

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

Tony L. Moore, #275740,)
Plaintiff,) Civil Action No. 5:11-1033-TMC
vs.)
Anthony J. Padula; Ms. Bell; Keith)
McBride; and L. Greer,)
Defendants.)

)

ORDER

Plaintiff, a state prisoner proceeding pro se, filed this action pursuant to 42 U.S.C. § 1983. In accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02, D.S.C., this matter was referred to a magistrate judge for pretrial handling. Before the court is the magistrate judge's Report and Recommendation ("Report"), recommending that the court grant the defendants' motion for summary judgment and dismiss the case. (ECF No. 122). The plaintiff timely objected to the Report. (ECF No. 127).¹

The Report has no presumptive weight and the responsibility to make a final determination in this matter remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The court need not conduct a de novo review when a party makes only "general and conclusory objections that do not direct the court to a specific error in the magistrate's proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). In that

¹ This is the third time this matter has been before the court on a Report and Recommendation on the defendants' motion for summary judgment. Most recently, on October 18, 2012, the magistrate judge recommended that the court grant the defendants' motion. (ECF No. 87). The plaintiff timely objected to the Report (ECF No. 92) and the court understood part of his objection to state that he had not yet received certain relevant medical records in discovery. Accordingly, the court denied the defendants' motion for summary judgment with leave to re-file after the parties resolved the discovery issue. (ECF No. 98). Almost a full year has passed since the court issued that order. So, while the plaintiff again states in his objections that he has not received all of his requested documents from the defendants, the court finds that the parties have had adequate time for discovery, that there is not an unresolved motion to compel or equivalent motion before the court, and that the defendants have complied to the best of their abilities with all discovery requests.

case, the court reviews the Report only for clear error. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

As set forth above, the plaintiff filed timely objections to the Report. However, his objections merely restate factual allegations and legal conclusions raised in briefing and fully addressed in the Report. The court has thoroughly reviewed the Report, the plaintiff's objections, and the record in this case and agrees with the Report's recommended disposition. However, the court would like to re-address one of the plaintiff's claims.

The plaintiff's most substantive argument lies in his claim for failure to protect. As the Report indicates, to establish a claim for failure to protect from violence, the plaintiff has to show that prison officials knew of and disregarded "an excessive risk to [the plaintiff's] health or safety." *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). Thus, to survive summary judgment, the plaintiff would have had to provide the court with enough evidence to create a genuine issue of fact as to that issue. *See* Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). This court has independently reviewed the evidence offered by both sides, and without weighing the evidence or making a finding as to any of the material facts of this case, finds that the plaintiff has not met his burden.

Accordingly, the court adopts the Report (ECF No. 122). Therefore, the defendants' motion for summary judgment (ECF No. 105) is **GRANTED**. In addition, the plaintiff's pending motion for entry of default (ECF No. 133) is **DENIED AS MOOT** and this case is **DISMISSED**.

IT IS SO ORDERED.

s/Timothy M. Cain
United States District Judge

January 2, 2014
Anderson, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.