

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BRADFORD ROSS,

Plaintiff,

v.

CASE NO. 1:15-CV-218

VICTOR L. DOMINGUEZ-BEM and
CORIZON, INC.,

HON. ROBERT J. JONKER

Defendants.

ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION

The Court has reviewed Magistrate Judge Kent's Report and Recommendation in this matter (ECF No. 56), Plaintiff's Objection to the Report and Recommendation (ECF No. 57), and Defendants' Response to Objection (ECF No. 58). 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:

[t]he 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 Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself; Plaintiff's objections; and Defendants' response. After its review, the Court finds that Magistrate Judge Kent's Report and Recommendation is factually sound and legally correct.

The Magistrate Judge recommends granting Defendants's Motion for Summary Judgment (ECF No. 44). Fundamentally, Plaintiff claims that Dr. Dominguez-Bem's termination of Plaintiff's use of a cervical collar amounts to deliberate indifference, because a specialist, Dr. Rawal, had instructed staff at Duane Waters Hospital that Plaintiff should wear the cervical collar longer. The Magistrate Judge properly determined that at most, Plaintiff's claim against Dr. Dominguez-Bem reflects a disagreement between physicians, not deliberate indifference. (ECF No. 56, PageID.497.) In his Objection, Plaintiff primarily reiterates and expands arguments he presented in his motion papers. The Report and Recommendation already carefully, thoroughly, and accurately addresses these arguments. Plaintiff also directs the Court's attention to cases in which other courts found deliberate indifference where medical providers ignored or contravened specialists' directives. The cases Plaintiff cites are readily distinguishable and do not affect the analysis here. The Court agrees with the Magistrate Judge's conclusion that Defendants are entitled to the relief they seek, for the very reasons the Report and Recommendation delineates.

Plaintiff also objects that the Report and Recommendation fails to address what Plaintiff describes as a state law claim for gross negligence. To the extent Plaintiff brings a state law claim, the Court declines to exercise supplemental jurisdiction. 28 U.S.C. § 1367(c)(3).

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (ECF No. 56) is approved and adopted as the opinion of the Court.

IT IS FURTHER ORDERED that Defendants' Motion for Summary Judgment (ECF No. 44) is **GRANTED**.

IT IS FURTHER ORDERED that to the extent Plaintiff brings a state law claim for gross negligence, the claim is **DISMISSED** for lack of jurisdiction.

IT IS FURTHER ORDERED that for the same reasons that the Court dismisses the action, the Court discerns no good-faith basis for an appeal within the meaning of 28 U.S.C. § 1915(a)(3).

See McGore v. Wrigglesworth, 114 F.3d 601, 611 (6th Cir. 1997).

This case is **DISMISSED**.

Dated: March 8, 2017

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