

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<b>THOMAS WISNIEWSKI,</b>	:	
<b>Plaintiff</b>	:	
	:	<b>No. 1:16-cv-1626</b>
<b>v.</b>	:	
	:	<b>(Judge Kane)</b>
<b>JAMES F. FROMMER, JR., D.O., <u>et al.</u>,</b>	:	
<b>Defendants</b>	:	<b>(Magistrate Judge Carlson)</b>
	:	

**ORDER**

**THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:**

Presently before the Court in the above-captioned action is the October 12, 2016 Report and Recommendation of Magistrate Judge Carlson. (Doc. No. 35.) On October 26, 2016, Plaintiff filed Objections to the Report and Recommendation. (Doc. No. 43.) On November 8, 2016, Defendants Correct Care Solutions, LLC, and Drs. Dancha and Frommer (the “CCS Defendants”), filed a Response to Plaintiff’s Objections (Doc. No. 49), and on November 14, 2016, Plaintiff filed a Reply to Defendants’ Response (Doc. No. 51). The Report and Recommendation concerns the appropriateness of continued injunctive relief in this case.

The Report and Recommendation was issued against a tortured procedural backdrop. By way of providing context to the pending Report and Recommendation, this lawsuit was initiated in the Court of Common Pleas of Huntington County on August 17, 2015, by way of Plaintiff filing a Complaint and Emergency Application for TRO. (Doc. No. 43 at 3 n.1.) Specifically, Plaintiff, an inmate at the State Correctional Institution at Smithfield, Pennsylvania (“SCI-Smithfield”), challenged the CCS Defendants’ discontinuation of certain medication (400 mg Tramadol) prescribed to Plaintiff to help manage his chronic back pain. (Doc. No. 1-2 at 3, 10.)

Plaintiff sought an order directing the CCS Defendants to resume providing him with 400 mg of Tramadol on a daily basis. (Id. at 11.) On August 21, 2015, following a hearing on the matter, Plaintiff's application for injunctive relief was granted. (Doc. No. 2-1.) The CCS Defendants promptly moved to dissolve the injunction on August 26, 2015, on the basis that they did not have an adequate opportunity to present evidence at the hearing on Plaintiff's application for injunctive relief. (Doc. No. 3-1 at 2.) The CCS Defendants' motion to dissolve the injunction was granted after a hearing was held on the motion on September 1, 2015. (Doc. No. 3-3.) Plaintiff subsequently appealed the order granting the CCS Defendants' motion to dissolve the injunction to the Pennsylvania Superior Court. (Doc. No. 3-4.)

On June 16, 2016, the Superior Court vacated the lower court's September 1, 2015 Order dissolving the injunction, reasoning that the trial court abused its discretion when it denied Plaintiff's request for a continuance of the hearing on Defendants' motion to dissolve the injunction to secure medical records and expert testimony in advance of the hearing. The Superior Court remanded the case back to the lower court with instructions to "reschedule and conduct a new hearing on [the] motion to dissolve the August 21, 2015 injunction" after Plaintiff had "an opportunity to gather the required medical records and medical testimony." (Doc. No. 3-5 at 6-7.) On June 30, 2016, Plaintiff filed a motion to impose sanctions for non-compliance with the injunction. (Doc. No. 2-6.) A hearing on the motion to dissolve the injunction was scheduled for August 22, 2016. (Doc. No. 3-7.)

However, on July 22, 2016, prior to the scheduled August 22, 2016 hearing, Plaintiff filed an amended complaint asserting claims under 42 U.S.C. § 1983, which eventually triggered the removal of the case to this Court on August 5, 2016 (Doc. No. 1), and referral of the case to

Magistrate Judge Carlson for pretrial management. (Doc. No. 10).<sup>1</sup> In a Memorandum and Order addressing several miscellaneous motions dated August 16, 2016, Magistrate Judge Carlson scheduled a hearing for August 23, 2016 on the two competing state court motions relating to the preliminary injunction. (Doc. No. 15.) Following an evidentiary hearing, Magistrate Judge Carlson issued the pending Report and Recommendation recommending, inter alia, discontinuation of the preliminary injunction to the extent any state court order granting preliminary injunctive relief still remained in effect upon removal of this case to federal court. (Doc. No. 35 at 2-3.)

Plaintiff has objected to the Report and Recommendation on a number of procedurally-based grounds.<sup>2</sup> Among his objections, Plaintiff challenges (1) Magistrate Judge Carlson's authority to conduct a de novo review of whether continued injunctive relief is appropriate when no motion for preliminary injunctive relief was before him; and (2) Magistrate Judge Carlson's determination that "changed circumstances" warrant dissolution of any state court order authorizing continued injunctive relief. The former objection is based on Plaintiff's position that the preliminary injunction originally entered on August 21, 2015, was reinstated upon the Superior Court's vacating the lower court's order dissolving the injunction, and thus, was in effect upon removal of the case to this Court. According to Plaintiff, the exercise of Magistrate Judge Carlson's authority was thus limited to resolving the two motions pending before him.

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<sup>1</sup> Plaintiff subsequently filed a Second Amended Complaint that named certain employees of the Pennsylvania Department of Corrections ("DOC"), and the DOC itself. (Doc. No. 28.)

<sup>2</sup> The Court only addresses those objections relevant to the Court's disposition of the pending Report and Recommendation.

Therefore, Plaintiff concludes that Magistrate Judge Carlson abused his authority when he sua sponte considered the question of the appropriateness of injunctive relief under Federal Rule of Civil Procedure 65.

Having carefully reviewed the Report and Recommendation in light of Plaintiff's objection, the Court finds that it need not resolve Plaintiff's objection to Magistrate Judge Carlson's findings and recommendation relating to his de novo review of the viability of continued injunctive relief, as it observes that Magistrate Judge Carlson's Report and Recommendation alternatively addressed the CCS Defendants' motion for dissolution of the preliminary injunction entered in state court, recommending that the Court dissolve the preliminary injunction entered in state court to the extent one remained in effect. By the Court's reading of the Report and Recommendation, Magistrate Judge Carlson explicitly adopted Plaintiff's position that a preliminary injunction was in effect upon removal of this case to federal court, and found that the evidence presented at the August 23, 2016 hearing demonstrated that preliminary injunctive relief was no longer appropriate due to "changed circumstances" under the standard articulated in Franklin Sewerage Authority v. Middlesex County Utility Authority, 787 F.2d 117, 121 (3d Cir. 1986). See id. ("The standard that the district court must apply when considering a motion to dissolve an injunction is whether the movant has made a showing that changed circumstances warrant the discontinuation of the order."). Indeed, Magistrate Judge Carlson found that "even if we accepted Wisniewski's view of the procedural posture of this case we would nonetheless conclude 'that changed circumstances warrant the discontinuation of the order.'" (Doc. No. 35 at 10.)

As to Plaintiff's objection to Magistrate Judge Carlson's determination that changed

circumstances warrant discontinuation of the order for injunctive relief, it appears that Plaintiff merely disagrees with Magistrate Judge Carlson's view of the evidence presented at the hearing. Magistrate Judge Carlson relied on the testimony at the evidentiary hearing that Plaintiff is currently receiving 100 mg of Tramadol, and the evidence submitted by the CCS Defendants of Plaintiff's stable condition from the outset of this litigation in August of 2015 to the hearing held in August of 2016, which supported Dr. Frommer's position that an increased dosage of Tramadol beyond 100 mg was not warranted at this time. Despite Plaintiff's objections to the contrary, the Court finds no error in Magistrate Judge Carlson's conclusions in this regard, as he was best positioned to weigh the evidence presented and to make appropriate credibility determinations, and thus, the Court will not set aside his findings.

Therefore, upon detailed review of the Report and Recommendation, Plaintiff's Objections, the CCS Defendants' Response, and Plaintiff's Reply thereto, as well as the applicable law, the Court will adopt Magistrate Judge Carlson's Report and Recommendation insofar as it contemplates granting the CCS Defendants' motion to dissolve the preliminary injunction due to changed circumstances stemming from the 100 mg of Tramadol Plaintiff currently receives daily.

**ACCORDINGLY**, this 24th day of July 2017, upon independent review of the record and the applicable law, **IT IS ORDERED THAT:**

1. The Court **ADOPTS** the Report and Recommendation (Doc. No. 35), of Magistrate Judge Carlson;
2. The CCS Defendants' Motion to Dissolve Injunction (Doc. No. 3-1), is **GRANTED** without prejudice to Plaintiff's ability to renew a request for preliminary injunctive relief should the facts of this case materially change;

3. Plaintiff's motion for sanctions (Doc. No. 2-6), is **DENIED**;<sup>3</sup>
4. Defendants' Motion for Leave to File a Post-Hearing Brief as Response (Doc. No. 22), is **DENIED** as **MOOT**; and
5. This matter is referred back to Magistrate Judge Carlson for further pretrial management.

s/ Yvette Kane  
Yvette Kane, District Judge  
United States District Court  
Middle District of Pennsylvania

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<sup>3</sup> Upon review of the procedural history of this case and record evidence, the Court is persuaded that the CCS Defendants' failure to fully comply with the injunction order was the result of a misunderstanding as to whether an injunction order was still in effect upon the Superior Court's vacating the dissolution order and remanding the matter for a hearing.