

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

<b>LUIS NIEVES,</b>	:	<b>No. 3:16cv1912</b>
<b>Plaintiff</b>	:	
	:	<b>(Judge Munley)</b>
<b>v.</b>	:	
	:	<b>(Magistrate Judge Carlson)</b>
<b>OFFICER PAUL TOMCZYK, et al.,</b>	:	
<b>Defendants</b>	:	

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**MEMORANDUM**

Before the court for disposition is Magistrate Judge Martin C. Carlson’s report and recommendation (hereinafter “R&R”). (Doc. 31). The R&R proposes granting Defendant Officer Paul Tomczyk’s (hereinafter “Officer Tomczyk”) motion to dismiss. (Doc. 20). For the following reasons, the court will adopt the R&R.

**Background**

Plaintiff Luis Nieves (hereinafter “plaintiff”), a state prisoner, avers that on August 4, 2015, Officer Tomczyk and several paramedics found him bleeding from lacerations on his arm. (Doc. 1, Compl. (hereinafter “Compl.”), at 2-3). According to plaintiff, Officer Tomczyk and the paramedics briefly restrained him to provide medical treatment, including an injection and stitches. (Id.)

On September 19, 2016, plaintiff sued Officer Tomczyk and the paramedics for medical malpractice and a violation of his civil rights, alleging that his medical treatment was involuntary. (See Compl.). On January 23, 2017, Officer Tomczyk filed a motion to dismiss. (Doc. 20). On March 2, 2017, Magistrate Judge Carlson recommended granting the motion to dismiss. (Doc. 31). Plaintiff has not responded to the R&R in any meaningful way,<sup>1</sup> and the time for filing a response has passed. Thus, we find that plaintiff has not filed objections to the R&R.

### **Legal Standard**

When deciding whether to adopt a report and recommendation when no objections have been filed, the court must determine if a review of the record evidences plain error or manifest injustice. FED. R. CIV. P. 72(b) 1983 Advisory Committee Notes (“When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record to accept the recommendation.”); see also 28 U.S.C. § 636(b)(1); Sullivan v. Cuyler, 723 F.2d 1077, 1085 (3d Cir. 1983).

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<sup>1</sup> Plaintiff has filed three letters with the court. (Docs. 32, 33, and 34). Plaintiff’s letters, however, do not object to, respond to, or even reference the R&R, nor do they discuss the claims made in this lawsuit.

## Discussion

After a careful review, we find neither a clear error on the face of the record nor a manifest injustice for three reasons. First, plaintiff failed to timely oppose Officer Tomczyk's motion to dismiss under Local Rule 7.6, and therefore, the motion is deemed unopposed.<sup>2</sup> Second, the record reflects that plaintiff has repeatedly failed to prosecute or to comply with court rules and orders under FED. R. CIV. P. 41(b), and therefore, pursuant to the factors articulated in Poulis v. State Farm Fire and Cas. Co., 747 F.2d 863 (3d Cir. 1984), his claims against Officer Tomczyk must be dismissed. Finally, Officer Tomczyk is not a medical professional, and therefore, is not subject to plaintiff's medical malpractice claim. Furthermore, even viewing plaintiff's allegations as true, Officer Tomczyk is entitled to qualified immunity for the reasons set forth in the R&R. Thus, we will adopt the R&R and dismiss Officer Tomczyk.

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<sup>2</sup> Specifically, Officer Tomczyk filed a motion to dismiss on January 23, 2017. (Doc. 20). On February 1, 2017, he filed a brief in support of the motion. (Doc. 24). Plaintiff failed to respond to the motion, and the time for filing a response passed. Consequently, on February 17, 2017, Magistrate Judge Carlson directed plaintiff to respond to Officer Tomczyk's motion to dismiss on or before March 1, 2017. (Doc. 27). Plaintiff failed to do so. Instead, plaintiff filed, on February 22, 2017, March 1, 2017, and March 2, 2017, respectively, three letters that failed to address the motion to dismiss in any meaningful way. (Docs. 28, 29, and 30).

**Conclusion**

For the foregoing reasons, the court will adopt Magistrate Judge Carlson's R&R granting Officer Tomczyk's motion to dismiss. An appropriate Order follows.

Date: April 5, 2017

s/ James M. Munley  
**JUDGE JAMES M. MUNLEY**  
**United States District Court**