

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
OKLAHOMA

Kevin Maurice Brown v. FNU Cole, et al.

Brown · No. CIV-24-706-R · Decided February 10, 2026

SUMMARY

The United States District Court for the Western District of Oklahoma adopted the magistrate judge’s Report and Recommendation and granted Dr. Michael Boger’s motion to dismiss a prisoner’s Eighth Amendment deliberate-indifference claim. The court concluded that the plaintiff had not plausibly alleged that Dr. Boger knew of and disregarded a substantial risk of serious harm by failing to provide a walking cane or stick, and dismissed the action without prejudice.

CASE DETAILS

COURT	United States District Court for the Western District of Oklahoma
WRITING FOR THE COURT	David L. Russell
JURISDICTION	United States District Court for the Western District of Oklahoma
DECIDED	February 10, 2026
DOCKET	CIV-24-706-R
DISPOSITION	dismissed
PROCEDURAL POSTURE	A pro se state prisoner objected to a magistrate judge's Report and Recommendation recommending dismissal of his remaining 42 U.S.C. § 1983 claim against Dr. Michael Boger for failure to state a claim. The district court conducted de novo review of the specifically objected-to portions, adopted the Report and Recommendation, granted the motion to dismiss, denied the motion for permanent injunction as moot, and dismissed the action without prejudice.
STANDARD OF REVIEW	De novo review of portions of a magistrate judge's Report and Recommendation to which a specific objection is made under 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b)(3); failure to make a specific objection waives further review. The sufficiency of the complaint was assessed under the plausibility standard applicable to a motion to dismiss.
PRECEDENTIAL VALUE	unpublished district court order

TOPICS

prisoners rights

section 1983

cruel and unusual punishment

motions to dismiss

injunctions

PRACTICE AREAS

civil rights

prisoner litigation

constitutional law

federal civil procedure

QUESTIONS PRESENTED

1. Whether Brown's objection to the magistrate judge's Report and Recommendation was sufficiently specific to preserve de novo review.
2. Whether Brown plausibly alleged that Dr. Boger acted with deliberate indifference to a serious medical need in violation of the Eighth Amendment.
3. Whether Brown's motion for a permanent injunction should be granted.

HOLDINGS

1. A party who does not make a specific objection to the magistrate judge's Report and Recommendation waives further review of the issues addressed in the Report.
2. A prisoner does not state an Eighth Amendment deliberate-indifference claim merely by alleging a disagreement with a physician's treatment decision; the allegations must plausibly establish both an objectively serious medical need and the defendant's subjective awareness of, and disregard for, a substantial risk of serious harm.
3. Brown's motion for a permanent injunction was denied as moot after the underlying action was dismissed.

KEY QUOTATIONS

"At most, Plaintiff indicates a disagreement with Dr. Boger's treatment decisions, which is not sufficient to state a constitutional violation."

FACTUAL BACKGROUND

Brown, a state prisoner who is blind, alleged that Dr. Michael Boger denied him medical care by failing to provide a walking cane or stick for several months. Brown contended that Boger knew he needed the aid because of his blindness. The district court found that the allegations did not plausibly show that Boger knew Brown faced a substantial risk of serious harm and disregarded that risk.

PROCEDURAL HISTORY

Brown brought a civil rights action under 42 U.S.C. § 1983, and several claims were dismissed during screening. The remaining claim alleged that Dr. Michael Boger was deliberately indifferent to Brown's serious medical needs by failing to provide a walking cane or stick for several months. Magistrate Judge Shon T. Erwin recommended granting Boger's motion to dismiss, and the district court adopted that recommendation after finding that Brown's objection did not specifically address the Report's reasoning.

DISPOSITION

dismissed

CASES CITED

- Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991)
- Lucas v. Turn Key Health Clinics, LLC, 58 F.4th 1127, 1136 (10th Cir. 2023)
- United States v. 2121 E. 30th St., 73 F.3d 1057, 1060 (10th Cir. 1996)

OPINION

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF OKLAHOMA KEVIN MAURICE BROWN,)) Plaintiff,)) v.) No. CIV-24-706-R) FNU COLE, et al.,)) Defendants.) ORDER Plaintiff, a state prisoner proceeding pro se,¹ brought this civil rights action under 42 U.S.C. § 1983.

The matter was referred to United States Magistrate Judge Shon T. Erwin for initial proceedings in accordance with 28 U.S.C. § 636(b)(1)(B) and (C). Several claims were previously dismissed upon screening and the only remaining claim is against Dr. Michael Boger for deliberate indifference to serious medical needs in violation of the Eighth Amendment. Now before the Court is Judge Erwin's Report and Recommendation [Doc.

No. 71] recommending that Dr. Boger's Motion to Dismiss be granted and the claim dismissed for failure to state a claim. Plaintiff filed a timely Objection [Doc. No. 72] which gives rise to the Court's obligation to make a de novo determination of those portions of the Report to which a specific objection is made. 28 U.S.C. § 636(b)(1); Fed R. Civ. P. 72(b)(3).

1 Because Petitioner is proceeding pro se, the Court affords his materials a liberal construction but does not act as his advocate. Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991). Plaintiff alleges that Dr. Boger denied him medical care because he did not provide him with a walking cane for several months even though he knew Plaintiff needed one because he is blind.

To succeed on this claim, Plaintiff must show that the defendant acted with deliberate indifference to his serious medical needs, a standard that includes both an objective and a subjective component. Lucas v. Turn Key Health Clinics, LLC, 58 F.4th 1127, 1136 (10th Cir. 2023). Judge Erwin's Report found that Plaintiff failed to allege the subjective component because he had not included facts plausibly showing that Dr. Boger was subjectively aware that Plaintiff faced a substantial risk of serious harm by not having a walking stick.

Plaintiff's Objection does not substantively engage with the analysis and conclusions reached in the Report. Because Plaintiff has not raised a specific objection to the Report, he has waived

further review of the issues contained therein. See *United States v. 2121 E. 30th St.*, 73 F.3d 1057, 1060 (10th Cir. 1996).

In any event, upon review of relevant filings, the Court concurs with Judge Erwin that Plaintiff has not plausibly alleged that Dr. Boger acted with deliberate indifference to his serious medical needs. The facts are not sufficient to plausibly show that Dr. Boger, even if he had knowledge of Plaintiff's blindness, knew of and disregarded a substantial risk of serious harm by not providing a walking stick.

At most, Plaintiff indicates a disagreement with Dr. Boger's treatment decisions, which is not sufficient to state a constitutional violation. Accordingly, the Court ADOPTS the Report and Recommendation [Doc. No. 71]. Dr. Boger's Motion to Dismiss [Doc. No. 61] is GRANTED and Plaintiff's Motion for Permanent Injunction [Doc. No. 59] is DENIED as moot. This action is dismissed without prejudice.

IT IS SO ORDERED this 10th day of February, 2026. DAVID L. RUSSELL UNITED STATES DISTRICT JUDGE