

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

Dominic Javon Gilbert,)
)
Plaintiff,)
)
v.)
)
Dana Aiken, Victoria Albergottie,)
Quandara Grant,)
)
Defendants.)
)
_____)

Case No. 6:23-cv-05256-JDA-KFM

OPINION AND ORDER

This matter is before the Court on a motion to dismiss filed by Defendants Dana Aiken and Victoria Albergottie (the “Medical Defendants”). [Doc. 40.] In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.), this matter was referred to United States Magistrate Judge Kevin F. McDonald for pre-trial proceedings.

On September 25, 2024, the Magistrate Judge issued a Report and Recommendation (“Report”) recommending that the Medical Defendants’ motion to dismiss be granted in part and denied in part. [Doc. 67.] The Magistrate Judge advised the parties of the procedures and requirements for filing objections to the Report and the serious consequences if they failed to do so. [*Id.* at 11.] No party has filed objections and the time to do so has lapsed.

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 this Court. *Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). The Court is charged with making a de novo determination of only those portions of the Report that have been specifically objected to, and the Court may accept, reject, or modify

the Report, in whole or in part. 28 U.S.C. § 636(b)(1). The Court will review the Report only for clear error in the absence of an objection. See *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “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” (internal quotation marks omitted)).

The Court has reviewed the record in this case, the applicable law, and the Report of the Magistrate Judge for clear error. Having done so, the Court accepts the Report and Recommendation of the Magistrate Judge and incorporates it by reference. Accordingly, the Medical Defendants’ motion to dismiss [Doc. 40] is GRANTED IN PART and DENIED IN PART. It is granted as to Plaintiff’s Eighth Amendment deliberate indifference claims and denied as to Plaintiff’s Fourteenth Amendment deliberate indifference claims and request for punitive damages.

IT IS SO ORDERED.

s/ Jacquelyn D. Austin
United States District Judge

October 23, 2024
Greenville, 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.