

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

FATE MARTIN, JR., Register No. 176276,)
)
)
Plaintiff,)
)
v.) No. 09-4047-CV-C-SOW
)
)
DANA MEYER, et al.,)
)
)
Defendants.)

ORDER

On September 14, 2009, United States Magistrate Judge William A. Knox recommended dismissing plaintiff's claims. The parties were advised they could file written exceptions to the recommendation, pursuant to 28 U.S.C. § 636(b)(1)(C).

The court has conducted a de novo review of the record, including the exceptions filed by plaintiff on October 2, 2009. The issues raised in plaintiff's exceptions with regard to defendant Dana Meyer were adequately addressed in the report and recommendation. Thus, the court is persuaded that the recommendation of the Magistrate Judge is correct and should be adopted with respect to defendant Meyer.

In his exceptions, however, plaintiff sets forth additional facts regarding the five-week delay between his fall in March 2007 and the time his broken hand was X-rayed, and the further delay until after his transfer in August 2007 for treatment of his shoulder. Plaintiff alleges he has sustained permanent damage because of the rotator cuff injury and has been unable to engage in his regular work. Plaintiff states he repeatedly complained about his hand and shoulder, and defendant Garcia was deliberately indifferent in his treatment, or lack of treatment, and that he had to be transferred to another institution before he was given the treatment and surgery he needed. While these

allegations may be insufficient to withstand challenges by defendant, they are sufficient, as supplemented, to allow plaintiff to proceed on his claim against defendant Garcia.

IT IS, THEREFORE, ORDERED that the Report and Recommendation of September 14, 2009, is adopted, in part, and the claim against defendant Dana Meyer is dismissed, pursuant to 28 U.S.C. § 1915A, for failure to state a claim for which relief can be granted.. [22] It is further

ORDERED that plaintiff is granted leave to proceed in forma pauperis, pursuant to the provisions of 28 U.S.C. § 1915, on his claim against defendant Garcia for deliberate indifference to his serious medical needs between March and August 2007. It is further

ORDERED that within thirty days, the Attorney General of Missouri and Correctional Medical Services notify the court, in writing, whether they will or will not waive service of process. It is further

ORDERED that defendant Garcia answer or otherwise respond, pursuant to Rules 4 and 12, Federal Rules of Civil Procedure, within sixty days, if service of process is waived, or within twenty days after service of process, if service of process is not waived. It is further

ORDERED that defendant is granted leave to depose plaintiff at his place of incarceration.

/s/ Scott O. Wright
SCOTT O. WRIGHT
Senior United States District Judge

DATED: December 11, 2009