

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

**DAVID V. JORDAN,)
Plaintiff,) Case No. 1:18-cv-228
v.)
LIEUTENANT MURIN, et al.,)
Defendants.)**

MEMORANDUM ORDER OF JUDGMENT

This prisoner civil rights action was received by the Clerk of Court on August 16, 2018 and referred to the undersigned, then a United States Magistrate Judge, for report and recommendation (“R&R”), in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and the Local Civil Rules of this Court. After the undersigned was sworn in as a United States District Judge, the case was referred to United States Magistrate Judge Richard A. Lanzillo for all pretrial proceedings. ECF No. 9. The undersigned became the presiding U.S. District Judge on July 23, 2019.

The claims in this case concern events that allegedly transpired while Plaintiff was incarcerated at SCI-Forest. As set forth in his complaint, ECF No. 3, Plaintiff alleges that he was assaulted by corrections officials on May 1, 2016 in retaliation for having filed a lawsuit against fellow corrections officers. He further avers that he was denied constitutionally adequate medical care following the May 1, 2016 assault. Plaintiff now seeks redress under 42 U.S.C. §1983 for the alleged violation of his federal constitutional rights. In his complaint, he names nine current or former employees of the Pennsylvania Department of Corrections, along with four individuals who provided medical services at SCI-Forest during times relevant to this lawsuit. Among the individuals named as Defendants are the following medical personnel,

hereafter referred to collectively as the “Medical Defendants”: Heather G. McKeel (“McKeel”), Dr. Alpert (“Alpert”), and Dr. Eslenberg (“Eslenberg”).

Plaintiff’s claims against these Defendants are set forth in Counts 2, 4, 5, 6, and 7 of the Complaint. In relevant part, Count 2 asserts a First Amendment retaliation claim against McKeel; Counts 4, 5 and 6 assert Eighth Amendment deliberate indifference claims against all three Medical Defendants; Count 7 asserts an additional Eighth Amendment deliberate indifference claim against Alpert and McKeel. ECF No. 163 at 2.

On March 2, 2020, the Medical Defendants filed a motion for summary judgment as to all of the claims asserted against them. ECF No. 111. Plaintiff filed his responsive documents on May 8 and 11, 2020. ECF Nos. 129, 130, 131, 132, 133. The Medical Defendants replied on May 27 and 28, 2020. ECF Nos. 141, 142.

On November 4, 2020, Magistrate Judge Lanzillo issued an R&R recommending that the Medical Defendants’ motion for summary judgment be granted. ECF No. 163. Following a lengthy analysis, Judge Lanzillo concluded that Plaintiff had failed to demonstrate a genuine issue of material fact relative to his retaliation and deliberate indifference claims. As to the deliberate indifference claims at Counts 4-6 and Count 7, Judge Lanzillo opined that the evidence could not support a reasonable finding of deliberate indifference on the part of the Medical Defendants. With respect to the retaliation claim in Count 2, Judge Lanzillo opined that the evidence could not support Plaintiff’s theory that Defendant McKeel retaliated against him by performing a “false and retaliatory medical examination.” To the extent McKeel’s treatment notes included any inaccuracies, Judge Lanzillo concluded that these alleged inaccuracies could not reasonably be construed as adverse action that would be sufficient to deter a person of ordinary firmness from exercising his or her constitutionally protected rights.

Plaintiff filed objections on January 26, 2021. ECF No. 179. With respect to the Eighth Amendment deliberate indifference claims in Counts 4 through 6 and Count 7 of the complaint, Plaintiff insists that the record evidences a material issue of fact on the question of deliberate indifference relative to treatment rendered on May 5, May 18, and May 28, 2016. With regard to the retaliation claim in Count 2 of the Complaint, Plaintiff contends that there is a disputed issue of fact as to whether McKeel's conduct satisfied the "adverse action" prong of his retaliation claim.

The Medical Defendants responded to Plaintiff's objections on February 11, 2021. ECF No. 180. Therein, Defendants dispute Plaintiff's objection that the Magistrate Judge failed to fully consider his arguments. They further contend that Plaintiff did not directly respond to their Concise Statement of Material Facts to dispute the record evidence which rebuts his claims.

Having fully reviewed and considered the Plaintiff's objections, the Court finds them to be lacking in merit. Accordingly, after *de novo* review of the complaint and documents in the case, together with the report and recommendation, Plaintiffs' objections, and the Medical Defendants' reply thereto, the following order is entered:

AND NOW, this 16th day of February, 2021;

IT IS ORDERED that the motion for summary judgment filed on behalf of Defendants Alpert, Eslenberg, and McKeel, ECF No. [111], shall be, and hereby is, GRANTED.

IT IS FURTHER ORDERED that the report and recommendation of Magistrate Judge Lanzillo, issued on November 4, 2020, ECF No. [163], is adopted as the opinion of the Court, and Plaintiffs' objections thereto [179] are OVERRULED.

In accordance with the foregoing, IT IS ORDERED, pursuant to Rule 58 of the Federal Rules of Civil Procedure, that JUDGMENT shall be, and hereby is, entered in favor of

Defendants Alpert, Eslenberg, and McKeel and against Plaintiff David V. Jordan relative to Counts 2, 4, 5, 6, and 7 of the complaint.



SUSAN PARADISE BAXTER
United States District Judge

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