

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MAURICE MOORE,

Plaintiff,

Case No. 12-14783

Hon. Matthew F. Leitman

v.

CARMEN PALMER *et al.*,

Defendants.

**ORDER (1) OVERRULING DEFENDANTS' OBJECTION (ECF #85);
(2) ADOPTING THE MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION (ECF #84); AND GRANTING IN PART AND
DENYING IN PART DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT (ECF #70)**

Plaintiff Maurice Moore is a former inmate of the Michigan Department of Corrections ("MDOC"). In this action, Plaintiff alleges that numerous MDOC employees and officials violated his First and Eighth Amendment rights. Plaintiff also asserts a claim under state law for gross negligence. All of Plaintiff's claims relate to his allegation that he was repeatedly and viciously assaulted by members of the Latin Counts gang while in MDOC custody.

Following the close of discovery, Defendants filed a motion for summary judgment; Plaintiff opposed the motion. Magistrate Judge Mona K. Majzoub prepared a thorough and well-reasoned twenty-eight page Report and Recommendation ("R & R") in which she recommends that the Court grant the

motion in part and deny it in part. More specifically, the R & R suggests that the Court (1) grant summary judgment in favor of Defendants Scutt, Barrett, Vroman, Heyns, Heinritz, Haney, Armstrong, MacEachern, Stapleton, Chaney, and Wolfe on all of the claims against them; (2) deny summary judgment for Defendants Palmer, Kipp, Stewart, McCaulley, Sutherland, Napel, Alexander, Niemosto, Place, Marshall, LaCount, Prelesnik, Norwood, Huss, McKeon, and Straub; and (3) allow all of Plaintiff's claims against this latter group of Defendants to proceed to trial.

Defendants have now filed an objection to the R & R. Defendants say that they "accept the Magistrate Judge's summary of the evidence presented in Defendants' Motion and Plaintiff's Response thereto; it is the conclusions drawn from that evidence with respect to Plaintiff's claim of gross negligence that Defendants object to." (Objection, ECF # 85 at 2, Pg ID 698.) Defendants argue that the Magistrate Judge should have granted them summary judgment on the gross negligence claim because (1) Plaintiff failed to present evidence sufficient to support a finding that Defendants' proximately caused Plaintiff's claimed injuries and (2) Plaintiff has impermissibly attempted to recast an intentional tort claim as a gross negligence claim.

The Court overrules both of these objections because Defendants did not sufficiently present either of these arguments in their original motion and/or to the Magistrate Judge. Defendants attacked the sufficiency of Plaintiff's gross negligence claim at the highest level of generality – never once specifying the specific alleged defects identified in the objections. Accordingly, Defendants' objections can only be regarded as new arguments. A party may not make new arguments in an objection to an R & R. *See Murr v. United States*, 200 F.3d 895, 902, n.1 (6th Cir. 2000); *Jackson v. Commissioner of Social Security*, 2014 WL 1304913 at *7 (E.D. Mich. 2014).

Accordingly, **IT IS HEREBY ORDERED THAT:**

1. Defendants' Objection (ECF #85) to the R & R is **OVERRULED**;
2. The R & R (ECF #84) is **ADOPTED** as the Order of the Court;
3. Defendants' Motion for Summary Judgment (ECF #70) is **GRANTED** as to Defendants Scutt, Barrett, Vroman, Heyns, Heinritz, Haney, Armstrong, MacEachern, Stapleton, Chaney, and Wolfe; and
4. Defendants' Motion for Summary Judgment is **DENIED** as to Defendants Palmer, Kipp, Stewart, McCaulley, Sutherland, Napel, Alexander, Niemosto, Place, Marshall, LaCount, Prelesnik, Norwood, Huss, McKeon, and Straub.

s/Matthew F. Leitman

MATTHEW F. LEITMAN

UNITED STATES DISTRICT JUDGE

Dated: August 12, 2015

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on August 12, 2015, by electronic means and/or ordinary mail.

s/Holly A. Monda

Case Manager

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