

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

MARCUS THURMAN, )  
vs. Plaintiff, ) Case No. CIV-17-0950-HE-M  
COUNTY COMMISSIONERS OF )  
OKLAHOMA COUNTY, *et al.*, )  
Defendants. )

**ORDER**

Plaintiff Marcus Thurman, proceeding *pro se*, brought this action pursuant to 42 U.S.C. § 1983, asserting violations of his constitutional rights by several defendants. He purported to assert claims against the County Commissioners of Oklahoma County and a detention officer for the Oklahoma County Detention Center (Miller), claiming that Miller used excessive force against him.<sup>1</sup> On October 16, 2018, U. S. Magistrate Judge Shon T. Erwin issued a Report and Recommendation recommending that the motion to dismiss of defendant Oklahoma County be denied insofar as it asserted a lack of standing and/or jurisdiction, but granted on the basis that the complaint fails to state a claim against the county. The parties were advised of their right to object to the Report and Recommendation by November 2, 2018. No objection has been filed. The parties have therefore waived

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<sup>1</sup> *In substance, plaintiff is asserting a claim against Oklahoma County. A county's board of county commissioners is not a legal entity capable of being sued; the county itself is the legal entity. However, under Oklahoma law, a claim is asserted against the county by naming the board of county commissioners as the defendant. 19 Okla. Stat. § 4.*

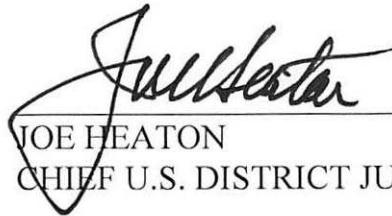
their right to appellate review of the factual and legal issues addressed in the report.

Cassanova v. Ulibarri, 595 F.3d 1120, 1123 (10th Cir. 2010).

Accordingly, the court **ADOPTS** the Report and Recommendation [Doc. #41] and **GRANTS** the County's motion to dismiss [Doc. #29]. The excess force claim against Oklahoma County is **DISMISSED** without prejudice. Plaintiff is granted leave to file, within **fourteen (14) days**, an amended complaint setting out any basis he may have for the county's liability for any excess force shown to have been used by defendant Miller.

**IT IS SO ORDERED.**

Dated this 28th day of November, 2018.



JOE HEATON  
CHIEF U.S. DISTRICT JUDGE