

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

JOHN R. JONES, Register No. 186930,)
)
)
Plaintiff,)
)
v.) No. 08-4232-CV-C-SOW
)
)
ELIZABETH CONLEY, M.D., et al.,)
)
)
Defendants.)

ORDER

On August 4, 6 and 11, 2009, United States Magistrate Judge William A. Knox recommended denying plaintiff's motions for default judgment against Richard C. Smith, M.D., of Ocoee, Florida; granting motions to dismiss filed by defendants Durwood Neal, and Donald McNutt; granting, in part, and denying, in part, the motion to dismiss of Donita Tressner, Tymber Spray, Correctional Medical Services and Elizabeth Conley; and denying plaintiff's request for preliminary injunctive relief. The parties were advised they could file written exceptions to the recommendation, pursuant to 28 U.S.C. § 636(b)(1)(C).

Plaintiff requested an extension time on August 19, 2009, to file exceptions, and timely filed exceptions regarding his request for a preliminary injunction on August 24, 2009. On September 21, 2009, as the court was preparing to docket this order, plaintiff filed untimely exceptions to the report and recommendation regarding defendants Neal and McNutt. Plaintiff's request for a 40-day extension of time is denied. In this court's recommendation, plaintiff was already granted an additional ten days beyond that set forth in the statute, 28 U.S.C. § 636(b)(1). Further, the defendants' motions to dismiss were filed in November and December of 2008, and plaintiff has had more than adequate time to prepare and respond to the issues.

Nevertheless, the court has read through the exceptions filed on September 21, 2009, and notes that plaintiff put the previous case number in the style portion of the pleadings that were filed in Jones v. Lamour, No. 04-4225 (W.D. Mo. 2006), and treated as a motion to reopen. The

court did not err in filing them in that case and treating them as a motion to reopen. Thus, plaintiff's exceptions would not change this court's adoption of the report and recommendation.

The court has conducted a de novo review of the record, including the exceptions filed by plaintiff on August 24, 2009. Plaintiff's exceptions regarding denial of his medically prescribed boots show he has not received his boots because of reasons unrelated to his medical treatment. The documents submitted by plaintiff clearly show that the sole of the boots he says he purchased contain metal, and therefore, have been denied by prison officials as a safety and security concern. Plaintiff fails to allege that he has in any way addressed this with his treating physician to see if alternative boots can be medically prescribed for him. There appears to be no imminent concern that would require this court's preliminary intervention on this issue during the pendency of this case.

Upon de novo review of the record, this court is convinced that the recommendations of the Magistrate Judge are correct and should be adopted.

IT IS, THEREFORE, ORDERED that plaintiff's motion for extension of time is denied.

[76] It is further

ORDERED that the Reports and Recommendations of August 4, 6, and 11, 2009, are adopted. [73, 74, 75] It is further

ORDERED that defendants' motion of December 15, 2008, to dismiss the claims against defendants Tymber Spray, Donita Tressner, Elizabeth Conley, M.D., and Correctional Medical Services, Inc., is (1) granted with respect to plaintiff's official capacity damage claims against defendants Spray, Tressner and Conley, and on all claims against defendants Spray, Tressner, Conley and Correctional Medical Services, Inc., relating to events and medical care which occurred prior to July 28, 2003; and (2) denied in all other respects. [32] It is further

ORDERED that plaintiff's motion of December 17, 2008, for preliminary injunctive relief related to the provision of medical boots is denied. [34] It is further

ORDERED that defendant Donald McNutt's motion of November 18, 2008, is granted and plaintiff's claims against defendant McNutt are dismissed, with prejudice. [26] It is further

ORDERED that defendant Durwood E. Neal, Jr.'s, motion of December 3, 2008, is granted and plaintiff's claims against defendant Neal are dismissed, with prejudice. [30] It is further

ORDERED that plaintiff's motions of April 22, May 5 and July 6, 2009, for default judgment are denied, and Richard C. Smith, M.D., of Ocoee, Florida, is dismissed as a defendant in this case. [63, 68, 72]

/s/ _____

SCOTT O. WRIGHT
Senior United States District Judge

Dated: September 23, 2009
Kansas City, Missouri