

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MARK COLIN JENNINGS, II,

Plaintiff,

Case No. 1:16-cv-483

v.

HON. JANET T. NEFF

HEIDI E. WASHINGTON, et al.,

Defendants.

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**OPINION AND ORDER**

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. Defendant Showers filed a motion for summary judgment on Plaintiff's Eighth Amendment failure-to-protect claim against him. The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R), recommending that this Court deny the motion. The matter is presently before the Court on Defendant's objections to the Report and Recommendation (ECF No. 55). Plaintiff filed a response to the objections, concurring with the Report and Recommendation and moving for a jury trial on all facts that are in dispute (ECF No. 57).<sup>1</sup> In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.

The Magistrate Judge determined that Defendant Showers was not entitled to summary judgment on Plaintiff's Eighth Amendment failure-to-protect claim because (1) Defendant's

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<sup>1</sup> Defendant also previously requested a jury trial (ECF No. 20 at PageID.76).

argument is not supported by admissible evidence, and (2) Plaintiff's evidentiary submissions create genuine factual disputes as to these matters (R&R, ECF No. 53 at PageID.438).

Defendant objects to the first basis for the Magistrate Judge's recommendation, arguing that his clerical error in omitting the words "under oath" from his interrogatory answers should not exclude this Court from considering his answers in its decision (Objs., ECF No. 55 at PageID.445). Defendant's argument fails to support a different result. As the Magistrate Judge pointed out, even if Defendant's interrogatory answers did not include this deficiency, "the result would be the same as Plaintiff has presented evidence directly contradicting Defendant's assertions, thereby creating a genuine factual dispute regarding the essential elements of Plaintiff's claim" (R&R, ECF No. 53 at PageID.439). Defendant's objection is therefore denied.

Defendant also objects to the second basis for the Magistrate Judge's recommendation, arguing that Defendant is entitled to summary judgment because he "acted reasonably and, in an abundance of caution, asked Jennings if he wanted protection" (Objs., ECF No. 55 at PageID.447). Again, Defendant's argument fails to support a different result. The Magistrate Judge specifically considered Defendant's assertion that he "offered to place Plaintiff in protective custody which Plaintiff refused" (R&R, ECF No. 53 at PageID.438, citing Def. Br., ECF No. 42 at PageID.252). However, the Magistrate Judge determined that Defendant failed to meet his burden to demonstrate the lack of a genuine factual dispute necessitating a trial on the merits in light of the contrary allegations in Plaintiff's affidavit as well as Plaintiff's deposition testimony that he did not refuse an offer of protection from Defendant (R&R, ECF No. 53 at PageID.439, citing Pl. Aff., ECF No. 50-1 at PageID.417-418, and Pl. Dep., ECF No. 42-2 at PageID.259). Defendant's mere disagreement with the result fails to demonstrate any factual or legal error by the Magistrate Judge.

Accordingly, this Court adopts the Magistrate Judge's Report and Recommendation as the Opinion of this Court.

**IT IS HEREBY ORDERED** that the Objections (ECF No. 55) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 53) is APPROVED and ADOPTED as the Opinion of the Court.

**IT IS FURTHER ORDERED** that Defendant Showers' Motion for Summary Judgment (ECF No. 41) is DENIED for the reasons stated in the Report and Recommendation.

**IT IS FURTHER ORDERED** that Plaintiff's Motion for a Jury Trial (ECF No. 57) is GRANTED.

Dated: June 27, 2017

/s/ Janet T. Neff

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JANET T. NEFF

United States District Judge