

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**CHARLESTON DIVISION**

ANDRE WILSON,

Plaintiff,

v.

CIVIL ACTION NO. 2:11-cv-00103

STEVE CAUDILL, et al.,

Defendants.

**MEMORANDUM OPINION AND ORDER**

This action was referred to the Honorable Mary E. Stanley, United States Magistrate Judge, for submission to this court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge conducted an evidentiary hearing at which the plaintiff and the defendants Terry Coleman and Sgt. David Toney appeared in person and by counsel and testified. The other defendants were represented by counsel. The Magistrate Judge has submitted findings of fact and has recommended that the court do the following: (1) **FIND** that there is a genuine issue of material fact as to whether the defendants Joe Little and David Toney used excessive force against the plaintiff; (2) **DENY** the motion to dismiss but **GRANT** the motion for summary judgment filed by the defendants Ballard, Caudill, and Rubenstein [Docket 36]; (3) **DENY as moot** the plaintiff's motion to issue a scheduling order [Docket 58]; (4) **DENY as moot** the defendants Ballard, Caudill, and Rubenstein's motion to dismiss the Second Amended Complaint [Docket 59]; (5) **DENY as moot** the plaintiff's motions for appointment of counsel [Docket 68 & Docket 71]; (6) **GRANT**

the motion to dismiss the Second Amended Complaint filed by the defendant Don Slack [Docket 69]; (7) **DENY** the motion to dismiss or, in the alternative, motion for summary judgment, filed by the defendant Joe Little [Docket 72]; (8) **GRANT** the motion for summary judgment filed by the defendants Terry Coleman and Rick Jones [Docket 74]; and (9) **DISMISS** this action as to the defendants Michael Shaffer, Brian Deboard, and Weston Toney. The plaintiff has not filed objections to the Magistrate Judge's findings and recommendation.

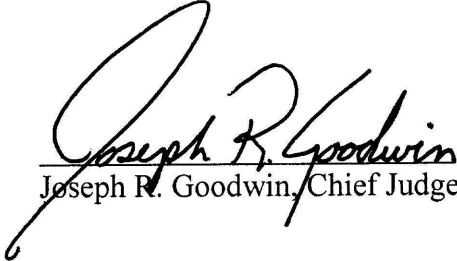
A district court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C). This court is not, however, required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985).

As the plaintiff has not filed objections in this case, the court adopts and incorporates herein the findings and recommendation of the Magistrate Judge. The court therefore: (1) **FINDS** that there is a genuine issue of material fact as to whether the defendants Joe Little and David Toney used excessive force against the plaintiff; (2) **DENIES** the motion to dismiss but **GRANTS** the motion for summary judgment filed by the defendants Ballard, Caudill, and Rubenstein [Docket 36]; (3) **DENIES as moot** the plaintiff's motion to issue a scheduling order [Docket 58]; (4) **DENIES as moot** the defendants Ballard, Caudill, and Rubenstein's motion to dismiss the Second Amended Complaint [Docket 59]; (5) **DENIES as moot** the plaintiff's motions for appointment of counsel [Docket 68 & Docket 71]; (6) **GRANTS** the motion to dismiss the Second Amended Complaint filed by the defendant Don Slack [Docket 69]; (7) **DENIES** the motion to dismiss or, in the alternative, motion for summary judgment, filed by the

defendant Joe Little [Docket 72]; (8) **GRANTS** the motion for summary judgment filed by the defendants Terry Coleman and Rick Jones [Docket 74]; and (9) **DISMISSES** this action as to the defendants Michael Shaffer, Brian Deboard, and Weston Toney.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: February 16, 2012

  
Joseph R. Goodwin, Chief Judge