IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION

Dennis James Gaede, Plaintiff, vs. James T. Podrebarac, Leann Bertsch, Warren Emmer, Tim Schuetzle, and Kathy Bachmeier, Defendants.	)	**ORDER ADOPTING REPORT AND RECOMMENDATION** Case No. 1:10-cv-070

On November 1, 2011, the defendants moved for summary judgment. See Docket No. 24. On November 30, 2011, Plaintiff Dennis Gaede filed a brief in opposition to the motion. See Docket No. 26. On December 14, 2011, the defendants filed a reply brief. See Docket No. 27.

On December 28, 2011, Magistrate Judge Charles S. Miller, Jr., issued a "Report and Recommendation." See Docket No. 28. Judge Miller concluded the following: (1) the defendants are all state employees and therefore have immunity from any claims for damages under the Eleventh Amendment to the United States Constitution; (2) the defendants in their individual capacity have qualified immunity from any claims for damages because there was no clearly established right to dental care beyond tooth extraction under the Eighth Amendment of the United States Constitution; and (3) no triable issues remained related to Gaede's Eighth Amendment claim for injunctive relief. Judge Miller recommended "that defendants' Motion for Summary Judgment (Doc. No. 24) be **GRANTED** and that Gaede's complaint be **DISMISSED WITH PREJUDICE**." See Docket No. 28, p. 16.

On January 18, 2012, Gaede filed an objection to the Report and Recommendation. See Docket No. 29. Gaede challenges Judge Miller's authority to issue the Report and Recommendation, argues that his Complaint sets forth a *prima facie* case that the defendants violated Eighth Amendment, that the defendants are not entitled to immunity, and requested the Court deny the defendants' motion and permit the case to proceed to a jury trial.

Under 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b)(1), magistrate judges have authority to issue reports and recommendations for dispositive motions relating to prisoner claims challenging conditions of confinement, such as civil rights claims under 42 U.S.C. § 1983. See Branch v. Martin, 886 F.2d 1043, 1045 n.1 (8th Cir. 1989) (explaining "conditions of confinement" has been interpreted to include nearly all 42 U.S.C. § 1983 claims related to health, safety, or punishment); Hobbs v. Lockhart, 46 F.3d 864, 867 (8th Cir. 1995) (explaining "magistrate judges are authorized [in a prisoner's 42 U.S.C. § 1983 claim] to conduct hearings . . . and to submit to the district court proposed findings of fact and conclusions of law and recommendations for the disposition of the case."); see also D.N.D. Civ. L. R. 72.1(B)(4). The district judge reviews the Report and Recommendation and has the discretion to adopt, reject, or modify the proposed finding and conclusions in the Report and Recommendation. 28 U.S.C. § 636(b)(1)(B); D.N.D. Civ. L. R. 72.1(D)(3). The United States Supreme Court has found that this procedure complies with Article III of the United States Constitution. United States v. Raddatz, 447 U.S. 667, 681-84 (1980). Therefore, Judge Miller acted in accordance with the law and within his authority as magistrate judge when he issued the Report and Recommendation.

The Court has carefully reviewed the Report and Recommendation, relevant case law, and the entire record, and finds the Report and Recommendation to be persuasive. Accordingly, the

Court **ADOPTS** the Report and Recommendation (Docket No. 28) in its entirety; **GRANTS** the defendants' "Motion for Summary Judgment" (Docket No. 24); and **DISMISSES WITH PREJUDICE** the plaintiff's complaint (Docket No. 5).

IT IS SO ORDERED.

Dated this 27th day of January, 2012.

/s/ Daniel L. Hovland
Daniel L. Hovland, District Judge
United States District Court