

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

RICHARD W. HENDERSON §
VS. § CIVIL ACTION NO. 1:07-CV-705
KENT DICKERSON, ET AL. §

**MEMORANDUM ORDER OVERRULING PLAINTIFF’S OBJECTIONS AND
ADOPTING THE MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION**

Plaintiff Richard W. Henderson, a prisoner confined at the Stiles Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se* and *in forma pauperis*, filed this civil rights action pursuant to 42 U.S.C. § 1983 against Kent Dickerson, Linda Irwin, Dr. Rizalino Reyes, Tiffany Elmore, Maxine M. Black, the University of Texas Medical Branch (UTMB), Richard Imboden, Felicia Davis, and unidentified members of the Stiles Unit medical staff.

The court ordered that this matter be referred to the Honorable Earl S. Hines, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge. The magistrate judge recommends dismissing the claims against Kent Dickerson, Tiffany Elmore, UTMB and the unidentified defendants.

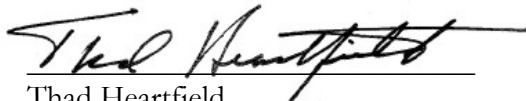
The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Plaintiff filed objections to the magistrate judge’s Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). Plaintiff contends that defendant Elmore misread his x-ray. At most, defendant Elmore's conduct amounts to negligence. However, demonstrating that the defendant was negligent or failed to act reasonably is not enough to show a constitutional violation. *Mace v. City of Palestine*, 333 F.3d 621, 626 (5th Cir. 2003).

ORDER

Accordingly, plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. A partial judgment will be entered in accordance with the magistrate judge's recommendation.

SIGNED this the **9** day of **November, 2009**.


Thad Heartfield
United States District Judge