

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

ARDRA YOUNG, #260575,

Plaintiff,

v.

Case No.: 21-12170

Hon. Gershwin A. Drain

ROSILYN JINDAL, *et al.*,

Defendants.

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**ORDER ACCEPTING AND ADOPTING REPORT AND  
RECOMMENDATION [#81] AND GRANTING DEFENDANTS KORTE'S  
AND GILBERT'S MOTION TO DISMISS [#66]**

Plaintiff filed the instant 42 U.S.C. § 1983 action alleging that while housed at the Gus Harrison Correctional Facility (GHC), Defendants Michigan Department of Corrections employees violated his First and Eighth Amendment rights by depriving him of adequate medical care for his hearing condition. Plaintiff further alleges this inadequate medical care ultimately caused his condition to deteriorate and resulted in hearing loss.

On August 21, 2023, Magistrate Judge Anthony P. Patti issued a Report and Recommendation recommending that the Court grant Defendants Kimberly Korte's and Michelle Gilbert's Motion to Dismiss, concluding Plaintiff's Amended Complaint fails to allege any specific allegations that Korte, as the Health Unit

Manager at GHC, or Gilbert, GHC's Nursing Supervisor, either encouraged the specific unconstitutional misconduct or in some other way directly participated in it. Rather, Plaintiff merely alleges that Korte and Gilbert abandoned their affirmative duty to ensure the Health Care Clinic was fully operational with respect to providing medically necessary auxiliary aids to hard of hearing prisoners. Plaintiff's failure to set forth specific facts of Korte's and Gilbert's personal involvement in the alleged misconduct requires that his Eighth Amendment deliberate indifference claim be dismissed against them. *See Peatross v. City of Memphis*, 818 F.3d 233, 241 (6th Cir. 2016)("[A] supervisor cannot be held liable simply because he or she was charged with overseeing a subordinate who violated the constitutional rights of another.").

Finally, because Plaintiff fails to allege a viable Eighth Amendment claim against Defendants Korte and Gilbert, Magistrate Judge Patti recommended that the Court need not consider their alternative exhaustion argument. The Court agrees and hereby accepts and adopts Magistrate Judge Anthony P. Patti's August 21, 2023 Report and Recommendation as this Court's factual findings and conclusions of law.

On September 6, 2023, Plaintiff filed a Motion for Extension of Time to file his objections to Magistrate Judge Patti's Report and Recommendation. On September 8, 2023, this Court granted Plaintiff's requested relief extending the

deadline for filing his objections to September 28, 2023. *See* ECF No. 84. However, Plaintiff has failed to file any objections by the September 28, 2023 deadline. Neither party has filed objections to the Magistrate Judge's Report and Recommendation, and the time for filing objections has expired. *See* 28 U.S.C. § 636(b)(1)(C); *see also* ECF No. 84.

Upon review of the parties' briefing and the Magistrate Judge's Report and Recommendation, the Court concludes that the Magistrate Judge reached the correct conclusion. Therefore, the Court ACCEPTS and ADOPTS Magistrate Judge Patti's August 21, 2023 Report and Recommendation [#81] as this Court's findings of fact and conclusions of law. Defendants Korte's and Gilbert's Motion to Dismiss [#66] is GRANTED.

SO ORDERED.

Dated: September 29, 2023

/s/Gershwin A. Drain  
GERSHWIN A. DRAIN  
United States District Judge

#### CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record and on Ardra Young, #260575, Richard Handlon Correctional Facility, 1728 Bluewater Highway, Ionia, MI 48846 on September 29, 2023, by electronic and/or ordinary mail.

/s/ Teresa McGovern  
Case Manager

