

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

FERNANDO REAL,	:	Civ. No. 3:13-CV-01054
	:	
Plaintiff,	:	(Judge Brann)
	:	
v.	:	
	:	(Magistrate Judge Blewitt)
CO HUBER, et al.,	:	
	:	
Defendants.	:	

ORDER

August 29, 2014

BACKGROUND:

The undersigned has given full and independent consideration to the February 18, 2014 Report and Recommendation of Magistrate Judge Thomas M. Blewitt (ECF No. 32) regarding four ripe, pending motions in the above captioned case: three motions to dismiss (ECF Nos. 14, 20, 26) and Plaintiff's Motion for Preliminary Injunction (ECF No. 16). The Plaintiff filed an Objection (ECF No. 33) to the report and recommendation, and the Defendants filed a Reply (ECF No. 34).

This Court agrees with the majority of Magistrate Judge Blewitt's analysis, and will adopt the report and recommendation in part. The Court rejects and modifies Magistrate Judge Blewitt's conclusion with respect to the Plaintiff's state law intentional tort claims. To the extent that Plaintiff can plead facts that

demonstrate with more specificity that the corresponding Defendants acted outside the scope of their official duties to commit intentional torts such that they may not rely on sovereign immunity,¹ and the Plaintiff can plead facts to satisfy each element of those underlying torts, those claims should not be dismissed. While the Plaintiff did not satisfy that burden here, he has not demonstrated futility. Thus, the Plaintiff's state law intentional tort claims are dismissed without prejudice.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Magistrate Judge Blewitt's Report and Recommendation (ECF No. 41) is ADOPTED in part, REJECTED in part, and MODIFIED.
2. Defendants' Motion to Dismiss (ECF No. 14), Motion to Dismiss (ECF No. 20), and Motion to Dismiss (ECF No. 26) are GRANTED in part.
3. Supervisory Defendants Southers, Bell, Williams, Law, Horner, Rhoades, Eichenburg, and Varner are DISMISSED from all claims without prejudice.
4. Plaintiff's claims with respect to denied grievances and appeals involving Defendants Law, Southers, Williams, and Varner are DISMISSED with prejudice.

¹ The Pennsylvania statute provides:

Pursuant to section 11 of Article 1 of the Constitution of Pennsylvania, it is hereby declared to be the intent of the General Assembly that the Commonwealth, and its officials and employees acting within the scope of their duties, shall continue to enjoy sovereign immunity and official immunity and remain immune from suit except as the General Assembly shall specifically waive the immunity.

1 Pa. C.S. § 2310.

5. Plaintiff's Due Process claim against Defendant Reisinger is DISMISSED with prejudice.
6. Plaintiff's Eighth Amendment denial of medical care claim against Defendants Law, Strum and Varner is DISMISSED with prejudice. The claims against Defendants Mary and Williams are DISMISSED without prejudice.
7. Plaintiff's Eighth Amendment conditions of confinement claim is DISMISSED with prejudice against all Defendants.
8. Defendant's state law intentional tort claims are DISMISSED without prejudice.
9. Plaintiff's Motion for Preliminary Injunction is DENIED (ECF No. 16).
10. Plaintiff's claims against Defendant McGinnis are DISMISSED without prejudice.
11. Plaintiff's supplement complaint (ECF No. 26) is deemed WITHDRAWN pursuant to United States District Court for the Middle District of Pennsylvania Local Rule 7.5 for failure to file a supportive brief and failure to submit a complete proposed Amended Complaint.
12. The case is REMANDED to the Magistrate Judge Blewitt for further proceedings.

BY THE COURT:

s/Matthew W. Brann
Matthew W. Brann
United States District Judge