

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

Michelle Ellison and David Ellison,)	Civil Action No. 4:16-847-BHH
)	
Plaintiffs,)	
)	
vs.)	
)	ORDER AND OPINION
Deputy Brian Proffit; John Does; Glen Kirby, and Kenney Boone,)	
)	
Defendants.)	
)	

Plaintiffs Michelle Ellison and David Ellison (“Plaintiffs”), through counsel, brought this civil action pursuant to 42 U.S.C § 1983. (ECF No. 1.) In accordance with 28 U.S.C. § 636(b)(1)(B) and Local Rule 73.02 for the District of South Carolina, this matter was referred to United States Magistrate Judge Kaymani D. West for pretrial handling. The matter is now before this Court for review of the Report and Recommendation (“Report”) issued by the Magistrate Judge on January 24, 2017. (ECF No. 43.) In her Report, the Magistrate Judge recommends that Defendant’s motion to dismiss be granted in part, and denied in part. (*Id.* at 17.) Specifically, the Magistrate Judge recommends that Plaintiff’s claims of malicious prosecution relating to the hindering and resisting charges and § 1983 civil conspiracy should be dismissed. The Magistrate Judge further recommends, however, that at this early stage of the litigation, Defendants’ Motion to Dismiss Plaintiffs’ claims for § 1983 malicious prosecution as to the breach-of-peace charges and supervisory liability, along with Defendants’ assertion of Eleventh-Amendment Immunity, should be denied. (*Id.*) Objections to the Report were due by February 7, 2017. Neither Defendants nor Plaintiffs have filed objections.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. See *Mathews v. Weber*, 423 U.S. 261 (1976). The

Court is charged with making a *de novo* determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The Court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. See 28 U.S.C. § 636(b). 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).

After a careful review of the record, the applicable law, and the Report of the Magistrate Judge, the Court finds no clear error. Accordingly, the Court ACCEPTS the Magistrate Judge’s recommendations and incorporates the Report (ECF No. 43) by specific reference into this Order. It is therefore

ORDERED that Defendant's motion to dismiss (ECF No. 8) is GRANTED as to Plaintiff’s claims of malicious prosecution relating to the hindering and resisting charges and § 1983 civil conspiracy, and DENIED as to Plaintiffs’ claims for § 1983 malicious prosecution as to the breach-of-peace charges and supervisory liability, along with Defendants’ assertion of Eleventh-Amendment Immunity.

IT IS SO ORDERED.

/s/Bruce Howe Hendricks
United States District Judge

February 13, 2017
Greenville, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified that any right to appeal this Order is governed by Rules 3 and 4 of the Federal Rules of Appellate Procedure.