

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLIE HARRIS,

Plaintiff,

vs.

Case No. 10-CV-13434
HON. GEORGE CARAM STEEH

BROWN, NURSE ADERY,
and JOHN DOE,

Defendants.

_____ /

ORDER ACCEPTING MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION [DOC. 40]

This matter is before the court on plaintiff Willie Harris' action alleging that defendants violated his rights by failing to provide him with appropriate medical care for his HIV infection. Defendant Adery filed a motion to dismiss for failure to state a claim on which relief may be granted. Plaintiff filed a motion to strike the motion as untimely. Defendant Adery filed a response to plaintiff's motion to strike. On October 17, 2011, the magistrate judge issued a report and recommendation recommending that defendant's motion to dismiss be denied as untimely, plaintiff's motion to strike be denied, and that plaintiff's claims against defendant Adery be dismissed for failure to state a claim on which relief may be granted. Plaintiff filed objections to the report and recommendation. In his objections, plaintiff argues his claims should not be dismissed because defendant Adery failed to file a timely answer and because he has sufficiently set forth a claim. He also argues that defendants Unknown Brown and Unknown Lab Worker should be served. For the reasons set forth in the report and recommendation, the magistrate judge properly found plaintiff's claims against defendant Adery should be

dismissed pursuant to 28 U.S.C. §§ 1915A and 1915(e)(2). Because defendants Unknown Brown and Unknown Lab Technician were dismissed without prejudice by the court's July 19, 2011 order, the magistrate judge properly decided not to direct the U.S. Marshal Service to serve those individuals. In order to obtain service on those individuals, plaintiff must file a new case asserting his claims against those individuals. Therefore, the court finds: (1) defendant Adery's motion to dismiss for untimely filing is DENIED; (2) plaintiff's motion to strike is DENIED; and (3) plaintiff's claims against defendant Adery are DISMISSED for failure to state a claim upon which relief can be granted.

IT IS SO ORDERED.

Dated: November 21, 2011

S/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on November 21, 2011, by electronic and/or ordinary mail and also to Willie Harris at Ionia Maximum Correctional Facility, 1576 W. Bluewater Hwy., Ionia, MI 48846.

s/Josephine Chaffee
Deputy Clerk