

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Robert Annabel,

Plaintiff,

v.

Case No. 12-13590

Daniel Heyns, *et al.*,

Sean F. Cox

United States District Court Judge

Defendants.

ORDER

**ADOPTING 7/26/16 REPORT AND RECOMMENDATION
AND GRANTING DEFENDANT DINSA'S MOTION FOR SUMMARY JUDGMENT**

Acting *pro se*, Plaintiff Robert Annabel, a state prisoner, filed this action on August 14, 2012. Plaintiff's original complaint named multiple individuals as defendants. The matter was assigned to a magistrate judge for all pretrial proceedings.

The operative complaint at this juncture is Plaintiff's June 16, 2015 Amended Complaint. (Docket Entry No. 109). Plaintiff's Amended Complaint asserts claims against a single Defendant – Surjit Dinsa, a psychiatrist who treated Plaintiff in prison. Plaintiff's Amended Complaint alleges that Dinsa: 1) violated his Eighth Amendment rights by using excessive force to involuntarily administer Prolixin injections; and 2) violated his Fourteenth Amendment rights by providing false testimony at panel hearing to determine whether the administration medically necessary.

On July 26, 2016, Magistrate Judge Anthony Patti issued a "Report and Recommendation To Grant Defendant Surjit Dinsa's Motion For Summary Judgment." (Docket Entry No. 127). In that Report and Recommendation, the magistrate judge recommends that this Court: 1) grant

Dinsa's Motion for Summary Judgment and dismiss the claims against Dinsa; and 2) dismiss "any remaining claims Plaintiff intended to bring against Tim Kipp and David Gedernalik because his amended complaint contains no mention of those individuals." (*Id.* at 23).

Pursuant to FED. R. CIV. P. 72(b), a party objecting to the recommended disposition of a matter by a Magistrate Judge must file objections to the R&R within fourteen (14) days after being served with a copy of the R&R.

On August 12, 2016, Plaintiff filed Objections to the July 26, 2016 Report and Recommendation. (Docket Entry No. 128).

Plaintiff does not object to the recommendation that the Court dismiss any remaining claims that Plaintiff intended to assert against Kipp or Gedernalik. But this Court concludes that there are no remaining claims against Kipp or Gedernalik to dismiss and the docket appears to reflect that as well. (*See* Docket, showing that all Defendants other than Dinsa have been terminated). When Plaintiff filed his Amended Complaint on June 16, 2016 (Docket Entry No. 109), that complaint replaced and superceded all prior complaints. *See, e.g. Drake v. City of Detroit*, 266 F. App'x 444,448 (6th Cir. 2008) ("an amended complaint supercedes all prior complaints"). Plaintiff's June 16, 2016 Amended Complaint asserts claims against a single defendant – Dinsa. There are no remaining claims in this action against any other defendants.

Plaintiff's objections focus on the magistrate judge's recommendation that the Court grant Dinsa's Motion for Summary Judgment. In challenging the Report and Recommendation, Plaintiff repeats the same arguments he made in opposition to the motion (i.e., that the magistrate judge cannot make credibility determinations and therefore must accept Plaintiff's version of the facts.). The Court concludes that Magistrate Judge Patti thoroughly explained why he concluded

that the record blatantly contradicts Plaintiff's story and why summary judgment in favor of Defendant Dinsa is warranted. The Court agrees with that analysis.

Accordingly, IT IS ORDERED that the Court ADOPTS the July 26, 2016 Report and Recommendation and GRANTS Defendant Dinsa's Motion for Summary Judgment. Plaintiff's claims against Defendant Dinsa Shall be DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.

Dated: September 12, 2016

S/ Sean F. Cox
Sean F. Cox
U. S. District Judge

I hereby certify that on September 12, 2016, the foregoing document was served on counsel of record via electronic means and upon Robert Annabel via First Class mail at the address below:

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S/ J. McCoy
Case Manager