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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

BRIAN LEON ROBERTS,)
)
Plaintiff,)
)
v.)
)
VERMONT DEPARTMENT OF)
CORRECTIONS, CENTURION OF)
VERMONT, LLC, LINDA ROBERTS,)
JEREMY CORNWALL, MINDY CONNOR,)
MARK POTANAS, MICHELLE BEATTIE,)
and DR. MITCHELL MILLER,)
)
Defendants.)

Case No. 2:16-cv-135

**OPINION AND ORDER ADOPTING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION**
(Docs. 34 & 51)

This matter came before the court for a review of the Magistrate Judge's October 14, 2016 Report and Recommendation ("R & R") (Doc. 51). (Doc. 34.) Plaintiff Brian Leon Roberts, an inmate in the care and custody of the Vermont Department of Corrections ("DOC"), seeks an Order compelling Defendants DOC, Centurion of Vermont, LLC, Linda Roberts, Jeremy Cornwall, Mindy Connor, Mark Potanas, Michelle Beattie, and Dr. Mitchell Miller (collectively, "Defendants") to transport him to Dartmouth Hitchcock Medical Center ("DHMC") for an evaluation by an infectious disease specialist of a recurring infection on his lower right leg. For additional relief, Plaintiff seeks \$25 million and immediate release from custody.

The Magistrate Judge recommended the court deny Plaintiff's motion. Neither party has filed an objection to the R & R, and the time period to do so has expired.

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 nine page R & R, the Magistrate Judge carefully reviewed the factual allegations, properly construed Plaintiff's filing as a motion for a preliminary injunction pursuant to Fed. R. Civ. P. 65(a), and concluded that Plaintiff failed to establish irreparable harm or a likelihood of success on the merits. The Magistrate Judge noted that Plaintiff suffers from deep vein thrombosis ("DVT") and that his recurrent bouts of cellulitis were caused by his failure follow Dr. Mitchell's advice to consistently wear compression stockings, which were issued to him in May 2015 together with repeated education regarding their use. In September 2016, Plaintiff received medical treatment, including hospitalization, for his DVT. There is no evidence that his DVT is presently causing him harm. Because compression stockings would alleviate Plaintiff's harm, the Magistrate Judge determined the harm is not irreparable. *See JSG Trading Corp. v. Tray-Wrap, Inc.*, 917 F.2d 75, 79 (2d Cir. 1990) (requiring movant to establish that it is "likely to suffer irreparable harm if equitable relief is denied"). The Magistrate Judge further opined that Plaintiff had not established a likelihood of success on the merits of his underlying Complaint. Accordingly, the Magistrate Judge recommended denial of Plaintiff's motion. Plaintiff has not identified any errors in the Magistrate Judge's decision, and the court finds none. The court therefore adopts the R & R and its recommendation in its entirety.

CONCLUSION

For the foregoing reasons, the court hereby ADOPTS the Magistrate Judge's R & R as the court's Order and Opinion, and DENIES Plaintiff's motion seeking additional medical treatment. (Doc. 34.)

SO ORDERED.

Dated at Burlington, in the District of Vermont, this 26th day of January, 2017.



Christina Reiss, Chief Judge
United States District Court