

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

JOHNNY WILLIAM BURNETT,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-18-182-R
)	
CLEVELAND COUNTY)	
SHERIFFS DEPARTMENT, et al.,)	
)	
Defendants.)	

ORDER

Plaintiff filed this action against Joseph Lester, Cleveland County Sheriff, and Joe Allbaugh, Director of the Oklahoma Department of Corrections, identifying that he was suing both in their official capacities. He also named the F. DeWayne Beggs Detention Center in the caption. Within the body of his Complaint Plaintiff identified Cleveland County Sheriff's Department and the Oklahoma Department of Corrections as Defendants. Plaintiff's allegations, while difficult to understand, allege violation of his civil rights during his incarceration, specifically as it relates to medical treatment he contends was necessary because of an accident while he was being transported on February 25, 2016. Pursuant to 28 U.S.C. § 636(b)(1)(B) and (C), the matter was referred to United States Magistrate Judge Shon T. Erwin for preliminary proceedings. On April 17, 2018, Judge Erwin issued a Report and Recommendation wherein he recommended the Complaint be dismissed following screening pursuant to 28 U.S.C. § 1915A(a) and § 1915(e)(2)(B). The Court granted Plaintiff extensions of time in which to object, and on July 26, 2018, he filed

an objection. Having considered his objection and the requests therein, the Court orders as follows.

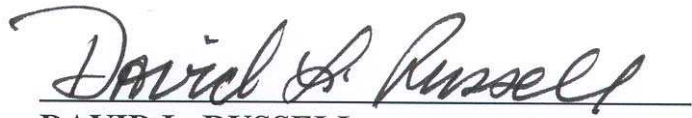
Judge Erwin recommended the action be dismissed because Defendant Allbaugh, in his official capacity, and the Department of Corrections are entitled to Eleventh Amendment immunity. With regard to Defendants Cleveland County Sheriff's Department and the F. Dewayne Beggs Detention Center Judge Erwin recommended dismissal because neither is an entity amenable to being sued. He noted in the Report and Recommendation that the county could be sued by naming the Board of County Commissioners. With regard to Defendant Lester, again in his official capacity, Judge Erwin noted that pleading the claim in this manner was the same as pleading a cause of action against Cleveland County, which required that Plaintiff allege an official policy or custom that was deliberately indifferent to his constitutional rights and the moving force behind Mr. Burnett's injury. The Complaint and its attachments, even given liberal construction, did not include any such allegations. As a result, Judge Erwin recommended dismissal without prejudice.

On May 3, 2018, Plaintiff filed a document entitled "Objection" indicating therein a lack of legal resources to appropriately respond to the Report and Recommendation. The Court granted him additional time in which to object, hoping he would gain access to legal materials in the interim. On June 21, 2018, Plaintiff requested additional time in which to object because he was without legal materials due to his placement in administrative segregation. Ultimately, Plaintiff filed this timely objection. Therein he reiterates that he did not receive proper medical treatment following an accident while in custody. He does

not, however, remedy the deficiencies identified by Judge Erwin other than by requesting amendment to his complaint. Plaintiff asks that the Cleveland County Commissioners Office and Rod Cleveland, Darry Stacy, and Howard Haralson be added to the lawsuit. The Court hereby GRANTS Plaintiff leave to amend. He must, however, file an entirely new complaint; the Court cannot merely substitute parties. Furthermore, because Plaintiff is seeking relief under 42 U.S.C. § 1983, he must specify the role each Defendant played in the alleged violation of his constitutional rights. Plaintiff shall file his amended complaint within forty-five days of entry of this Order. If Plaintiff does not file a timely amended complaint, the action will be dismissed without prejudice.

For the reasons stated herein, the Report and Recommendation is adopted; the Court grants Plaintiff leave to amend in an effort to plead his claims against newly identified defendants.

IT IS SO ORDERED this 27th day of July 2018.


DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE