

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

KENNETH RUTHERFORD,

Plaintiff,

v.

Civil Action 2:09-cv-914

Judge James L. Graham

Magistrate Judge E.A. Preston Deavers

GINNY LAMNECK, *et al.*,

Defendants.

ORDER

Plaintiff, Kenneth Rutherford, who is proceeding without the assistance of counsel, brings this civil rights action under 42 U.S.C. § 1983, alleging that Defendants utilized excessive force against him in violation of his rights under the Eighth Amendment. This matter is before the Court for consideration of the May 7, 2012 Report and Recommendation of the United States Magistrate Judge, to whom this case was referred pursuant to 28 U.S.C. § 636(b). (ECF No. 49). The Magistrate Judge recommended that Defendants' Motion for Summary Judgment be granted in part and denied in part.

The Report and Recommendation specifically advises the parties that the failure to object to the Report and Recommendation within fourteen days of the Report results in a "waiver of the right to de novo review . . . by the District Judge and waiver of the right to appeal the judgment of the District Court." (Report and Recommendation 18–19, ECF No. 49.) The time period for filing objections to the Report and Recommendation has expired. Neither party has not objected to the Report and Recommendation.

The Court has reviewed the Report and Recommendation. Noting that no objections have been filed and that the time for filing such objections has expired, the Court **ADOPTS** the Report and Recommendation. (ECF No. 49.) Accordingly, Defendants' Motion for Summary Judgment is **GRANTED IN PART AND DENIED IN PART**. (ECF No. 46). Plaintiff's claims against Defendants Fisher and Spezzalli are **DISMISSED WITHOUT PREJUDICE** for failure to comply with the Prison Litigation Reform Act's exhaustion requirements; Plaintiff's state-law assault and battery claims are **DISMISSED** for lack of jurisdiction; and the remainder of Defendants' Motion is **DENIED**, such that Plaintiff may proceed on his Eighth Amendment excessive force claims against Defendant Cheadle.

IT IS SO ORDERED.

S/ James L. Graham
James L. Graham
United States District Judge

Date: June 6, 2012