

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

TIFFANY SMITH, as parent and natural
guardian of Deante Smith;

Plaintiff,

vs.

CITY OF OMAHA, a political subdivision
existing and organized in the State of
Nebraska; OMAHA POLICE DEPARTMENT,
ALEX HAYES, Chief of Police, individually
and in his official capacity; BENJAMIN
EDWARDS, Omaha Police Officer,
individually and in his official capacity; AAREN
ANDERSON, Omaha Police Officer,
individually and in his official capacity;
JERALD SWANSON, Omaha Police Officer,
individually and in his official capacity; DON
KLEINE, Douglas County Attorney,
individually and in his official capacity; JOHN
DOE, Douglas County Attorney, individually
and in his official capacity; DOUGLAS
COUNTY, a political subdivision existing and
organized in the State of Nebraska; and
JOHN DOES 1-100,

Defendants.

8:12CV331

MEMORANDUM AND ORDER

This matter is before the court on the plaintiff's objection, Filing No. [41](#), to the magistrate judge's order, Filing No. 40, denying her motion to withdraw the Rule 26(f) report filed by defendants City of Omaha, Omaha Police Department, Alex Hayes, Benjamin Edwards, Aaren Anderson, and Jerald Swanson ("the City defendants"), Filing No. [38](#). In his motion to withdraw the report, the plaintiff argued that counsel for the City defendants misrepresented to the court whether the parties believe mediation would be appropriate. In response, plaintiff explained that it submitted the report based on the parties' joint agreements—although the plaintiff thought mediation was appropriate, the City defendants did not and no agreement to mediate was represented to the court.

Filing No. [39](#), Response at 1-2. The City defendants assert that they did not intend to mislead the court. *Id.* at 2.

The Supreme Court has construed the statutory grant of authority conferred on magistrate judges under [28 U.S.C. § 636](#) to mean that nondispositive pretrial matters are governed by § 636(b)(1)(A) and dispositive' matters are covered by § 636(b)(1)(B). [Gomez v. United States](#), 490 U.S. 858, 873-74 (1989); see also [Fed. R. Civ. P. 72\(a\)](#). On review of a decision of the magistrate judge on a nondispositive matter, the district court may set aside any part of the magistrate judge's order that it finds is clearly erroneous or contrary to law. [28 U.S.C. § 636 \(b\)\(1\)\(A\)](#); [Fed. R. Civ. P. 72\(a\)](#). Dispositive motions, however, are subject to *de novo* review. [United States v. Lothridge](#), 324 F.3d 599, 600 (8th Cir.2003); [28 U.S.C. § 636\(b\)\(1\)](#).

The court finds no error in the magistrate judge's order. The magistrate judge had been provided the plaintiff's explanation and rationale. Under the circumstances, the court finds it unnecessary to withdraw the report since any potential misunderstanding has been explained. The plaintiff is free to file a motion to compel mediation. Accordingly,

IT IS ORDERED that the plaintiff's objection (Filing No. [41](#)) to the magistrate judge's order (Filing No. 40) is overruled.

Dated this 1st day of July, 2013.

BY THE COURT:

s/ Joseph F. Bataillon
United States District Judge