

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

ROBERT HANKINS,)	
)	
Plaintiff,)	
v.)	Civil Action No. 07-332 Erie
JEFFREY A. BEARD, et al.,)	
)	
Defendants.)	

MEMORANDUM JUDGMENT ORDER

_____ Plaintiff's civil rights complaint was received by the Clerk of Court on December 3, 2007 and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates. The Magistrate Judge's Report and Recommendation, filed on November 30, 2009 [172], recommends that Defendant Chris Meyer's Motion for Summary Judgment [115] be granted and the DOC Defendants' Motion for Summary Judgment [119] be granted in part and denied in part as follows:

- a) The motion should be denied with regard to Plaintiff's claim that his continuous confinement in disciplinary custody, allegedly caused by the lack of due process afforded him at his misconduct hearings, has deprived him of a protected liberty interest in violation of his Fourteenth Amendment due process rights; and
- b) The motion should be granted with regard to all other claims asserted by Plaintiff in this case.

Consistent with the foregoing, the Magistrate Judge recommends that Defendants Shaffer, Maue, Haley, Link, Rohrabough, Petrosky, Nose, Beachy, Richter, Burton, Holman, Tift, Mozingo, and Linderman be terminated from the case. Finally, it is recommended that the Plaintiff be ordered to file an amended complaint pertaining solely to the remaining due process claim, specifying the Defendants against whom such claim is asserted and the specific allegations against each.

The parties were given ten (10) days in which to file objections. Plaintiff filed his

objections [174] on December 11, 2009, and Defendant Chris Meyers filed his reply to the Plaintiff's objections [175] on December 16, 2009.

After de novo review of the complaint and documents in the case, together with the Report and Recommendation, Plaintiff's objections and Defendant Meyer's response thereto, the Court adopts the Magistrate Judge's Report and Recommendation in part: *to wit*, the Court declines to adopt the Report and Recommendation insofar as it recommends that summary judgment be entered against the Plaintiff relative to his excessive force claims of May 2, 2006 and May 9, 2006, as the Court finds that there are material issues of fact which render summary judgment inappropriate as to those claims. However, the Court will adopt the Magistrate Judge's Report and Recommendation in all other respects. Accordingly, the following order is entered:

AND NOW, this 2nd day of February, 2010;

IT IS ORDERED that Defendant Chris Meyer's Motion for Summary Judgment [115] be, and hereby is, GRANTED. JUDGMENT is hereby entered in favor of Defendant Chris Meyer and against Plaintiff Robert Hankins as to all claims asserted against Defendant Meyer.

IT IS FURTHER ORDERED that the DOC Defendants' Motion for Summary Judgment [119] be, and hereby is, GRANTED in part and DENIED in part as follows:

- a) Said motion is DENIED with regard to Plaintiff's excessive force claims of May 2, 2006 and May 9, 2006;
- b) Said motion is also DENIED with regard to Plaintiff's claim that his continuous confinement in disciplinary custody, allegedly caused by the lack of due process afforded him at his misconduct hearings, has deprived him of a protected liberty interest in violation of his Fourteenth Amendment due process rights; and
- c) Said motion is GRANTED with regard to all other claims asserted by Plaintiff against the DOC Defendants. As to those claim, JUDGMENT is hereby entered in favor of the DOC Defendants and against Plaintiff.

IT IS FURTHER ORDERED, consistent with the foregoing, that Defendants Shaffer, Maue, Haley, Link, Rohrbaugh, Petrosky, Beachy, Richter, Burton, Holman, Tift, Mazingo, and Linderman be terminated from the case.

IT IS FURTHER ORDERED that the Plaintiff shall file, on or before February 22, 2010, an amended complaint pertaining solely to the remaining claims as set forth above. With respect to his surviving due process claim, the Plaintiff shall identify in his amended complaint each and every Defendant against whom such claim is being asserted and the specific allegations being made against each Defendant.

The Report and Recommendation of Magistrate Judge Baxter filed on November 30, 2009 [172] is adopted, in part, as the opinion of this Court, to the extent set forth herein.

s/ SEAN J. McLAUGHLIN
Sean J. McLaughlin
United States District Judge

cc: all parties of record
U.S. Magistrate Judge Baxter