

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

KENNETH BAILEY,)	
)	
Plaintiff,)	
vs.)	NO. CIV-08-1003-HE
)	
MICHELLE COGBURN, ET AL.,)	
)	
Defendants.)	

ORDER


Plaintiff Kenneth Bailey, a Vermont state prisoner appearing *pro se* and *in forma pauperis*, instituted this action pursuant to 42 U.S.C. § 1983 seeking damages and equitable relief for alleged constitutional and statutory violations occurring during his confinement at the North Fork Correctional Facility, a private prison in Oklahoma. Consistent with 28 U.S.C. § 636(b)(1)(B), the matter was referred to Magistrate Judge Gary M. Purcell for initial proceedings. Defendants moved for summary judgment pursuant to Fed. R. Civ. P. 56, to which plaintiff responded. After considering the motion and response, Judge Purcell recommends that defendants' motion be granted in part and denied in part. Plaintiff, by failing to object to the Report and Recommendation, has waived his right to appellate review. United States v. 2121 East 30th Street, 73 F.3d 1057, 1059-1060 (10th Cir. 2006).

After *de novo* review, the court **ADOPTS** the Report and Recommendation [Doc. #45]. Plaintiff's claims for violations of Vermont state law or the Vermont Constitution are **DISMISSED** pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim for relief, defendant's motion for summary judgment on the basis of plaintiff's failure to exhaust his

administrative remedies is **DENIED**, and defendants' motion for summary judgment with respect to plaintiff's constitutional claims is **GRANTED** [Doc. #42]. Further, the court declines to exercise pendent jurisdiction over plaintiff's remaining state tort claims pursuant to 28 U.S.C. § 1367(c)(3).

IT IS SO ORDERED.

Dated this 11th day of March, 2009.



JOE HEATON
UNITED STATES DISTRICT JUDGE