

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

BOBBY ALLAN GREEN,)
Plaintiff,)
vs.) No. CIV-13-601-C
JEFF SMITH, DAVID PRATER,)
and MEGAN KOENIG,)
Defendants.)

ORDER

This civil rights action brought by a prisoner, proceeding pro se, was referred to United States Magistrate Judge Suzanne Mitchell, consistent with the provisions of 28 U.S.C. § 636(b)(1)(B). Judge Mitchell entered a Report and Recommendation on April 16, 2015, recommending denial of Defendant Koenig’s Motion for Summary Judgment, but recommending dismissal of all remaining claims for Plaintiff’s failure to comply with Court orders. Defendant Koenig has timely objected. The Court therefore considers the matter de novo.

Defendant Koenig concedes her Motion for Summary Judgment is directed to a state claim for malicious prosecution, not the constitutional claims actually stated by Plaintiff. She argues the test is the same; summary judgment should be granted; and/or offers to supply additional briefing. It is not proper for the Court to “take on the responsibility of serving as the litigant’s attorney in constructing arguments and searching the record.” Garrett v. Selby Connor Maddux & Janer, 425 F.3d 836, 840 (10th Cir. 2005). This prohibition applies equally to all litigants, whether pro se, counseled, plaintiff, or defendant. Thus changing

Defendant Koenig's summary judgment theory to what she could have argued (but did not) is inappropriate. Defendant offers no objection to Judge Mitchell's recommendation that all remaining claims be dismissed.

Accordingly, the Report and Recommendation of the Magistrate Judge is adopted in its entirety, and Defendant Megan Koenig's Motion for Summary Judgment (Dkt. No. 71), Motion to Deem Motion for Summary Judgment Confessed (Dkt. No. 74), Errata to Correct Exhibit 1 to Defendant to Defendant Megan Koenig's Motion to Deem Motion for Summary Judgment Confessed (Dkt. No. 75) are DENIED. Plaintiff's remaining claims are DISMISSED WITHOUT PREJUDICE for failure to comply with a Court Order.

IT IS SO ORDERED this 19th day of May, 2015.


ROBIN J. CAUTHRON
United States District Judge