

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MANFRED BERNIER,

Plaintiff,

-against-

9:17-CV-1376 (LEK/ATB)

THOMAS CARTER, et al.,

Defendants.

DECISION AND ORDER

I. INTRODUCTION

Plaintiff Manfred Bernier commenced this *pro se* action on December 21, 2017 pursuant to Bivens v. Six Unknown Narcotics Agents, 403 U.S. 388 (1971). Dkt No. 1 (“Complaint”). Plaintiff claims Defendants violated his constitutional right to adequate medical care while he was incarcerated at Ray Brook Federal Correctional Institution. Id. Plaintiff claims Defendant Carter violated the Eighth Amendment by denying him medical care and Defendant King violated the Eighth Amendment by failing to intervene. Id.

On June 1, 2021, Defendants filed a motion for summary judgment. Dkt. No. 61. Plaintiff did not respond. See Docket.

Now before the Court is a Report-Recommendation regarding the motion for summary judgment filed by the Honorable Andrew T. Baxter, recommending the Defendants’ motion for summary judgment be granted in part and denied in part. Dkt. No. 65 (“Report-Recommendation”). For the reasons that follow, the Court approves and adopts the Report-Recommendation.

II. BACKGROUND

A. Factual Allegations

Petitioner's factual allegations are detailed in the Report-Recommendation, familiarity with which is assumed. See R. & R. at 2–5.

B. The Report-Recommendation

Judge Baxter thoroughly reviewed Plaintiff's claims that his Eighth Amendment Rights were violated and found there was sufficient evidence on the record to preclude summary judgment of the claim against Defendant Carter, but that summary judgment was appropriate as to the claim against Defendant King. See id. at 12–19.

III. STANDARD OF REVIEW

Within fourteen days after a party has been served with a copy of a magistrate judge's report-recommendation, the party "may serve and file specific, written objections to the proposed findings and recommendations." Fed. R. Civ. P. 72(b); L.R. 72.1(c). If objections are timely filed, a court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b).

However, if no objections are made, or if an objection is general, conclusory, perfunctory, or a mere reiteration of an argument made to the magistrate judge, a district court need review that aspect of a report-recommendation only for clear error. Barnes v. Prack, No. 11-CV-857, 2013 WL 1121353, at *1 (N.D.N.Y. Mar. 18, 2013); Farid v. Bouey, 554 F. Supp. 2d 301, 306–07 (N.D.N.Y. 2008), abrogated on other grounds by Widomski v. State Univ. of N.Y. at Orange, 748 F.3d 471 (2d Cir. 2014); see also Machicote v. Ercole, No. 06-CV-13320, 2011 WL 3809920, at *2 (S.D.N.Y. Aug. 25, 2011) ("[E]ven a pro se party's objections to a Report and Recommendation must be specific and clearly aimed at particular findings in the magistrate's proposal"). "A [district] judge . . . may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." § 636(b).

IV. DISCUSSION

Plaintiff did not file objections to the Report-Recommendation by October 7, 2021, when they were due pursuant to 28 U.S.C. § 636(b)(1) and calculated according to Fed. R. Civ. P. 6(d) and 6(a)(1)(C). See Docket. Consequently, the Court reviews the Report-Recommendation for clear error and finds none. Therefore, the Court adopts the Report-Recommendation in its entirety.

V. CONCLUSION

Accordingly, it is hereby:

ORDERED, that the Report-Recommendation (Dkt. No. 65) is **APPROVED and ADOPTED** in its entirety; and it is further

ORDERED, that Defendants' motion for summary judgment (Dkt. No. 61) is **DENIED** as to Defendant Carter; and it is further

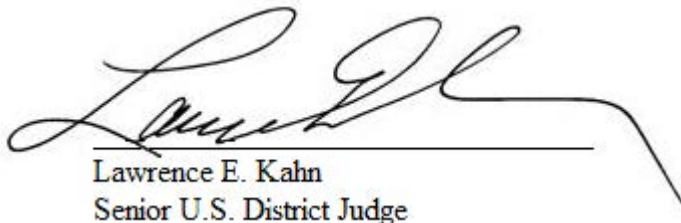
ORDERED, that Defendants' motion for summary judgment (Dkt. No. 61) is **GRANTED** as to Defendant King; and it is further

ORDERED, that the Clerk remove Defendant King as a defendant in this matter; and it is further

ORDERED, that the Clerk serve a copy of this Decision and Order on all parties in accordance with the Local Rules.

IT IS SO ORDERED.

DATED: October 19, 2021
 Albany, New York



Lawrence E. Kahn
Senior U.S. District Judge