

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

FREDDIE FOUNTAIN §
v. § CIVIL ACTION NO. 6:13cv958
RICK THALER, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE

The Plaintiff Freddie Fountain proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the case be 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.

The operative pleading is Fountain's third amended complaint, in which he named 41 defendants and raised numerous global claims for relief. The Attorney General for the State of Texas filed a motion for a Rule 7 reply, and Fountain filed a motion for leave to reply and expound upon his complaint pursuant to Rule 7, as well as affidavits in support of his complaint.

After review of the pleadings, the Magistrate Judge issued a Report recommending that all of the Plaintiff's allegations except for six be dismissed with prejudice as frivolous and for failure to state a claim upon which relief may be granted. Fountain has filed objections and supplemental objections to this Report.

The Court has conducted a careful *de novo* review of those portions of the Magistrate Judge's proposed findings and recommendations to which the Plaintiff objected. *See* 28 U.S.C. §636(b)(1) (district judge shall "make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.") Upon such *de novo* review,

the Court has determined that the Report of the Magistrate Judge is correct and the Plaintiff's objections are without merit. It is accordingly

ORDERED that the Plaintiff's objections are overruled and the Report of the Magistrate Judge (docket no. 174) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that all of the Plaintiff's allegations except for his claims of (1) denial of cleaning supplies in May 2014; (2) denial of adequate food; (3) deliberate indifference to serious medical needs in August of 2013; (4) deliberate indifference to mental health needs; (5) denial of reasonably adequate clothing in November of 2013 and August of 2014; and (6) cruel and unusual punishment through burns in the shower in January and May of 2014 are **DISMISSED WITH PREJUDICE** as frivolous and for failure to state a claim upon which relief may be granted. It is further

ORDERED that all of the Defendants except for Warden Rupert, Michael Beil, Nurse Practitioner Pierson, Nurse Taliaferro, Naomi Olivares, Lt. White, Robert Scott, and Brandon Shinault are **DISMISSED** as parties to this lawsuit.

SIGNED this 1st day of September, 2015.



MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE