

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

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MELISSA DUMONT, as Personal )  
Representative for the ESTATE OF )  
ROBERT DONALD HUTT, )

Plaintiff, )

v. )

Case No. 2:14-cv-209

CORRECTIONS CORPORATION OF )  
AMERICA, CORRECT CARE )  
SOLUTIONS, LLC, ANDREW PALLITO, )  
MICHAEL E. RAPAPORT, )  
and MITCHELL MILLER, )

Defendants. )

**OPINION AND ORDER ADOPTING MAGISTRATE JUDGE'S  
REPORT AND RECOMMENDATION**

(Docs. 117 & 136)

This matter came before the court for a review of the Magistrate Judge's November 21, 2016 Report and Recommendation ("R & R") (Doc. 136), in which he recommended the court grant Defendant Andrew Pallito's motion to dismiss Plaintiff Melissa Dumont's claims against him based on the incarceration of decedent Robert Donald Hutt at Southern State Correctional Facility.<sup>1</sup> (Doc. 117.) Neither party has filed an objection to the R & R, and the time period to do so has expired.

Stacey A. Adamski, Esq. represents Plaintiff. Daniel P. Struck, Esq., Sandra A. Stempel, Esq., and Jennifer G. Mihalich, Esq. represent Corrections Corporation of America ("CCA"). Assistant Attorney General Megan J. Shafritz represents former Vermont Department of Corrections ("DOC") Commissioner Andrew Pallito.

<sup>1</sup> On August 10, 2016, the parties filed a stipulation to dismiss with prejudice Plaintiff's claims against Defendant Pallito arising out of the decedent's incarceration at CCA's Florence Correctional Center in Florence, Arizona.

A district judge must make a *de novo* determination of those portions of a magistrate judge's report and recommendation to which an objection is made. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1); *Cullen v. United States*, 194 F.3d 401, 405 (2d Cir. 1999). The district judge may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. § 636(b)(1); *accord Cullen*, 194 F.3d at 405. A district judge, however, is not required to review the factual or legal conclusions of the magistrate judge as to those portions of a report and recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985).

In his thirty-four page R & R, the Magistrate Judge carefully reviewed the factual and procedural record as well as Plaintiff's Third Amended Complaint and concluded that Defendant Pallito's motion to dismiss should be granted. As a threshold matter, the Magistrate Judge observed that the law of the case doctrine applies because Plaintiff's new allegations in the Third Amended Complaint are merely reiterations of claims previously asserted in the Second Amended Complaint and dismissed by the court. *See United States v. Quintieri*, 306 F.3d 1217, 1225 (2d Cir. 2002) (noting that the "more flexible branch" of the law of the case doctrine holds "that when a court has ruled on an issue, that decision should generally be adhered to by that court in subsequent stages in the same case, unless cogent and compelling reasons militate otherwise") (citation and internal quotation marks omitted).

The Magistrate Judge further recommended dismissal of Plaintiff's claims against Defendant Pallito for failure to state a claim. *See* Fed. R. Civ. P. 12(b)(6). The Magistrate Judge correctly concluded that Plaintiff failed to allege any personal involvement by Defendant Pallito in the alleged constitutional violations, and that the allegations contained in the Third Amended Complaint are insufficient to establish an Eighth Amendment violation. With regard to Plaintiff's state law causes of action, the Magistrate Judge determined that they are barred by the doctrines of sovereign immunity and absolute official immunity.

The court agrees with the Magistrate Judge's recommendations and finds them well-reasoned. The court therefore adopts the R & R in its entirety.

**CONCLUSION**

For the foregoing reasons, the court hereby ADOPTS the Magistrate Judge's R & R (Doc. 136) and GRANTS Defendant Pallito's motion to dismiss Plaintiff's Third Amended Complaint (Doc. 117).

SO ORDERED.

Dated at Burlington, in the District of Vermont, this 15<sup>th</sup> day of February, 2017.

  
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Christina Reiss, Chief Judge  
United States District Court