

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

BECKLEY DIVISION

MR. STEVE JONES,

Plaintiff,

v.

CIVIL ACTION NO. 5:11-cv-00530

F.C.I. BECKLEY MED. STAFF
EMPLOYEES, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

The Court has reviewed the United States' *Motion to Dismiss Defendants Conley White, Janeen Rose and Frances Lilly and Substitute the United States* (Document 16); the *United States' Motion to Dismiss Medical Negligence Claims for Failure to State a Claim* (Document 18); the *Defendants' Motion to Dismiss, or in the Alternative, Motion for Summary Judgment* (Document 23); the *Defendants' First Amended Motion to Dismiss, or in the Alternative, Motion for Summary Judgment* (Document 28); and the United States' *First Amended Motion to Dismiss Defendants Conley White, Janeen Rose and Frances Lilly and Substitute the United States* (Document 30).

By *Standing Order* (Document 4) entered on August 8, 2011, this action was referred to the Honorable R. Clarke VanDervort, 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. On January 11, 2013, the Magistrate Judge submitted a *Proposed Findings and Recommendation* (Document 43) wherein it is recommend that this Court grant the United

States' *First Amended Motion to Dismiss Defendants Conley White, Janeen Rose and Frances Lilly and Substitute the United States* (Document 30); deny as moot the United States' *Motion to Dismiss Defendants Conley White, Janeen Rose and Frances Lilly and Substitute the United States* (Document 16); grant the *United States' Motion to Dismiss Medical Negligence Claims for Failure to State a Claim* (Document 18); grant the *Defendants' First Amended Motion to Dismiss, or in the Alternative, Motion for Summary Judgment* (Document 28); deny as moot the *Defendants' Motion to Dismiss, or in the Alternative, Motion for Summary Judgment* (Document 23); and refer this matter back to the Magistrate Judge for further proceedings regarding the Plaintiff's FTCA claim. Objections to the Magistrate Judge's *Proposed Findings and Recommendation* were due by February 7, 2013.

Neither party has timely filed objections to the Magistrate Judge's *Proposed Findings and Recommendation*. The Court is not 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). Failure to file timely objections constitutes a waiver of *de novo* review and the Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*, and **ORDERS** as follows: 1) the United States' *First Amended Motion to Dismiss Defendants Conley White, Janeen Rose and Frances Lilly and Substitute the United States* (Document 30) is **GRANTED**; 2) the United States' *Motion to Dismiss Defendants Conley White, Janeen Rose and Frances Lilly and Substitute the United States* (Document 16) is

DENIED AS MOOT; 3) the *United States' Motion to Dismiss Medical Negligence Claims for Failure to State a Claim* (Document 18) is **GRANTED**; 4) the *Defendants' First Amended Motion to Dismiss, or in the Alternative, Motion for Summary Judgment* (Document 28) is **GRANTED**; 5) the *Defendants' Motion to Dismiss, or in the Alternative, Motion for Summary Judgment* (Document 23) is **DENIED AS MOOT**; and 6) this matter is **REFERRED** back to the Magistrate Judge for further proceedings regarding the Plaintiff's FTCA claim.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge VanDervort, counsel of record, and any unrepresented party.

ENTER: February 11, 2013

A handwritten signature in blue ink that reads "Irene C. Berger". The signature is written in a cursive style with a horizontal line underneath the name.

IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA