

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

|                                       |   |                          |
|---------------------------------------|---|--------------------------|
| Khalilah Najwa Joyner,                | ) |                          |
|                                       | ) | C/A No. 3:17-2089-MBS    |
| Plaintiff,                            | ) |                          |
|                                       | ) |                          |
| vs.                                   | ) |                          |
|                                       | ) | <b>OPINION AND ORDER</b> |
| Dr. Michael Kim, Family Medicine Dr.; | ) |                          |
| Dr. Michael Savino, Emergency Room    | ) |                          |
| Dr.; and The United States Army,      | ) |                          |
|                                       | ) |                          |
| Defendants.                           | ) |                          |
| _____                                 | ) |                          |

Plaintiff Khalilah Najwa Joyner, proceeding pro se and in forma pauperis, filed a medical malpractice complaint on August 8, 2017, asserting the court has diversity jurisdiction over the action. In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Shiva V. Hodges for pretrial handling.

The Magistrate Judge reviewed the complaint pursuant to the provisions of 28 U.S.C. § 1915. On August 15, 2017, the Magistrate Judge issued a Report and Recommendation in which she determined that sovereign immunity precludes the action from proceeding under diversity jurisdiction. The Magistrate Judge further observed that Plaintiff’s remedy is to proceed under the Federal Tort Claims Act, 28 U.S.C. §§ 2671, et seq. Accordingly, the Magistrate Judge recommended that the court dismiss the complaint without prejudice and without issuance and service of process. Plaintiff filed no objections to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). This court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. § 636(b)(1).

This court may also receive further evidence or recommit the matter to the Magistrate Judge with instructions. Id. In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

The court has thoroughly reviewed the record. The court concurs in recommendation of the Magistrate Judge. Plaintiff’s complaint is summarily dismissed without prejudice and without issuance and service of process.

**IT IS SO ORDERED.**

/s/ Margaret B. Seymour  
Senior United States District Judge

Charleston, South Carolina

September 6, 2017