

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

KIRK ARTERBERRY §
VS. § CIVIL ACTION NO. 9:16-CV-99
MANAGEMENT AND TRAINING §
CORPORATION (“MTC”) AND DANIEL
DRISKELL

MEMORANDUM ORDER OVERRULING OBJECTIONS AND
ADOPTING THE MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

Plaintiff, Kirk Arterberry, an inmate represented by counsel, Tammy Peden, filed the above-referenced civil rights action pursuant to 42 U.S.C. § 1983 against defendants Management and Training Corporation (“MTC”) and Warden David Driskell.

The Court referred this matter to the Honorable Zack Hawthorn United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this Court. The Magistrate Judge recommends defendants’ 12(b)(6) Motion to Dismiss be denied.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record, and pleadings. Defendants filed objections to the Report and Recommendation of United States Magistrate Judge. This requires a *de novo* review of the objections in relation to the pleadings and applicable law. *See* FED. R. CIV. P. 72(b).

After careful consideration of the objections and responses, the court finds defendants’ objections lacking in merit. Defendants continue to argue that plaintiff has pleaded a negligence or premises liability claim, which does not support a Section 1983 claim. Although this is a correct statement of the law about Section 1983 claims generally, Defendants continue to ignore the facts as specifically pleaded by plaintiff in this case. As outlined by the Magistrate Judge, plaintiff has pleaded sufficient facts to survive the “facial plausibility” standard. *Ashcroft v. Iqbal*, 129 S.Ct. 1927 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007). Plaintiff has pleaded specifically

pleaded specifically a claim for deliberate indifference and has not pleaded a claim for negligence or premises liability. Plaintiff has also pleaded sufficient personal involvement of both defendants and has pleaded facts sufficient to suggest the defendants knew of, and disregarded, an “excessive risk” to plaintiff’s health or safety.

ORDER

Accordingly, petitioner’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**.

So **ORDERED** and **SIGNED** this **24** day of **May, 2017**.



Ron Clark, United States District Judge