IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

FREDDY LUDWIG WAMBACH, Plaintiff,	§ § §	
vs.	§	CIVIL ACTION NO. 1:10-1022-HFF-SVH
S. BLACKWELL, R.N., and T. MURRAY, in their individual and official capacities, Defendants.	§ § §	

AMENDED ORDER

This case was filed as a 42 U.S.C. § 1983 action. Plaintiff is proceeding pro se. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that Defendants' motion for summary judgment be granted with regard to Plaintiff's claim against Murray for excessive force and denied as to Plaintiff's claim against Blackwell for alleged deliberate indifference to his serious medical needs. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on July 21, 2011, and Defendants filed their objections to the Report on August 4, 2011. Plaintiff failed to file any objections.

After carefully reviewing the Report, the objections, and the record in this case, the Court has come to the firm opinion that the more prudent course is to dismiss Defendants' motion for summary judgment without prejudice with leave to refile so as to allow more briefing and the submission of additional evidence, if any, on Plaintiff's deliberate indifference claim. Because of the circumstances present here, namely concerning Plaintiff's ability to present his claim, the Magistrate Judge shall consider appointing counsel to assist Plaintiff with his case. Thereafter, the Magistrate Judge shall issue a scheduling order allowing for supplemental briefing with specifics about Plaintiff's complaints of his injuries, evidence of those injuries, if any, and all other matters that the Magistrate Judge finds necessary to develop the record fully.

As such, Defendants' motion for summary judgment is hereby **DISMISSED** without prejudice with leave to refile and this case is returned to the Magistrate Judge for further proceedings consistent with this Order.

IT IS SO ORDERED.

Signed this 30th day of September, 2011, in Spartanburg, South Carolina.

s/ Henry F. Floyd
HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE

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NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified of the right to appeal this Order within thirty days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.