

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIMOTHY PUCKETT,

Plaintiff,

v.

T. HUIZING, *et al.*,

Defendants.

CASE NO. 1:07-CV-1274

HON. ROBERT J. JONKER

ORDER AND JUDGMENT
APPROVING REPORT AND RECOMMENDATION

The Court has reviewed Magistrate Judge Brenneman's Report and Recommendation in this matter (docket # 34) and Plaintiff Puckett's Objections to the Report and Recommendation (docket # 40).

Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, "[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified." 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997). Specifically, the Rules provide that:

The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981).

The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself; and Plaintiff's objections. After its review, the Court finds that Magistrate Judge Brenneman's Report and Recommendation is factually sound and legally correct.

In his Report and Recommendation, Magistrate Judge Brenneman recommends that Defendants' Mark Gregory and Roger Eastman's Motion for Summary Judgment (docket # 13) be granted.¹ Mr. Puckett offers no specific objections to the Report and Recommendation. Rather, he simply reiterates his allegations against all of the Defendants. (*See* Pl.'s Resp. in Opp. to Magistrate's Recommendation, docket # 40.) He has also now filed an affidavit in support of his factual claims (docket # 41). Mr. Puckett offers no reason for his failure to include his affidavit of facts in the summary judgment record available to the Magistrate Judge. But even assuming he had submitted the affidavit, or equivalent evidentiary support, in a timely way, it would not change the outcome here. A timely submission would have precluded summary judgment for Defendant Gregory based on Gregory's uncontested affidavit (Report and Recommendation, docket # 34, at 5), but it would not have precluded summary judgment on the alternate ground articulated by the Magistrate Judge (*Id.*, at 6-7). The record supports this alternative ground, and nothing in Mr. Puckett's objections or belated affidavit undermines the analysis. Summary judgment for

¹A summons as to Defendant Huizing issued on March 3, 2009, but no proof of service has yet been filed.

Mr. Gregory on the basis set forth in Subsection C of the Report and Recommendation remains appropriate. (*See id.*)

Mr. Puckett's objections and affidavit do not affect his claim against Mr. Eastman, which consists merely of an assertion that Mr. Eastman "knew there was no reason for my cell door to be opened up without me being in restraints, but he proceeded to open my cell door 2 or 3 times." (*See* Compl., docket # 1, at 3.) There is no indication that Mr. Eastman applied any force against Mr. Puckett, let alone a degree of force that would implicate the Eighth Amendment. Summary judgment for Mr. Eastman is appropriate.

ACCORDINGLY, IT IS ORDERED: that the Report and Recommendation of the Magistrate Judge (docket # 34) is approved and adopted as the opinion of the Court, to the extent consistent with this order.

IT IS FURTHER ORDERED: that Defendants Gregory and Eastman's Motion for Summary Judgment (docket # 13) is **GRANTED**. Defendants Gregory and Eastman are dismissed from this action.

Dated: March 12, 2009

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE