

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

JOEY KELLY McCLAIN	§	
v.	§	CIVIL ACTION NO. 6:16cv204
CORBETT RANDALL, ET AL.	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
ON DEFENDANTS McWHIRTER, MANKER, AND MAFTAN

The Plaintiff Joey McClain, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights in the Texas Department of Criminal Justice, Correctional Institutions Division. 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 Lt. Corbett Randall, Nurse Tammilyn McWhirter, and Officers Tiffany Manker and Alhakim Maftan.

McClain alleges that Lt. Randall improperly used excessive force against him. He asserts that although McWhirter, Manker, and Maftan were not present when the alleged use of force occurred, they gave false statements in connection with the investigation of the incident.

After review of the pleadings, the Magistrate Judge issued a Report recommending that the claims against McWhirter, Manker, and Maftan be dismissed with prejudice for purposes of proceeding *in forma pauperis*. A copy of this Report was sent to McClain by certified mail at his last known address, where it was received on February 15, 2017, but no objections have been received; accordingly, he is 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 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 Report of the Magistrate Judge (docket no. 34) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the Plaintiff's claims against the Defendants Nurse Tammilyn McWhirter, Officer Tiffany Manker, and Officer Alhakim Maftan are **DISMISSED** with prejudice for purposes of proceeding *in forma pauperis* as frivolous and for failure to state a claim upon which relief may be granted. McWhirter, Manker, and Maftan are **DISMISSED** as parties to the lawsuit. The dismissal of these claims and parties shall have no effect upon the Plaintiff's claims against Lt. Randall.

So ORDERED and SIGNED this 4th day of April, 2017.



Ron Clark, United States District Judge