

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Don Jordan Bryant,) Civil Action No.: 4:17-cv-00546-RBH
)
Plaintiff,)
)
v.) **ORDER**
)
Florence County Detention Center,)
)
Defendant.)
)

Plaintiff Don Jordan Bryant, a state prisoner proceeding pro se,¹ filed this action pursuant to 42 U.S.C. § 1983 against the above-captioned Defendant. *See* ECF No. 1. The matter is before the Court for review of the Report and Recommendation (“R & R”) of United States Magistrate Judge Thomas E. Rogers, III, made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02 for the District of South Carolina.² *See* R & R, ECF No. 9. The Magistrate Judge recommends that the Court summarily dismiss Plaintiff’s complaint without prejudice and without issuance and service of process. R & R at 8-9.

Standard of Review

The Magistrate Judge makes only a recommendation to the Court. The Magistrate Judge’s recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The Court must conduct a

¹ Plaintiff is a state prisoner, but his allegations concern an incident that occurred while he was a pretrial detainee at the Florence County Detention Center.

² The Magistrate Judge reviewed Plaintiff’s complaint pursuant to the screening provisions of 28 U.S.C. §§ 1915(e)(2) and 1915A. The Court is mindful of its duty to liberally construe the pleadings of pro se litigants. *See Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). *But see Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985) (“Principles requiring generous construction of pro se complaints are not, however, without limits. *Gordon* directs district courts to construe pro se complaints liberally. It does not require those courts to conjure up questions never squarely presented to them.”).

de novo review of those portions of the R & R to which specific objections are made, and it 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 Court must engage in a de novo review of every portion of the Magistrate Judge's report to which objections have been filed. *Id.* However, the Court need not conduct a de novo review when a party makes only "general and conclusory objections that do not direct the [C]ourt to a specific error in the [M]agistrate [Judge]'s proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). In the absence of specific objections to the R & R, the Court reviews only for clear error, *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005), and the Court need not give any explanation for adopting the Magistrate Judge's recommendation. *Camby v. Davis*, 718 F.2d 198, 199-200 (4th Cir. 1983).

Discussion³

In his complaint, Plaintiff alleges he slipped, fell, and broke his jaw while exiting the shower at the Florence County Detention Center ("FCDC"). ECF No. 1 at 6. He claims that "[p]rior to the incident," he tried "to notify the officer who was escorting [him] that the floor had water everywhere and there were not any 'Wet Floor' signs anywhere." *Id.* Plaintiff asserts an Eighth Amendment deliberate indifference claim and names the FCDC as the sole defendant. *Id.* at 1-2, 4.

The Magistrate Judge recommends summarily dismissing Plaintiff's complaint because the FCDC is not a person amenable to suit under 42 U.S.C. § 1983. R & R at 3-4. Plaintiff does not object to the Magistrate Judge's finding, and having reviewed the R & R for clear error, the Court agrees with

³ The R & R contains a full summary of the procedural and factual history of this case, as well as the applicable legal standards.

the Magistrate Judge's recommendation. *See Diamond*, 416 F.3d at 315 (stating a district court need only review the magistrate judge's R & R for clear error in the absence of specific objections).

Plaintiff has, however, filed a document entitled "Argument" within the time for filing objections. *See* ECF No. 13. In this document, Plaintiff states, "Before the incident took place I did notify Officer David Timmons, Lt. Redden, and Officer J. Palmer about the flood that was in front of the showers but they did nothing about it and ignored my pleas placing my life in danger." *Id.* He claims "[t]hese three state employees are fully responsible for [his] injury and therefore should pay the relief requested." *Id.* The Court construes Plaintiff's filing as a motion to amend his complaint to add Timmons, Redden, and Palmer as defendants in this action. *See generally Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (stating "[a] document filed pro se is 'to be liberally construed'" (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976))). Nevertheless, the Court finds amendment would be futile.

As noted above, Plaintiff alleges a deliberate indifference claim under the Eighth Amendment,⁴ which prohibits the infliction of "cruel and unusual punishments" and protects inmates from inhumane treatment and conditions during incarceration. *Williams v. Benjamin*, 77 F.3d 756, 761 (4th Cir. 1996). To state such a claim, a prisoner must allege (1) the alleged deprivation was objectively sufficiently serious and (2) prison officials had a sufficiently culpable state of mind. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). Here, Plaintiff's allegation that state officials failed to remedy the wet floor in the FCDC's shower facility does not state a plausible claim of deliberate indifference. At best, Plaintiff's claim sounds in negligence. *See, e.g., Jenkins v. Palmer*, No. 5:15-cv-03398-HMH-KDW, 2016 WL

⁴ The Fourteenth Amendment governs Plaintiff's deliberate indifference claim because he was a pretrial detainee at the time of the alleged incident. *See Martin v. Gentile*, 849 F.2d 863, 870 (4th Cir. 1988). Although a pretrial detainee's deliberate indifference claim arises under the due process clause of the Fourteenth Amendment, the Eighth Amendment's prohibition of cruel and unusual punishments provides the framework for analyzing such a claim. *Id.*

3101969, at *5 (D.S.C. May 6, 2016) (“[M]any courts, including this one, have refused to find deliberate indifference to inmate safety in the context of slips and falls during incarceration.”), *adopted by*, 2016 WL 3079043 (D.S.C. May 31, 2016); *Beasley v. Anderson*, 67 F. App’x 242, 2003 WL 21108537 at *1 (5th Cir. 2003) (“[Plaintiff Beasley] maintains that Arthur Anderson showed deliberate indifference in failing to correct a slippery shower floor before Beasley fell. Beasley’s claim regarding a slip and fall sounds in negligence, which is insufficient to allege a constitutional violation.”). Even if Plaintiff proceeded against Timmons, Redden, and Palmer, he would—at most—have only a negligence claim against them.⁵ Accordingly, Plaintiff’s proposed amendment is futile and the Court will deny his motion to amend. *See Mayfield v. Nat’l Ass ’n for Stock Car Auto Racing, Inc.*, 674 F.3d 369, 379 (4th Cir. 2012) (stating a court should deny a request to amend if amendment would be futile).

Conclusion

The Court has thoroughly reviewed the entire record, including Plaintiff’s complaint, the R & R, and Plaintiff’s objections/motion to amend. *See* ECF Nos. 1, 9, & 13. For the reasons stated in this Order and in the R & R, the Court adopts and incorporates the R & R [ECF No. 9] by reference, denies Plaintiff’s motion to amend [ECF No. 13], and **DISMISSES** this action *without prejudice and without issuance and service of process*.

IT IS SO ORDERED.

Florence, South Carolina
April 3, 2017

s/ R. Bryan Harwell
R. Bryan Harwell
United States District Judge

⁵ To the extent Plaintiff has alleged a state law claim for negligence, the Court declines to exercise jurisdiction over such a claim pursuant to 28 U.S.C. § 1367(c)(3).