

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

| | | |
|--------------------------------------|---|---------------------------------|
| Jimmy W. Wilson #295788, |) | Civil Action No. 5:15-00025-MBS |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | ORDER AND OPINION |
| Dr. Way, HCA Nurse Darrell Harrison, |) | |
| S.C.D.C. Medical Director Dr. McRee, |) | |
| |) | |
| <u>Defendants.</u> |) | |

Plaintiff Jimmy W. Wilson (“Plaintiff”), proceeding pro se and in forma pauperis, brought this action against Dr. Way, HCA Nurse Darrell Harrison, and S.C.D.C. Medical Director Dr. McRee (“Defendants”) pursuant to 42 U.S.C. § 1983.

This matter is before the court on Plaintiff’s request for Declaration for Entry of Default, ECF No. 90, as well as Plaintiff’s Motion/Urgent Message for Medical Treatment, ECF No. 121. In accordance with 28 U.S.C. § 636(b) (2012) and Local Civil Rule 73.02, D.S.C., the matter was referred to United States Magistrate Judge Kaymani D. West for a Report and Recommendation. The Magistrate Judge filed a Report and Recommendation on September 22, 2015, recommending that the Entry of Default and Motion/Urgent Message for Medical Treatment be denied. ECF No. 137. Neither party filed objections to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The court is charged with making a *de novo* review of any portions of the Report and Recommendation to which a specific objection is made.

Id. The district 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 Judge's proposed findings and recommendations. *Orpiano v. Johnson*, 687 F.2d 44, 47-48 (4th Cir. 1982). The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge. 28 U.S.C. § 636(b)(1).

Plaintiff has filed no objection to the Magistrate Judge's Report and Recommendation. Nevertheless, the court has conducted a *de novo* review of the issues in this case and concludes that the Magistrate Judge has properly applied the applicable law. First, the Magistrate Judge properly found that Defendants adequately complied with Plaintiff's discovery requests by providing Plaintiff with the opportunity to inspect his medical records. Defendants directed Plaintiff to request his medical records pursuant to the rules of the South Carolina Department of Corrections, ECF No. 73-1 at 2, but Plaintiff has failed to follow the direction of Defendants. Because Defendants have adequately responded to Plaintiff's discovery requests and have not failed to plead or otherwise defend, default judgment is not appropriate.

Next, the Magistrate Judge properly characterized Plaintiff's Motion/Urgent Message as a request for injunctive relief. The Magistrate Judge then applied the factors for granting a preliminary injunction as outlined in *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 20 (2008). Pursuant to *Winter*, "a Plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Id.* In applying the *Winter* factors, the Magistrate Judge properly determined that Plaintiff has not made a clear showing that he is likely to succeed on the merits of his complaint. The Magistrate Judge also found

facts that do not indicate that Plaintiff's health is in imminent danger. Plaintiff also has not shown that the preliminary injunction is in the public interest or that the balance of equities tip in Plaintiff's favor. Thus, the Magistrate Judge properly determined that Plaintiff's request that the court provide injunctive relief should be denied.

Based upon the foregoing, the court adopts and incorporates herein by reference the Report and Recommendation of the Magistrate Judge. For the reasons stated herein and in the Report and Recommendation, Plaintiff's request for Declaration for Entry of Default, ECF No. 90, and Motion/Urgent Message for Medical Treatment, ECF No. 121, are **DENIED**. The within action is recommitted to the Magistrate Judge for further pretrial handling.

IT IS SO ORDERED.

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

December 30, 2015
Columbia, South Carolina