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

BECKLEY DIVISION

PHILLIP E. CLINE,

Plaintiff,

v. CIVIL ACTION NO. 5:17-cv-02391

DR. ALLEN, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

On April 19, 2017, the Plaintiff, proceeding *pro se*, filed a *Complaint* (Document 1) in this matter. On August 30, 2017, the *Defendants' Motion to Dismiss, or in the Alternative, Motion for Summary Judgment* (Document 16) was filed.

By *Standing Order* (Document 3) entered on April 19, 2017, this action was referred to the Honorable Omar J. Aboulhosn, 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 June 22, 2018, the Magistrate Judge submitted a *Proposed Findings and Recommendation* (Document 21) wherein it is recommended that this Court grant in part and deny in part the *Defendants' Motion to Dismiss, or in the Alternative, Motion for Summary Judgment* (Document 16), and remove this matter from the Court's docket. Objections to the Magistrate Judge's *Proposed Findings and Recommendation* were due by July 9, 2018.

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 a party'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** that the *Defendants' Motion to Dismiss, or in the Alternative, Motion for Summary Judgment* (Document 16) be **GRANTED in part** and **DENIED in part**. Specifically, the Court **ORDERS** that the *Defendants' Motion to Dismiss, or in the Alternative, Motion for Summary Judgment* (Document 16):

> be **DENIED** as to Defendants' argument that collateral estoppel precludes Plaintiff's claim that Defendants acted with deliberate indifference by continuously failing to provide appropriate pain medication and failing to transfer Plaintiff to a medical facility based upon Dr. Feldenzer's recommendations[; and]… be **GRANTED** as to the following arguments: (1) Collateral estoppel precludes Plaintiff's claim that Defendants acted with deliberate indifference by continuously failing to provide adequate pain medication through March 2, 2012 and in failing to transfer Plaintiff to a higher level medical facility based upon Dr. Greenberg's recommendation; (2) Plaintiff cannot establish a claim of deliberate indifference to his medical condition; and (3) Plaintiff's claim against Defendant Thomas is inappropriately based upon supervisory liability.

(*Proposed Findings and Recommendation*, Page 43). Additionally, the Court **ORDERS** that this matter be **REMOVED** from the Court's docket.

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

ENTER: July 16, 2018

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