

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

SEAN GILMORE,

Plaintiff,

vs.

**Case No.: 2:17-cv-052
JUDGE GEORGE C. SMITH
Magistrate Judge Jolson**

SHANDAN HITCHENS, et al.,

Defendants.

ORDER

On December 6, 2017, the United States Magistrate Judge issued a *Report and Recommendation* on numerous pending motions. The Magistrate Judge recommended that Defendants' Motion to Dismiss be granted and that Plaintiff's Motions be denied. (*See* Doc. 46). The parties were advised of their right to object to the *Report and Recommendation* and of the consequences of their failure to do so. This matter is now before the Court on Plaintiff's objections to the Magistrate Judge's *Report and Recommendation*. (Doc. 51). Defendants have filed a Response in Opposition. (Doc. 53).

The objections present the same issues considered by the Magistrate Judge in her Order. Plaintiff has not provided any argument or contrary legal authority as to how Magistrate Judge Jolson's analysis was incorrect, but continues to request appointment of counsel, an expert witness, and discovery, as well as another opportunity to file a comprehensive complaint. The Magistrate Judge's analysis and conclusion that Plaintiff's claim must be dismissed based on the doctrine of *res judicata* is well-reasoned and correct. A previous lawsuit on this same issue was decided on the merits by a court of competent jurisdiction, this action involves two of the same

parties as the prior action, this action involves matters litigated in the prior action, and the Plaintiff brought identical causes of action.

Next, the Magistrate correctly concluded that Plaintiff's deliberate indifference claim fails because he did not receive medical care for his concussion, fractured nose, eye injury, rib fractures, and upper and lower back injuries. A prisoner does not state a valid Eighth Amendment claim when "his claim amounts to a difference of opinion between him and the prison health care providers and a dispute over the adequacy of his treatment." *Apanovitch v. Wilkinson*, 32 F. App'x 704, 707 (6th Cir. 1976). Following the dismissal of the deliberate indifference claim, the Magistrate Judge then correctly concluded that Plaintiff's remaining claims arose under state law and should therefore be dismissed. When all federal claims are dismissed before trial, state-law claims "generally should be dismissed as well." *Brooks v. Rothe*, 577 F.3d 701, 709 (6th Cir. 2009); *see also Mathis v. Doctor's Hosp. (West)*, No. 2:12-cv-358, 2012 U.S. Dist. LEXIS 80190, at *9-10 (S.D. Ohio June 11, 2012) (adopting recommendation not to exercise supplemental jurisdiction where federal claims failed).

Finally, the Magistrate Judge correctly dismissed the remaining unserved Defendants. Plaintiff failed to comply with Federal Rule of Civil Procedure 4(m) requiring him to perfect service on those Defendants within the requisite time. "Although in forma pauperis plaintiff[s] should not be penalized for marshal's failure to obtain proper service, it [is the plaintiff's] responsibility to provide [the marshal with] proper addresses for service." *Lee v. Armontrout*, 399 F.2d 487, 489 (8th Cir. 1993), cert. denied, 510 U.S. 875 (1993).

Additionally, Plaintiff argues that the March 10, 2017 incident did not occur at the Lucas County Jail, but rather occurred at the Correction Reception Center. (Doc. 51, Pl.'s Objs. at 3).

These facts are noted, but do not impact the analysis and decision rendered by the Magistrate Judge on the pending motions.

Therefore, for the reasons stated in the Magistrate Judge's *Report and Recommendation*, this Court finds that Plaintiff's objections are without merit and are hereby **OVERRULED**. The *Report and Recommendation*, Document 46, is hereby **ADOPTED** and **AFFIRMED**. Defendants' Motion to Dismiss is hereby **GRANTED** and all of Plaintiff's pending Motions are **DENIED**.

The Clerk shall remove Documents 20, 26, 27, 28, 29, 30, 31, 33, 34, 35, and 46 from the Court's pending motions list and enter final judgment in this case.

IT IS SO ORDERED.

/s/ George C. Smith

GEORGE C. SMITH, JUDGE
UNITED STATES DISTRICT COURT