

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

GENE BURKS,

Plaintiff,

File No: 2:09-CV-149

v.

HON. ROBERT HOLMES BELL

ROBERT MASTERS, et al.,

Defendants.

**MEMORANDUM OPINION AND ORDER ADOPTING
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Before the Court is Plaintiff's objection (Dkt. No. 40) to the Magistrate Judge Greeley's July 7, 2010, Report and Recommendation ("R&R") (Dkt. No. 35) which recommends that this Court grant Defendants' motion for summary judgment. The Court is required to review *de novo* those portions of the R&R to which specific objections are made. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The Court may accept, reject, or modify any or all of the Magistrate Judge's findings or recommendations. *Id.*

Plaintiff has raised a single objection. Plaintiff objects to the Magistrate Judge's finding that Plaintiff suffered only a brief period of physical discomfort. (R&R at 5.) To contest this finding, Plaintiff relies only on allegations made in his complaint. Plaintiff points out that according to his complaint, he demanded medical treatment for several hours, which demonstrates that there exists a genuine dispute of material fact as to the duration of his discomfort. (Objections at 2.)

As the Magistrate Judge correctly stated in his R&R, “[i]f the movant carries the burden of showing there is an absence of evidence to support a claim or defense, then the party opposing the motion must demonstrate by affidavits, depositions, answers to interrogatories, and admissions on file, that there is a genuine issue of material fact for trial.” (R&R at 4); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). Here, Defendants have carried the burden of showing that there is an absence of evidence to support Plaintiff’s claim. On November 25, 2009, the Magistrate Judge notified Plaintiff of his opportunity to submit evidence in support of his claim. (Dkt. No. 28.) Instead, Plaintiff continued to rest on his pleadings, and continues to do so in his objection to the R&R. Thus, Plaintiff has failed to present any evidence to oppose Defendants’ motion. The objection will be denied.

With regard to the sections of the R&R not specifically objected to, the Court has reviewed the matters and concludes that the R&R correctly analyzes the issues and makes a sound recommendation.

Accordingly,

IT IS HEREBY ORDERED that Plaintiff’s objection (Dkt. No. 40) is **OVERRULED**.

IT IS FURTHER ORDERED that the July 7, 2010, Report and Recommendation of the Magistrate Judge (Dkt. No. 35) is **APPROVED** and **ADOPTED** as the opinion of the Court.

IT IS FURTHER ORDERED that Defendants' Motion for Summary Judgment (Dkt. No. 19) is **GRANTED**.

IT IS FURTHER CERTIFIED pursuant to 28 U.S.C. § 1915(a)(3) and Fed. R. App. P. 24(a)(3) that an appeal of this action would not be in good faith.

Dated: September 27, 2010

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE