

FILED
SCRANTON

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

JUN 11 2013

PER M. S. P.
DEPUTY CLERK

BRENTON BOYD NEWSOME,

Plaintiff,

v.

TOBY CATONE,

Defendants.

Civil Action No. 3:12-CV-2475

(Judge Kosik)

ORDER

AND NOW, this 11 day of June, 2013, IT APPEARING TO THE COURT THAT:

1. On December 11, 2012, Plaintiff filed, *pro se*, a Complaint pursuant to 42 U.S.C. § 1983 alleging he suffered an array of maladies, including chest pain, dizziness, constipation, a burning sensation when urinating, episodes of vomiting blood, a swollen abdomen, and infected urethra, pelvic pain, and a "75% loss of pubic hair." (Doc. 1). Plaintiff also filed a motion for leave to proceed *in forma pauperis* the same day (Doc. 2).
2. On February 11, 2013, Magistrate Judge Martin C. Carlson screened the *pro se* Complaint pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and issued a Report and Recommendation ("R&R"). (Doc. 9).
3. In the R&R, Magistrate Judge Carlson recommended granting Plaintiff's motion for leave to proceed *in forma pauperis* and dismissing Plaintiff's Complaint as to the Immigration Service, Warden Sabol and Prime Care Medical, Inc. (*Id.*). The R&R also recommended allowing Plaintiff to amend his Complaint to fix the defects noted in the R&R. (*Id.*).
4. Instead of filing objections to the R&R, Plaintiff filed a motion for leave to file an amended complaint. (Doc. 13). Attached to his motion was an amended complaint. (*Id.* at Att. 1).
5. On March 15, 2013, we issued an order adopting the R&R of the Magistrate Judge, granting Plaintiff's motion for leave to proceed *in forma pauperis*, granting Plaintiff's motion to file an Amended Complaint, and remanding the case to the Magistrate Judge for further proceedings consistent with the order. (Doc. 14).
6. On March 19, 2013, Plaintiff filed another motion for leave to file an amended complaint with an attachment.¹ (Doc. 15).

¹In a letter, Plaintiff explains that he mistakenly attached incorrect copies of pages to his Amended Complaint. (Doc. 15). He asked that we replace pages 8 and 9 of the Amended Complaint with the new pages he enclosed in this filing. (*Id.*). We make note of his corrected pages to the Amended Complaint.


7. Magistrate Judge Carlson screened the *pro se* Amended Complaint pursuant to Rule 15 of the Federal Rules of Civil Procedure.
8. On May 16, 2013, the Magistrate Judge issued another R&R recommending that Plaintiff's motion for leave to amend his complaint be granted, in part, and denied, in part; that Defendants Decker, Bennett, Sabol, and Prime Care Medical, Inc. be dismissed; and that any pendent state medical malpractice claims be dismissed without prejudice to the Plaintiff's compliance with Rule 1042.3. (Doc. 17). Plaintiff's §1983 claim will be allowed to proceed against Defendants Catone, Richardson, Reid, and Harrison.
9. Pursuant to Local Rule 72.3, Plaintiff was given fourteen (14) days, after being served with a copy of the Report and Recommendation, to make any objections to the Magistrate Judge's proposed findings, recommendations, or report.
10. Plaintiff did not file objections to the Report and Recommendation of the Magistrate Judge.

AND, IT FURTHER APPEARING THAT:

11. If no objections are filed to a magistrate judge's report and recommendation, the plaintiff is not statutorily entitled to a de novo review of his claim. *See* 28 U.S.C. § 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 150-53 (1985). Nonetheless, the usual practice of the district court is to give "reasoned consideration" to a magistrate judge's report prior to adopting it. *See Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987).
12. We have reviewed the thorough Report of the Magistrate Judge, and we agree with the Recommendation.
13. After considering the R&R of the Magistrate Judge and Plaintiff's motion for leave to file an amended complaint, we will adopt the R&R; grant Plaintiff's motion, in part; dismiss Defendants Decker, Bennet, Sabol, and Prime Care Medical, Inc.; dismiss any pendent state medical malpractice claims, without prejudice, to Plaintiff's compliance with Rule 1042.3; and remand the case back to the Magistrate Judge for further proceedings consistent with this Order.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

1. The Report and Recommendation (Doc. 17) of Magistrate Judge Carlson is **ADOPTED**;
2. Plaintiff's motion to file an Amended Complaint (Doc. 15) is **GRANTED**, in part;
3. Defendants Decker, Bennet, Sabol, and Prime Care Medical, Inc. are **DISMISSED**; and
4. The Clerk of Court is directed to **REMAND** this case to the Magistrate Judge for further proceedings consistent with this Order.


Edwin M. Kosik
United States District Judge