

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

STACY DAMOND MITCHELL	§	
v.	§	CIVIL ACTION NO. 6:14cv468
BRAD LIVINGSTON, ET AL.	§	

MEMORANDUM ADOPTING INITIAL REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE

The Plaintiff Stacy Mitchell, 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 named defendants are TDCJ Executive Director Brad Livingston, Warden Todd Foxworth, Sgt. Bradley Norton, Sgt. Samuel Adams, Lt. Myers, Sgt. Angela Davis, Nurse Linda Laningham, and officers Theresa Brachmeir, Melissa Day, Michael Gongre, Trevor Shannon, Tracy Ross, Michael Facemire, and Jonathan Newman.

Mitchell complained of a use of force incident occurring April 26, 2012. After an evidentiary hearing, the magistrate judge issued a report recommending dismissal of all defendants except for Sgt. Bradley Norton. No objections were filed to this report; accordingly, the parties are barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the report of the magistrate judge. Upon such review, the Court has determined that the report of the magistrate judge is correct. *See*

United States v. Wilson, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a magistrate judge’s report are filed, the standard of review is “clearly erroneous, abuse of discretion and contrary to law”). It is accordingly

ORDERED that the initial report of the magistrate judge (docket no. 18) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that all claims and parties other than the allegation of excessive force against Bradley Norton be dismissed with prejudice as frivolous and for failure to state a claim upon which relief may be granted. It is further

ORDERED that the dismissal of these claims and parties not count as a strike for purposes of 28 U.S.C. §1915(g).

SIGNED this 16th day of October, 2015.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE