

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LEON DOUGLAS,

Plaintiff,

v.

KEARA MUZZIN, et al.,

Defendants.

CASE NO. 1:15-CV-41

HON. ROBERT J. JONKER

**ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION**

The Court has reviewed Magistrate Judge Green’s Report and Recommendation in this matter (ECF No. 89), as well as the Objection submitted by the Defendants (ECF No. 90) and the Objection submitted by Plaintiff (ECF No. 99). 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 451 (3d ed. 2014). Specifically, the Rules provide that:

The district judge must determine de novo any part of the magistrate judge’s disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b)(3). 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 Magistrate Judge recommends granting the Defendants' motion for summary judgment (ECF No. 73) in part to dismiss Plaintiff's Eighth Amendment claims against Defendants Muzzin and Martin. The Magistrate Judge further recommends that the Court deny the motion in all other respects. (ECF No. 89). The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself; and the two Objections. After its review, the Court finds that Magistrate Judge Green's Report and Recommendation is factually sound and legally correct and accordingly adopts its conclusion.

PLAINTIFF'S OBJECTION (ECF No. 99)

Plaintiff objects to the Magistrate Judge's recommendation that Defendants Muzzin and Martin are entitled to qualified immunity on the Eighth Amendment claims raised against them in their individual capacities. According to Plaintiff, he has shown that Defendants were deliberately indifferent to his serious medical needs.

The Report and Recommendation carefully and accurately details the factual record. The basic facts of Defendants Muzzin and Martin are really beyond genuine dispute. How to characterize those facts is disputed, but that does not preclude summary judgment here. On this record, no reasonable fact-finder could conclude Defendants Muzzin and Martin were deliberately indifferent to Plaintiff's medical needs, for the very reasons the Report and Recommendation describes. Nothing in Plaintiff's Objection changes that fundamental analysis.

Accordingly, Plaintiff's Objection is overruled.

DEFENDANTS' OBJECTION (ECF No. 90)

Defendants do not object to the Magistrate Judge's decision to dismiss Plaintiff's Section 1983 claims against Defendants Muzzin and Martin based on qualified immunity. However, Defendants do object to the Magistrate Judge's recommendation that the ADA and RA claims

should not be dismissed. Defendants assert that because Plaintiff has not shown Defendants Muzzin and Martin acted with deliberate indifference toward Plaintiff, Plaintiff may not recover compensatory damages under the ADA or RA. Defendants may be right, but as the Court reads the record on de novo review, this is the first time Defendants have raised the argument. There is only a cursory reference in Defendant's summary judgment brief to the ADA and RA claims that is entirely undeveloped and accompanied by no legal authority. (ECF No. 84, PageID.364). Generally, "issues raised for first time in objections to magistrate judge's report and recommendation are deemed waived." *United States v. Waters*, 158 F.3d 933, 936 (6th Cir. 1998) (citing *Marshall v. Chater*, 75 F.3d 1421, 1426-27 (10th Cir. 1996)).

Accordingly, the Defendants' Objection is overruled. If Defendants believe they have a meritorious argument on the ADA and RA claims, they may raise it at trial under FED. R. CIV. P. 50.

CONCLUSION

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (ECF No. 89) is approved and adopted as the opinion of the Court.

IT IS FURTHER ORDERED that Defendant's Motion for Summary Judgment (ECF No. 73) is **GRANTED** to the extent it seeks the dismissal of Plaintiff's Eighth Amendment claims against Defendants Muzzin and Martin and **DENIED** in all other respects.

Date: March 25, 2019

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