

NOT RECOMMENDED FOR PUBLICATION

No. 20-2132

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DAVID ROY WORTHY,

Plaintiff-Appellant,

V.

MICHIGAN DEPARTMENT OF
CORRECTIONS,

Defendant,

and

CORIZON MEDICAL GROUP; MR. COLEMAN;
MARY J. HOWARD; DOCTOR JUAN PEREZ,

Defendants-Appellees.

FILED
Sep 30, 2021
DEBORAH S. HUNT, Clerk

) ON APPEAL FROM THE UNITED
) STATES DISTRICT COURT FOR
) THE EASTERN DISTRICT OF
) MICHIGAN

ORDER

Before: SUHRHEINRICH, CLAY, and NALBANDIAN, Circuit Judges.

David Roy Worthy, a former Michigan prisoner proceeding pro se, appeals the district court's dismissal of his civil rights action against Corizon Medical Group, Mr. Coleman, Mary J. Howard, and Dr. Juan Perez, filed under 42 U.S.C. § 1983. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

In August 2018, Worthy filed suit against the Michigan Department of Corrections (“MDOC”), alleging that inadequate medical services provided by Corizon, MDOC’s medical services provider, exacerbated a knee injury he sustained while incarcerated. Seven months later,

No. 20-2132

- 2 -

Worthy filed an amended complaint, removing the MDOC as a defendant and substituting Corizon, as well as Coleman, Howard, and Perez. Worthy sought \$4,000,000 in damages “for medical neglect,” alleging that prison medical staff acted with deliberate indifference and he would not have required surgery had his injury been treated properly.

The summonses for Coleman and Howard were returned unexecuted, and the district court ordered Worthy to properly identify Coleman. Because Howard no longer worked for the MDOC and could not be served at the work address that Worthy had provided for service, the district court ordered the MDOC to furnish her last-known address, and the United States Marshals Service effectuated service of process through the United States Postal Service.

Meanwhile, Corizon and Perez moved for summary judgment. A magistrate judge recommended that the court grant summary judgment to Corizon and Perez, and Worthy objected, arguing, among other things, that the court should apply a medical-malpractice negligence standard to his deliberate-indifference claim. Holding that Worthy’s claim failed as a matter of law and that his objections were without merit, the district court granted summary judgment in favor of Corizon and Perez.

After the grant of summary judgment, the magistrate judge issued a show-cause order instructing Worthy to: (1) file the delivery receipt reflecting proof of service as to Howard; and (2) properly identify Coleman by his full name and address. Worthy submitted the proof of service as to Howard but did not identify Coleman to the court. He then requested an entry of default against Howard along with a default judgment in the amount of \$300,000. Although default was entered against Howard, the clerk denied an entry of default judgment because Worthy failed to attach any evidence as to a sum certain.

Worthy subsequently sought to challenge the grant of summary judgment in favor of Corizon and Perez, but we dismissed his appeal because the district court had not yet entered final judgment and the grant of summary judgment was not an immediately appealable collateral order. While the appeal was still pending, Worthy again filed a motion for default judgment against Howard. The magistrate judge, however, “[could not] discern from the amended complaint, or

No. 20-2132

- 3 -

any of the pleadings in [the] case, what involvement Howard had in Worthy's treatment while incarcerated," and ordered Worthy to supplement his complaint with factual support.

The magistrate judge then recommended that Coleman be dismissed from the action and that the district court deny the motion for entry of default judgment against Howard and dismiss her from the action because Worthy failed to state a claim. Worthy filed objections to both recommendations but again neglected to provide any support for his arguments. The district court adopted the recommendations, noting that Worthy failed to properly identify Coleman after being given two opportunities to do so and that he failed to state a claim against Howard or submit specific objections to the magistrate judge's report. Consequently, the district court dismissed the case in full.

Worthy now appeals, arguing that the district court incorrectly decided the facts of the case and that it applied the wrong law. He summarily argues that the defendants engaged in "malpractice" and were negligent, but he does not mention any defendant by name in his brief and is silent on the dismissal of Coleman for failure to effect timely service of process.

Normally, we review *de novo* a district court's grant of summary judgment. *Tyson v. Sterling Rental, Inc.*, 836 F.3d 571, 576 (6th Cir. 2016). Summary judgment is proper "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

Likewise, we review *de novo* a district court's judgment dismissing a complaint for failure to state a claim under 28 U.S.C. § 1915(e)(2)(B), using the standard that applies to Federal Rule of Civil Procedure 12(b)(6) dismissals from *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). *Hill v. Lappin*, 630 F.3d 468, 470–71 (6th Cir. 2010). To avoid dismissal, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

As a threshold matter, Worthy does not appear to raise any issues substantively. Rather, he merely restates the allegation that the defendants did not provide proper medical care. As a result, he is deemed to have forfeited his arguments on appeal. See *Radvansky v. City of Olmsted Falls*, 395 F.3d 291, 310–11 (6th Cir. 2005); *see also Williamson v. Recovery Ltd. P'ship*, 731

No. 20-2132

- 4 -

F.3d 608, 621 (6th Cir. 2013) (“Issues adverted to in a perfunctory manner, without some effort to develop an argument, are deemed forfeited.” (citation omitted)).

Although Worthy claims that “case law can be stated” in support of his argument, he fails to cite any case law or put forth anything that could be considered developed argumentation. *See Geboy v. Brigano*, 489 F.3d 752, 767 (6th Cir. 2007) (holding that pro se litigants must make “some effort at developed argumentation” to preserve appellate arguments (quotation omitted)). And because he otherwise fails to challenge the legal bases cited by the district court for dismissing his complaint, Worthy has abandoned any challenge on those grounds. *See O’Hara v. Brigano*, 499 F.3d 492, 498 (6th Cir. 2007).

In any event, to the extent that Worthy explicitly relies on “negligence” and “malpractice” as the basis for his claims, he cannot prevail on the merits. *Winkler v. Madison Cnty.* 893 F.3d 877, 891 (6th Cir. 2018) (explaining “[a] plaintiff . . . must show something greater than negligence or malpractice” to satisfy the subjective component of a deliberate indifference claim (citing *Farmer v. Brennan*, 511 U.S. 825, 835 (1994))).

Accordingly, we **AFFIRM** the district court’s judgment.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID WORTHY,

Plaintiff,

v.

MICHIGAN DEPARTMENT OF
CORRECTIONS, *et al.*,

Defendants.

Case No. 18-12451
Honorable Laurie J. Michelson
Magistrate Judge Elizabeth A. Stafford

**ORDER ADOPTING REPORT AND RECOMMENDATIONS [69, 71], DENYING
MOTION FOR DEFAULT JUDGMENT [66], AND DISMISSING COMPLAINT**

State prisoner David Worthy brought this suit alleging a violation of his constitutional right to adequate medical care. The Court granted Defendants Corizon Medical Group and Dr. Perez summary judgment and dismissed them from the suit in February 2020. (*See* ECF No. 55.) Two defendants remained: Michigan Department of Corrections employee Mary J. Howard and another MDOC employee identified only as “Mr. Coleman.” Magistrate Judge Elizabeth A. Stafford, who is handling pretrial matters in the case, then ordered Worthy to show cause why this Court should not dismiss the remaining defendants for failure to prosecute or failure to serve. (*See* ECF No. 56.) In response, Worthy requested a clerk’s entry of default against Defendant Howard (ECF Nos. 58, 59) and then moved for a default judgment against her (ECF No. 66). Magistrate Judge Stafford has issued two reports that are now before this Court. In the first, Magistrate Judge Stafford recommends dismissing Defendant Coleman because Worthy failed to timely serve Coleman, or failed to prosecute his case against Coleman. (ECF No. 69.) And in the second, she recommends denying Worthy’s motion for a default judgment and instead dismissing Howard for failure to state a claim. (ECF No. 71.) Worthy objects to both recommendations. (ECF Nos. 70, 72.)

I.

The Court performs a de novo review of those portions of the Magistrate Judge's Report and Recommendation to which Worthy has objected. *See* 28 U.S.C. § 636(b); *United States v. Curtis*, 237 F.3d 598, 603 (6th Cir. 2001). The Court need not and does not perform a de novo review of the report's unobjected-to findings. *Thomas v. Arn*, 474 U.S. 140, 150 (1985); *Garrison v. Equifax Info. Servs., LLC*, No. 10-13990, 2012 WL 1278044, at *8 (E.D. Mich. Apr. 16, 2012).

II.

A.

Worthy has not provided the information necessary to serve the complaint on Coleman, merely identifying this defendant as "Mr. Coleman." And in her Report recommending dismissal of Coleman, Magistrate Judge Stafford notes that Worthy was twice ordered to properly identify and confirm the address for Coleman after the summons was returned unexecuted. (ECF No. 69, PageID.364.) And Magistrate Judge Stafford warned that failure to do so could result in Coleman being dismissed. (*Id.*) Worthy has still failed to provide the required information.

In his one-page objection to the recommendation to dismiss Coleman, Worthy asserts that he could not further identify Coleman because the nursing staff refused to give him Coleman's first name. (ECF No. 70, PageID.366.) Worthy suggests that MDOC should be able to identify Coleman because he "is the only man that clearifies [sic] MRIs to be considered." (*Id.*) But it does not appear that Worthy ever sought to obtain this information from MDOC after initiating this litigation.

And so the fact remains that Worthy has failed to respond to multiple court orders to properly identify Coleman. At this point, dismissal of Coleman for failure to timely serve, as

required by Federal Rule of Civil Procedure 4(m), is proper. So the Court overrules Worthy's objection and adopts the Magistrate Judge's recommendation to dismiss Coleman.

B.

As for Magistrate Judge Stafford's Report recommending dismissal of Howard, Worthy fails to make any specific objections.

In her Report, Magistrate Judge Stafford recommends denying Worthy's motion for a default judgment against Howard because "a default judgment is not proper if the plaintiff has failed to state a claim against the defendant." (ECF No. 71, PageID.369 (internal citations omitted)). Magistrate Judge Stafford concludes that Worthy has failed to allege sufficient facts to permit the court to draw the reasonable inference that Howard was directly involved in or participated in the treatment of Worthy's injury. (*Id.* at PageID.370.)

At the conclusion of her Report, Magistrate Judge Stafford gave Worthy explicit instructions for filing objections. She noted that "If a party fails to timely file specific objections, any further appeal is waived. . . . And only the specific objections to this report and recommendation are preserved for appeal; all other objections are waived." (ECF No. 69, PageID.364; ECF No. 71, PageID.371–372.) The objection that Worthy filed does not meet these requirements.

In his one-page objection, Worthy states only the following: "The Webster dictionary simply states, 'medical neglect is known as a delayed diagnosis.' [Howard] was employed by 'Corizon Medical.'" (ECF No. 72, PageID.373.) This statement in no way addresses the analysis in Magistrate Judge Stafford's Report and offers no developed argument regarding how Howard was involved in his treatment.

The Court agrees with Magistrate Judge Stafford that Worthy has failed to state a claim against Howard and finds it is appropriate to dismiss sua sponte Worthy's complaint against Howard. *See* 28 U.S.C. § 1915(e)(2)(B).

III.

For the reasons stated above, the Court ADOPTS the recommendations of Magistrate Judge Stafford (ECF Nos. 69, 71) and OVERRULES Worthy's objections (ECF Nos. 70, 72). The Court DENIES Worthy's motion for default judgment (ECF No. 66) and DISMISSES Defendants Coleman and Howard. Because Coleman and Howard are the final remaining defendants, the case is DISMISSED IN FULL.

SO ORDERED.

Dated: October 20, 2020

s/Laurie J. Michelson
LAURIE J. MICHELSON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID WORTHY,

Plaintiff, Civil Action No.: 18-cv-12451
v. Honorable Laurie J. Michelson
Magistrate Judge Elizabeth A. Stafford

MICHIGAN DEPARTMENT
OF CORRECTIONS, et al,

Defendants.

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**REPORT AND RECOMMENDATION TO DENY PLAINTIFF'S MOTION
FOR ENTRY OF DEFAULT JUDGMENT [ECF NO. 66]
AND TO DISMISS DEFENDANT MARY HOWARD**

David Worthy, proceeding *pro se*, brought this action under 42 U.S.C. § 1983, alleging defendants violated his rights under the Eighth Amendment by providing inadequate medical treatment while he was incarcerated.¹ [ECF No. 1; ECF No. 13]. Worthy filed his original complaint in August 2018 and filed an amended complaint on March 7, 2019. [*Id.*]. Defendant Mary Howard was not served with the amended complaint until August 13, 2019. [ECF No. 57]. Howard failed to plead or otherwise

¹ The Honorable Laurie J. Michelson referred this matter to the undersigned for all pre-trial proceedings under 28 U.S.C. § 636(b)(1). [ECF No. 12].

defend against the action, and the Clerk entered default against Howard on March 17, 2020. [ECF No. 61]. But the Clerk denied Worthy's request for entry of default judgment under Federal Rule of Civil Procedure 55(b)(1) because his claim against Howard was not for a sum certain. [ECF No. 60]. This motion for a default judgment against Howard followed.² [ECF No. 66].

When a defendant is in default, a plaintiff's well-pleaded factual allegations relating to liability are generally accepted as true. *Deutsche Bank Nat'l Trust Co. v. Steele*, 2008 WL 111227, at *2 (S.D. Ohio Jan. 8, 2008) (citing *Antoine v. Atlas Turner, Inc.*, 66 F.3d 105, 110 (6th Cir.1995)). But a default judgment is not proper if the plaintiff has failed to state a claim against the defendant. See *Harrison v. Bailey*, 1997 WL 49955, 107 F.3d 870 (6th Cir. 1997) (unpublished) (citing *Quirindongo Pacheo v. Rolon Morales*, 953 F.2d 15, 16 (1st Cir. 1992)). In fact, for plaintiffs proceeding *in forma pauperis*, 28 U.S.C. § 1915(e)(2)(B), a court must dismiss *sua sponte* those portions of a complaint that fail to state a claim upon which relief may be granted. *Staten v. D.R. Horton, Inc.*, 2020 WL 1333414, at *2 (E.D. Mich. March 23, 2020).

² The Court construes Worthy's handwritten submission asking the Court to enter a motion of default as a motion for entry of default judgment. [ECF No. 66].

In the amended complaint, Worthy alleges that Howard was the acting nurse “at the time of service.” [ECF No. 13, PageID.28]. His motion for default judgment identifies Howard simply as an employee of “Corizon Medical Services.” [ECF No. 66]. To state a claim for deliberate indifference to a serious medical need under the Eighth Amendment, a plaintiff must allege personal involvement by a defendant in the alleged denial or administering of medical treatment. *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009); see also *Martin v. Harvey*, 14 F. App’x 307, 309 (6th Cir. 2001). For a claim to be viable, the plaintiff must plead sufficient factual content to permit the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Iqbal*, 556 U.S. at 678.

Here, the Court could not discern from the amended complaint³ what involvement Howard had in Worthy’s treatment, so it ordered Worthy to supplement his motion with facts alleging Howard’s involvement or participation in the treatment of his injury, and to cite to supporting exhibits. [ECF No. 68]. Worthy’s response to the Court’s order merely reiterated that Howard was employed by Corizon and that she had not responded “in a timely matter (sic).” [ECF No. 70].

³ The Court also reviewed Worthy’s prison medical records attached as an exhibit to the brief in support of Defendants Corizon and Perez’s motion for summary judgment and found no mention of Mary Howard. [ECF No. 41].

Because Worthy has failed to make factual allegations that Howard directly participated or was otherwise personally involved in Worthy's treatment, the Court **RECOMMENDS** that the motion for entry of default judgment [ECF No. 66] be **DENIED** and that Howard be **DISMISSED SUA SPONTE**.

Defendants Corizon Medical Group and Juan Perez, M.D., were granted summary judgment on Worthy's claims against them. [ECF No. 55]. In addition, this Court recommended in June 2020 that defendant "Coleman" be dismissed because Worthy failed to sufficiently identify him or serve him with the complaint. [ECF No. 69]. If this report and recommendation and the one filed in June 2020 are both adopted, no defendants will remain, so Worthy's complaint should be dismissed in full.

Dated: September 4, 2020
Detroit, Michigan

s/Elizabeth A. Stafford
ELIZABETH A. STAFFORD
United States Magistrate Judge

NOTICE TO THE PARTIES ABOUT OBJECTIONS

Within 14 days of being served with this report and recommendation, any party may serve and file specific written objections to this Court's findings and recommendations. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). If a party fails to timely file specific objections, any further appeal

is waived. *Howard v. Secretary of HHS*, 932 F.2d 505 (6th Cir. 1991). And only the specific objections to this report and recommendation are preserved for appeal; all other objections are waived. *Willis v. Secretary of HHS*, 931 F.2d 390, 401 (6th Cir. 1991).

Each objection must be labeled as "Objection #1," "Objection #2," etc., and **must specify** precisely the provision of this report and recommendation to which it pertains. Within 14 days after service of objections, **any non-objecting party must file a response** to the objections, specifically addressing each issue raised in the objections in the same order and labeled as "Response to Objection #1," "Response to Objection #2," etc. The response must be **concise and proportionate in length and complexity to the objections**, but there is otherwise no page limitation. If the Court determines that any objections are without merit, it may rule without awaiting the response.

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on September 4, 2020.

s/Marlena Williams
MARLENA WILLIAMS
Case Manager

[ECF No. 22; ECF No. 56]. He was warned that failure to do so could result in the unidentified defendant being dismissed from this suit for failure to timely serve under Fed. R. Civ. P. 4(m) and/or for failure to prosecute pursuant to Fed. R. Civ. P. 41(b). See *Shepherd v. Voitus*, 2015 WL 4599609, at *1 (N.D. Ohio July 29, 2015). Worthy has neither provided the required information nor otherwise responded to the orders.

The Court therefore **RECOMMENDS** that “Coleman” be **DISMISSED** from this action.

Dated: June 15, 2020
Detroit, Michigan

s/Elizabeth A. Stafford
ELIZABETH A. STAFFORD
United States Magistrate Judge

NOTICE TO THE PARTIES ABOUT OBJECTIONS

Within 14 days of being served with this report and recommendation, any party may serve and file specific written objections to this Court’s findings and recommendations. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). If a party fails to timely file specific objections, any further appeal is waived. *Howard v. Secretary of HHS*, 932 F.2d 505 (6th Cir. 1991). And only the specific objections to this report and recommendation are preserved for appeal; all other objections are waived. *Willis v. Secretary of HHS*, 931 F.2d 390, 401 (6th Cir. 1991).

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s/Marlena Williams
MARLENA WILLIAMS
Case Manager