

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

BRIAN N NELSON,

Plaintiff,

v.

RORY L GRIFFIN ET AL.,

Defendants.

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CIVIL ACTION NO. 5:16-CV-00049-RWS

**ORDER ADOPTING REPORT AND RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE**

The Plaintiff Brian Nelson, proceeding pro se, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged deprivations of his constitutional rights during his confinement in the Bowie County Correctional Center. The matter was referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges. Plaintiff has named as Defendants Rory Griffin, Deputy Director for Health and Correctional Services for the Arkansas Department of Corrections; Warden Page of the Bowie County Correctional Center; Dr. Jagdish Shah; and Nurse Regina Lynch. Defendants Griffin and Page have been dismissed (Docket No. 84).

Defendant Lynch filed a motion for summary judgment contending that Plaintiff failed to exhaust his administrative remedies. Docket No. 35. Plaintiff filed a response stating he exhausted his administrative remedies through the Arkansas Department of Corrections. Docket No. 57 at 3. In reply, Nurse Lynch acknowledged that there was some evidence in the record to support Plaintiff’s claim of exhaustion. Docket No. 69 at 5.


After review of the pleadings, the Magistrate Judge issued a Report recommending that the Defendant's motion for summary judgment be denied. Docket No. 75. No objections were filed. Accordingly, the Court reviews the Magistrate Judge's Report and Recommendation for clear error. See *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). After reviewing the Report and pleadings in this matter, the Court concludes that the Magistrate Judge did not clearly err in finding that there is some evidence of Plaintiff's exhaustion of administrative remedies in the record.

It is accordingly

ORDERED that the Report of the Magistrate Judge (Docket No. 75) is **ADOPTED** as the opinion of the Court. It is further

ORDERED that the Defendant Regina Lynch's motion for summary judgment based on exhaustion of administrative remedies (Docket No. 35) is **DENIED**.

So ORDERED and SIGNED this 30th day of August, 2017.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE