

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Kermit Brian Harris, :
 :
 Plaintiff, : Case No. 2:07-cv-0289
 :
 v. : Judge HOLSCHUH
 :
 Terry J. Collins, et al., :
 :
 Defendants. :

MEMORANDUM AND ORDER

This case is before the Court to consider *de novo* objections filed by both the plaintiff and by the Ohio Attorney General's office on behalf of two defendants, both employed by the Ohio Department of Rehabilitation and Correction, who have not yet been served with the complaint, to a Report and Recommendation issued by the Magistrate Judge on April 11, 2007. For the following reasons, the objections will be overruled, the claims against two of the defendants will be dismissed, and the remaining claims will be transferred to the United States District Court for the Northern District of Ohio.

The procedural background of the case is set forth in the Report and Recommendation. Four defendants are named in the complaint, two of whom are residents of this judicial district, and two of whom work at the Mansfield Correctional Institution, which is within the Northern District of Ohio. The two residents of this district are both employees of the Central Office of the ODRC. The Magistrate Judge concluded that the complaint fails to state a claim against them because they are not alleged to have been personally involved in the incidents described in the complaint but are being sued based only upon their supervisory role or their failure to respond positively to plaintiff's

grievances. The Report and Recommendation notes, correctly, that under the law in this Circuit, liability under 42 U.S.C. §1983 cannot be predicated upon such actions or status. Shehee v. Luttrell, 199 F.3d 295, 300 (6th Cir. 1999). Therefore, to the extent that plaintiff objects to this portion of the Report and Recommendation, those objections are OVERRULED.

The Attorney General objects to that portion of the Report and Recommendation which does not recommend dismissal of the remaining claims but rather recommends transferring the claims to the Northern District for further proceedings. The Attorney General argues that the complaint states, at most, a claim for medical negligence against Dr. Williams and Nurse Cain, the other two defendants, and that such claims are not actionable under §1983.

As plaintiff correctly points out in his objections, which are in part a response to the Attorney General's objections, the complaint alleges more than mere medical negligence. Although it does refer to negligence in the course of Dr. Williams' treatment of plaintiff, it also clearly alleges that once plaintiff filed a grievance concerning the quality of the care he was receiving, Dr. Williams intentionally discontinued one of his pain medications even though plaintiff's pain was a serious medical need. See Complaint, at pp. 5b-5c. Such allegations, if true, would state a claim either for deliberate indifference to a serious medical need (i.e. the withholding of necessary medical treatment for reasons unrelated to the patient's need for treatment and under circumstances where needless pain is the result) or for retaliation. See, e.g., Thaddeus-X v. Blatter, 175 F.3d 378, 394 (6th Cir. 1999). Therefore, the Magistrate Judge did not err in concluding that this portion of the case should be transferred rather than dismissed.

Based on the foregoing, the objections filed to the April

11, 2007 Report and Recommendation (#s 7 & 8) are OVERRULED. The Report and Recommendation is ADOPTED in its entirety. The claims against defendants Collins and Daley are DISMISSED for failure to state a claim. The case is TRANSFERRED to the United States District Court for the Northern District of Ohio, Eastern Division, at Cleveland, for further proceedings, including the issuance of summons and the service of the complaint by that Court.

Date: June 22, 2007

/s/ John D. Holschuh
John D. Holschuh, Judge
United States District Court