

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JEFF BEMER,

Plaintiff,

v.

CORRECTIONAL MEDICAL SERVICES
INC., et al.,

Defendants.

Case No. 10-cv-12228

HONORABLE STEPHEN J. MURPHY, III

ORDER ADOPTING REPORT AND RECOMMENDATION
(docket no. 67) **ON MOTION TO DISMISS AND / OR**
FOR SUMMARY JUDGMENT OF DEFENDANTS
IKRAM (docket no. 17) AND WOLCOTT (docket no. 45).

Jeff Bemer broke his foot while playing baseball in the prison yard at the Southern Michigan Correctional Facility in Jackson, Michigan, on or about June 7, 2007. He alleges that the foot was improperly treated by the prison officials tasked with his well-being during his incarceration. He has brought this lawsuit under 42 U.S.C. § 1983 for deliberate indifference to his medical needs under the Eighth Amendment, as well as a state-law tort claim of gross negligence, against the organizations responsible for conducting health services for prisoners in Michigan and the various medical staff that attended to his injury. The case has been referred to a magistrate judge for all pretrial proceedings. Two of the individuals named in the suit — Melva Wolcott, a nurse practitioner, and K. Nimir Ikram, a doctor — moved for either dismissal of the complaint as against them, or for summary judgment. The magistrate judge has recommended that the motions be granted. Bemer has not objected to the recommendation.

Review of a magistrate judge's recommendations on dispositive motions is governed by Fed. R. Civ. P. 72(b). The district judge who referred the motion is only required to

perform a de novo review of the magistrate judge's findings if the parties "serve and file specific written objections to the proposed findings and recommendations." Fed. R. Civ. P. 72(b)(2). Since Bemmer did not file objections to the Report, the Court is under no obligation to perform de novo review. Nevertheless, because a district judge always retains jurisdiction over a motion after referring it to a magistrate judge, the district judge is entitled to review a magistrate judge's recommendation on his own initiative. See *Thomas v. Arn*, 474 U.S. 140, 154 (1985) (clarifying that while a district court judge need not review a report and recommendation "de novo if no objections are filed, it does not preclude further review by the district judge, sua sponte or at the request of a party, under a de novo or any other standard"); *Henderson v. Carlson*, 812 F.2d 874, 878 (3rd Cir. 1987) ("[T]he better practice is for the district judge to afford some level of review to dispositive legal issues raised by the report," even if this is not strictly required by statute in the absence of objections).

The Court has reviewed the magistrate judge's Report and Recommendation, and finds that its reasoning and conclusions are sound. Therefore, it will grant Ikram and Wolcott's motions, and dismiss them from this case.

WHEREFORE, it is hereby **ORDERED** that the Report and Recommendation (docket no. 67) is **ADOPTED**, and the motions to dismiss and / or for summary judgment of Ikram (docket no. 17) and Wolcott (docket no. 45) are **GRANTED**.

SO ORDERED.

s/Stephen J. Murphy, III
STEPHEN J. MURPHY, III
United States District Judge

Dated: May 6, 2011

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on May 6, 2011, by electronic and/or ordinary mail.

Carol Cohron
Case Manager