

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOEL MARCEL CARTER,

Plaintiff,

Case No. 1:13-cv-0807

v.

HON. ROBERT J. JONKER

JAMIE AYALA and ROBERT DAVIS,

Defendants.

**ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION**

The Court has reviewed the Magistrate Judge’s Report and Recommendation (ECF No. 130) and Plaintiff’s Objections to the Report and Recommendation (ECF No. 131). Under the Federal Rules of Civil Procedure, where 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, the Plaintiff's Objections to the Magistrate's Report and Recommendation. After its review, the Court approves and adopts Magistrate Judge Kent's Report and Recommendation as amplified in this Order.

Plaintiff Carter suffers from multiple sclerosis and psychosis. Plaintiff's complaint raised three related claims under 42 U.S.C. § 1983 against two defendants: psychiatrist Dr. Jamie Ayala ("Dr. Ayala") and social worker Mr. Robert Davis ("Mr. Davis"). Plaintiff's claim alleging First Amendment retaliation has previously been dismissed by this Court because Plaintiff did not engage in conduct protected by the First Amendment (ECF No. 48). Plaintiff's remaining claims are for Eighth Amendment deliberate indifference and Fourteenth Amendment right to refuse medical treatment.

The Report and Recommendation carefully reviews the record and examines the relevant law, and recommends that defendants' motions for summary judgment (ECF Nos. 94, 109) be granted; that Plaintiff's supplemental motion for summary judgment (ECF No. 122) be denied; and that this action be dismissed. The Court finds the Magistrate Judge's Report and Recommendation to be well-reasoned and thorough, and accordingly adopts its conclusion.

PLAINTIFF'S OBJECTIONS

Plaintiff raises four objections, all of which lack merit. First, Plaintiff claims the Magistrate Judge failed to apply the correct standard of review, and in particular failed to draw factual inferences in his favor as the non-moving party. He is incorrect. The Court finds that the Magistrate Judge applied the correct standard of review, fairly and liberally construed Plaintiff's claims, and correctly found that Plaintiff's claims do not warrant relief under the applicable law.

Second, Plaintiff asserts that the Magistrate Judge “ignore[d] and disregard[ed]” his claims against Dr. Ayala by refusing to evaluate and accept his proffered evidence (ECF No. 131, PageID.876-878). The Court, however, finds that the Magistrate Judge’s Report and Recommendation carefully and thoroughly examines the extensive medical record in this case; details each occasion Dr. Ayala treated Plaintiff; and adequately addresses each of Plaintiff’s claims in this regard (ECF No. 130, PageID.863-871). Plaintiff’s objection fails to identify any issue the Magistrate Judge got wrong. Accordingly, Plaintiff’s objection is overruled.

Third, Plaintiff claims that the Magistrate Judge’s Report and Recommendation fails to address his “law of the case” argument with regard to Defendant Davis. Specifically, Plaintiff claims that this Court previously found that “a genuine issue of fact remains with regard to Davis” and that finding controls disposition of Defendant Davis’s motion for summary judgment in this case also (ECF No. 131, PageID.880). Plaintiff’s objection is meritless. This Court’s prior Order only found that Defendant failed to meet his qualified immunity burden at an earlier stage of the case (ECF No. 60, PageID.362). Defendants’ current motions raise the different issue of whether Plaintiff has identified sufficient facts supporting Eighth and Fourteenth Amendment claims. Moreover, nothing in the “law of the case” doctrine, or otherwise, prevents a District Court from revisiting and changing earlier decisions in the case. Accordingly, this objection is overruled.

Plaintiff’s final objection concerns the Magistrate Judge’s finding that Plaintiff failed to raise a cognizable claim under the Fourteenth Amendment because he was not forced to undergo medical treatment against his will. Plaintiff does not object to this finding *per se*, but instead argues that the Fourteenth Amendment claim at issue is not whether he was forced to undergo medical treatment, but whether he was retaliated against for refusing to undergo medical treatment. Plaintiff’s objection

misses the point. Plaintiff's First Amendment retaliation claim has already been dismissed by this Court in its very first Order (ECF No. 48, PageID.301) and is therefore no longer at issue. Accordingly, nothing in Plaintiff's objections changes the fundamental analysis.

CONCLUSION

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (ECF No. 130), is adopted.

IT IS FURTHER ORDERED that Defendant Ayala and Davis's Motions for Summary Judgment (ECF No. 94, 109) are **GRANTED**, and Plaintiff Carter's Supplemental Motion for Summary Judgment (ECF No. 122) is **DENIED**.

This case is **DISMISSED**.

IT IS SO ORDERED.

Dated: March 30, 2017

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