

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

Neil Emery and Ryan Burgdorf,

Plaintiffs,

v.

Case No. 15-11113

Joseph R. Burtch, D.O.,

Sean F. Cox

United States District Court Judge

Defendant.

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**ORDER**  
**ADOPTING 9/22/17 REPORT AND RECOMMENDATION**

Acting through Counsel, Plaintiffs Neil Emery and Ryan Burgdorf (“Plaintiffs”) filed this § 1983 civil rights action against Defendant Joseph R. Burtch, D.O., alleging that Defendant Burtch sexually assaulted them while providing medical care to them while they were incarcerated, in violation of the Eight Amendment. The matter was referred to Magistrate Judge David Grand for all pretrial matters.

On March 17, 2017, Defendant Burtch filed a Motion for Summary Judgment. After full briefing by the parties and oral argument, on September 22, 2017, Magistrate Judge Grand issued a fourteen page Report and Recommendation (“the R&R”) wherein he explained the standard of review that applies to the motion, set forth the governing legal standards, and then evaluated Defendant’s arguments. Magistrate Judge Grand concluded that, viewing the evidence in favor of Plaintiffs, the non-moving party, that: 1) Plaintiffs have established a genuine issue of material fact as to whether the objective prong of the analysis is met, including proof that the alleged conduct actually occurred and proof of injury; and 2) Plaintiffs have established a

genuine issue of material fact as to whether the subjective prong of the analysis has been met.

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 October 2, 2017, Defendant Burch filed timely Objections to the R&R. On October 14, 2017, Plaintiffs filed a Response to the Objections, and on October 20, 2017, Defendant filed a reply brief.

Having carefully reviewed the magistrate judge's R&R, and having considered Defendant Burch's objections to it, the Court concludes that the magistrate judge applied the correct legal standard and concurs with both his analysis and conclusions.

Accordingly, the Court **ADOPTS** the magistrate judge's September 22, 2017 R&R. **IT IS FURTHER ORDERED** that Defendant Burch's Motion for Summary Judgment is **DENIED**.

**IT IS SO ORDERED.**

s/Sean F. Cox  
Sean F. Cox  
United States District Judge

Dated: January 25, 2018

I hereby certify that a copy of the foregoing document was served upon counsel of record on January 25, 2018, by electronic and/or ordinary mail.

s/Jennifer McCoy  
Case Manager