

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

ANGELA ROBINETT §
VS. § CIVIL ACTION NO. 1:12cv489
VIRGILIO GERNALE, ET AL. §

ORDER OVERRULING OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Angela Robinett, proceeding *pro se*, filed the above-styled civil rights lawsuit against Virgilio Gernale and Octavius Black. The court previously referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to 28 U.S.C. § 636 and applicable orders of this court.

Defendant Black has filed a motion asking that the claim against him be dismissed pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). The Magistrate Judge has submitted a Report and Recommendation of United States Magistrate Judge concerning the motion. The Magistrate Judge recommends the motion be granted.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and pleadings. Plaintiff filed objections to the Report and Recommendation. The court must therefore conduct a *de novo* review of the objections.


The Magistrate Judge correctly concluded that the claim against defendant Black in her official capacity is barred by the Eleventh Amendment. With respect to the claim against defendant Black in her individual capacity, the Magistrate Judge concluded defendant Black was entitled to qualified immunity because plaintiff's allegations did not demonstrate she acted with deliberate indifference to her serious medical needs. In her objections, plaintiff included additional allegations against defendant Black. However, even when these allegations are considered, plaintiff has still failed to show defendant Black was aware of facts indicating plaintiff was subject to a substantial risk of serious harm. *See Farmer v. Brennan*, 511 U.S. 825, 847 (1994). While plaintiff describes the contents of a letter she sent to defendant Black, she has not shown defendant Black received the

letter. Further, the contents of the letter demonstrate that defendant Gernale, a physician, had not yet provided plaintiff with treatment. However, the contents of the letter do not show defendant Gernale refused to listen to plaintiff's complaints, but, instead, only show he did not believe the treatment requested by plaintiff was appropriate. A disagreement as to proper treatment is insufficient to demonstrate deliberate indifference. *Gilbert v. Caldwell*, 463 F.3d 339, 346 (5th Cir. 2006). As a result, the allegations against defendant Black are insufficient to meet the "extremely high standard" applicable to claims based upon deliberate indifference. *See Domino v. Texas Department of Criminal Justice*, 293 F.3d 752, 756 (5th Cir. 2001). Defendant Black is therefore entitled to qualified immunity.

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** as the opinion of the court. Defendant Black's motion to dismiss is **GRANTED** and the claim against defendant Black is **DISMISSED**.

SIGNED this the 25 day of **September, 2014**.



Thad Heartfield
United States District Judge