

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

Mark T. Lott )  
 Plaintiff, )  
 )  
 v. )  
 )  
 Timothy Budtz, Jared Anderson, and )  
 Chris Kunkle, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

C.A. No. 6:19-1087-RMG

**ORDER**

This matter is before the Court upon the Report and Recommendation (“R & R”) of the Magistrate Judge (Dkt. No. 86), recommending the Court grant Defendants’ motion for summary judgment. Plaintiff has filed objections to the R & R. (Dkt. No. 89).

The Magistrate Judge makes only a recommendation to this Court that has no presumptive weight. The responsibility to make a final determination remains with the Court. *See Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). The 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 must make a *de novo* determination of those portions of the R & R Plaintiff specifically objects. Fed. R. Civ. P. 72(b)(2). Where Plaintiff fails to file any specific objections, “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 & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (internal quotation omitted). “Moreover, in the absence of specific objections to the R & R, the Court need not give any explanation for adopting the recommendation.” *Wilson v. S.C. Dept of Corr.*,

No. 9:14-CV-4365-RMG, 2015 WL 1124701, at \*1 (D.S.C. Mar. 12, 2015). *See also Camby v. Davis*, 718 F.2d 198, 200 (4th Cir.1983).

Plaintiff is currently a civilly committed individual in the custody of the South Carolina Department of Mental Health under the provisions of the South Carolina Sexually Violent Predator Act, S.C. Code Section 44-48-10 *et seq.* Under an interagency agreement with the South Carolina Department of Corrections, Plaintiff is housed in a segregated unit at the Broad River Correctional Institution. The program is administered by a private contractor, Correct Care of South Carolina d/b/a Wellpath (“CCSC”). The named Defendants are supervisory staff for CCSC administering the sexually violent predator program. (Dkt. No. 86 at 1-2).

Plaintiff claims that Defendants failed to protect him from two assaults by a fellow resident in the sexually violent predator program, referred to as “K.” The Magistrate Judge correctly notes that Plaintiff’s custodial status is similar to a pre-trial detainee and he is entitled to the protections of the Eighth Amendment. To establish an Eighth Amendment claim, Plaintiff must show a “deliberate” or “callous indifference” on the part of prison officials to the a “specific known risk of harm.” *Pressley v. Hutto*, 816 F.2d 977, 979 (4<sup>th</sup> Cir. 1987). This requires a showing that a prison official acted with deliberate indifference to “actual knowledge that an inmate faces substantial risk of serious harm and disregards the risk by failing to take reasonable measures to abate it.” *Farmer v. Brennan*, 511 U.S. 825, 835 (1994).

The Magistrate Judge ably described in detail the Defendant’s limited knowledge regarding any threat “K” posed to Plaintiff prior to the first assault and their actions thereafter, which included sanctioning “K” and offering Plaintiff protective custody if he ever felt threatened. Plaintiff never requested protective custody prior to the second assault. (Dkt. No. 86 at 9-11). The Magistrate Judge correctly concluded that Defendants, on this record, were

entitled to summary judgment on claims of violation of Plaintiff's Eighth Amendment rights and supervisory liability and that they were additionally entitled to qualified immunity.

The Court **ADOPTS** the R & R of the Magistrate Judge (Dkt. No. 86) as the order of the Court and **GRANTS** Defendant's motion for summary judgment. This case is dismissed with prejudice.

**AND IT IS SO ORDERED.**

s/ Richard M. Gergel  
Richard M. Gergel  
United States District Judge

June 8, 2020  
Charleston, South Carolina