

Appendix A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-1373

REVEREND DR. SAMUEL T. WHATLEY; SAMUEL T. WHATLEY, II,

Plaintiffs - Appellants,

v.

MEDICAL UNIVERSITY OF SOUTH CAROLINA,

Defendant - Appellee.

Appeal from the United States District Court for the District of South Carolina, at
Charleston. Jacquelyn Denise Austin, District Judge. (2:23-cv-02500-JDA)

Submitted: July 30, 2024

Decided: August 1, 2024

Before NIEMEYER, AGEE, and HEYTENS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Samuel T. Whatley, Samuel T. Whatley, II, Appellants Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Reverend Dr. Samuel T. Whatley and Samuel T. Whatley II appeal the district court's order accepting the recommendation of the magistrate judge and dismissing without prejudice* their civil complaint for failure to state a claim upon which relief could be granted. We have reviewed the record and find no reversible error. Accordingly, we affirm the district court's order. *Whatley v. Med. Univ. of S.C.*, No. 2:23-cv-02500-JDA (D.S.C. Apr. 8, 2024). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

* The district court's dismissal without prejudice is a final order because the court dismissed the complaint "without granting leave to amend." *Britt v. DeJoy*, 45 F.4th 790, 791 (4th Cir. 2022) (en banc) (order).

FILED: August 1, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-1373
(2:23-cv-02500-JDA)

REVEREND DR. SAMUEL T. WHATLEY; SAMUEL T. WHATLEY, II

Plaintiffs - Appellants

v.

MEDICAL UNIVERSITY OF SOUTH CAROLINA

Defendant - Appellee

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ NWAMAKA ANOWI, CLERK

Appendix B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Reverend Dr. Samuel T. Whatley,)	Case No. 2:23-cv-02500-JDA
Samuel Whatley, II,)	
)	
Plaintiffs,)	
)	
v.)	<u>OPINION AND ORDER</u>
)	
Medical University of South Carolina,)	
)	
Defendant.)	
_____)	

This matter is before the Court on a Complaint filed by Plaintiffs. [Doc. 1.] In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2), D.S.C., this matter was referred to United States Magistrate Judge Paige J. Gossett for pre-trial proceedings.

Plaintiffs' Complaint alleges that Plaintiffs requested that Defendant provide medical treatment to their family member, Eunice Greene Thompson, but Defendant refused to provide the treatment that they requested and Thompson died in the fall of 2022 after Defendant left her off of life support for seven hours. [Doc. 1 at 5.] The Complaint also alleges that Defendant had "refused treatment to plaintiff(s) from 2021 to 2022 by unlawfully requiring proof of vaccination as a condition of treatment." [Id.] As their relief, they seek "[c]ompensation for the pain and suffering caused by lack of care that resulted in the death of a family member. That is, the bills incurred and ignoring the request to do the rehabilitation therapy despite having the equipment and personnel to do so." [Id.]

On June 23, 2023, the Magistrate Judge issued an Order advising Plaintiffs that their Complaint, as filed, is subject to summary dismissal pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim upon which relief can be granted (the "Order Regarding Amendment"). [Doc. 12.] The Order Regarding Amendment stated that Plaintiffs failed to state a claim upon which relief could be granted pursuant to the Emergency Medical Treatment and Active Labor Act ("the Act"). [Id.] The Magistrate Judge explained that to recover under the Act, "a plaintiff must show that he (1) suffered 'personal harm' as (2) a 'direct result' of (3) the hospital's violation," and that Plaintiffs failed to plausibly allege any of those elements. [Id. at 3–5.] The Magistrate Judge granted Plaintiffs 21 days from the date that the Order was entered (plus three days for mail time) to file an amended complaint correcting the identified deficiencies. [Id. at 5.]

Plaintiffs did not file an amended complaint, but instead, on July 7, 2023, filed an "Objection and Motion" to the Court's Order, asking the Court to authorize service based on the Complaint they had already filed. [Doc. 14.] In the filing, Plaintiffs argued that the Magistrate Judge "attempt[ed] to interfere in due process involving medical malpractice and wrongful death of a family member, Eunice Greene Thompson, by insinuating that ... the socio-economic status of plaintiffs[] justifies blocking defendant from being served." [Id. at 1.] Plaintiffs also repeated the allegations made in their Complaint and alleged that "Defendant knowingly covered up the wrongful death by deleting any medical records associated with [Thompson] and did not inform plaintiffs after removing [Thompson] off life support." [Id. at 1–2.] Plaintiffs incorporated documentation

supporting their contention that they had requested treatment of the type that Defendant was capable of providing. [*Id.* at 3–17.] They also added allegations concerning a different family member who was denied care by Defendant's personnel. [*Id.* at 17–18.]

On August 15, 2023, the Magistrate Judge issued a Report and Recommendation (the "Report"). [Doc. 19.] In the Report, the Magistrate Judge noted Plaintiffs' "Objection and Motion" and concluded from the filing that "it appear[ed] [Plaintiffs] have elected to stand on their Complaint as filed." [*Id.* at 1.] The Magistrate Judge therefore concluded that, for all the reasons in the Order Regarding Amendment, the Complaint was subject to summary dismissal pursuant to 28 U.S.C. § 1915(2)(2)(B)(ii) for failure to state a claim upon which relief can be granted, and the Magistrate Judge denied Plaintiffs' motion to serve Defendant on that basis. [*Id.* at 1 & n.1.] The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and the serious consequences if they failed to do so.

Plaintiffs then filed objections to the Report. [Doc. 22.] In the objections, Plaintiffs merely restate the factual basis for their claim without addressing the Magistrate Judge's legal analysis, including the deficiencies the Magistrate Judge identified in the Complaint. [*Id.*]

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. See *Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a de novo determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The Court may accept, reject, or

modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. See 28 U.S.C. § 636(b). The Court will review the Report only for clear error in the absence of an objection. See *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that "in the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." (internal quotation marks omitted)).

The Court has reviewed the record in this case, the applicable law, and the Report of the Magistrate Judge—including the denial of Plaintiffs' motion to serve Defendant—for clear error. Having done so, the Court finds no clear error, accepts the Report and Recommendation of the Magistrate Judge, and incorporates it by reference. Accordingly, the action is DISMISSED without prejudice and without issuance and service of process.

IT IS SO ORDERED.

s/Jacquelyn D. Austin
United States District Judge

Columbia, South Carolina
April 8, 2024

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

**Reverend Dr. Samuel T. Whatley; Samuel
Whatley, II,**

Plaintiffs,

V.

Medical University of South Carolina,

Defendant.


C/A No. 2:23-2500-SAL-PJG

REPORT AND RECOMMENDATION

The plaintiffs, proceeding without counsel, filed this civil action. This matter is before the court pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.) for initial review pursuant to 28 U.S.C. § 1915. By order dated June 23, 2023, the court provided the plaintiffs the opportunity to file an amended complaint to correct deficiencies identified by the court that would warrant summary dismissal of the Complaint. (ECF No. 12.) The plaintiffs did not file an amended complaint. Instead, the plaintiffs filed an “objection” to the court’s order (ECF No. 14), asking the court to authorize service based on the Complaint they already filed and providing supporting documentation. Thus, it appears the plaintiffs have elected to stand on their Complaint as filed. See *Britt v. DeJoy*, 45 F.4th 790, 796-97 (4th Cir. 2022).

The court has thoroughly reviewed the plaintiffs' Complaint and supporting documents, and for all the reasons stated in the court's June 23 order, concludes that the Complaint is subject to summary dismissal pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim upon which relief can be granted.¹

¹ In light of the court's recommendation, plaintiff's motion to serve the defendant is denied. (ECF No. 14.)

A handwritten signature in black ink, reading "Paige J. Gossett", written over a horizontal line.

August 15, 2023
Columbia, South Carolina

Paige J. Gossett
UNITED STATES MAGISTRATE JUDGE

*The parties are directed to note the important information in the attached
"Notice of Right to File Objections to Report and Recommendation."*

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
901 Richland Street
Columbia, South Carolina 29201

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).

UNITED STATES DISTRICT COURT

for the

District of South Carolina

Reverend Dr. Samuel T. Whatley and Samuel T.

Whatley, II,

Plaintiffs

v.

Civil Action No. 2:23-cv-2500-JDA

Medical University of South Carolina,

Defendant.

JUDGMENT IN A CIVIL ACTION

The court has ordered that (check one):

☐ the plaintiff (name) _____ recover from the defendant (name) _____ the amount of _____ dollars (\$___), which includes prejudgment interest at the rate of ___%, plus postjudgment interest at the rate of ___%, along with costs.

☒ The plaintiffs, Reverend Dr. Samuel T. Whatley and Samuel T. Whatley, II, shall take nothing of the defendant, Medical University of South Carolina, and this action is dismissed without prejudice and without issuance and service of process.

This action was (check one):

☐ tried by a jury, the Honorable _____ presiding, and the jury has rendered a verdict.

☐ tried by the Honorable _____ presiding, without a jury and the above decision was reached.

☒ decided by the Honorable Jacquelyn D. Austin, United States District Judge, presiding. The Court having adopted the Report and Recommendation of the Honorable Paige J. Gossett, United States Magistrate Judge, which recommended dismissal.

Date: April 8, 2024

ROBIN L. BLUME, CLERK OF COURT

s/Amanda D. Hilley

Signature of Clerk or Deputy Clerk

**Additional material
from this filing is
available in the
Clerk's Office.**