

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
TEXAS, SAN ANTONIO DIVISION

**Russell Hess; Barbara Wofford; and K.H., H.H., B.H., L.H., R.H.,
Minor Daughters v. Officer Liam Ortman, Badge #1122; Officer
Aron Benoy, Badge #1105; Sergeant Bryan Harshman, Badge #1116;
The Bulverde Police Department; and The City of Bulverde**

Hess v. Ortman · No. SA-25-CV-00814-FB · Decided January 28, 2026

SUMMARY

The United States District Court for the Western District of Texas accepted the magistrate judge’s Report and Recommendation after conducting the required review of the plaintiffs’ objections. The court granted the defendants’ First Amended Motion to Dismiss, dismissed the action with prejudice, dismissed any remaining motions as moot, and closed the case.

CASE DETAILS

COURT	United States District Court for the Western District of Texas, San Antonio Division
WRITING FOR THE COURT	Fred Biery
JURISDICTION	United States District Court for the Western District of Texas, San Antonio Division
DECIDED	January 28, 2026
DOCKET	SA-25-CV-00814-FB
DISPOSITION	dismissed
PROCEDURAL POSTURE	The district court reviewed a magistrate judge's Report and Recommendation recommending that Defendants' First Amended Motion to Dismiss be granted. Plaintiffs filed objections, which the district court reviewed de novo to the extent required.
STANDARD OF REVIEW	For portions of a magistrate judge's Report and Recommendation to which objections are made, the district court conducts de novo review. Portions without objections are reviewed for clear error or whether they are contrary to law. Frivolous, conclusive, or general objections do not require de novo review.
PRECEDENTIAL VALUE	unknown

PARTIES

Russell Hess, Barbara Wofford, K.H., H.H., B.H., L.H., and R.H.,
minor daughters v. Officer Liam Ortman, Officer Aron Benoy,
Sergeant Bryan Harshman, The Bulverde Police Department, The City
of Bulverde

TOPICS

motions to dismiss

civil procedure

section 1983

government liability

municipal liability

PRACTICE AREAS

civil procedure

civil rights

municipal law

QUESTIONS PRESENTED

1. What standard of review applies to portions of a magistrate judge's Report and Recommendation when parties object or do not object?
2. Whether Plaintiffs' objections had merit and whether the Report and Recommendation recommending dismissal should be accepted.
3. Whether Defendants' First Amended Motion to Dismiss should be granted and the action dismissed with prejudice.

HOLDINGS

1. A district court must conduct de novo review of those portions of a magistrate judge's Report and Recommendation to which a party objects, while portions without objections are reviewed for clear error or whether they are contrary to law; frivolous, conclusive, or general objections do not require de novo review.
2. Plaintiffs' objections lacked merit; the Report and Recommendation was accepted, Defendants' First Amended Motion to Dismiss was granted, and the action was dismissed with prejudice.

KEY QUOTATIONS

“Such a review means that the Court will examine the entire record, and will make an independent assessment of the law.” (at 1-2)

“After due consideration, and for the reasons set forth in the Report and Recommendation, the Court concludes the objections lack merit.” (at 2)

“IT IS FURTHER ORDERED that the above styled and numbered cause is DISMISSED WITH PREJUDICE.” (at 2)

FACTUAL BACKGROUND

Plaintiffs Russell Hess, Barbara Wofford, and their minor daughters brought an action against individual Bulverde police officers, the Bulverde Police Department, and the City of Bulverde. Defendants filed a First

Amended Motion to Dismiss, and a magistrate judge recommended that the motion be granted. Plaintiffs objected to the recommendation, but the district court found the objections meritless after reviewing the entire record.

PROCEDURAL HISTORY

The magistrate judge recommended granting Defendants' First Amended Motion to Dismiss. Plaintiffs filed written objections. The district court independently reviewed the record and conducted de novo review of the matters raised in the objections, concluded that the objections lacked merit, accepted the Report and Recommendation, granted the motion to dismiss, dismissed the action with prejudice, and dismissed remaining motions as moot.

DISPOSITION

dismissed

CASES CITED

- United States v. Wilson, 864 F.2d 1219, 1221 (5th Cir. 1989), cert. denied, 492 U.S. 918 (1989)
- Battle v. United States Parole Commission, 834 F.2d 419, 421 (5th Cir. 1987)

OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION RUSSELL HESS; BARBARA WOFFORD; § and K.H., H.H., B.H.,
L.H., R.H., Minor § Daughters, § § Plaintiffs, § § V. § CIVIL ACTION NO. SA-25-CV-00814-FB
§ OFFICER LIAM ORTMAN, Badge #1122; § OFFICER ARON BENOY, Badge #1105; §
SERGEANT BRYAN HARSHMAN, Badge § #1116; THE BULVERDE POLICE §
DEPARTMENT; and THE CITY OF § BULVERDE, § § Defendants. § ORDER ACCEPTING
REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE Before the
Court are the Report and Recommendation of United States Magistrate Judge (ECF No. 18)
recommending that Defendants' First Amended Motion to Dismiss (ECF No. 14) be granted, along
with Plaintiffs' written objections (ECF Nos. 21 & 22) thereto.

Where no party has objected to a Magistrate Judge's Report and Recommendation, the Court need not conduct a de novo review of the Report and Recommendation. See 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made.").

In such cases, the Court need only review the Report and Recommendation and determine whether it is clearly erroneous or contrary to law. United States v. Wilson, 864 F.2d 1219, 1221 (5th Cir.), cert. denied, 492 U.S. 918 (1989).

On the other hand, any Report and Recommendation to which objection is made requires de novo review by the Court. Such a review means that the Court will examine the entire record, and will make an independent assessment of the law.

The Court need not, however, conduct a de novo review when the objections are frivolous, conclusive, or general in nature. *Battle v. United States Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987). The Court has thoroughly analyzed Plaintiffs' submissions in light of the entire record.

As required by Title 28 U.S.C. § 636(b)(1)(c), the Court has conducted an independent review of the entire record in this cause and has conducted a de novo review with respect to those matters raised by the objections.

After due consideration, and for the reasons set forth in the Report and Recommendation, the Court concludes the objections lack merit. IT IS THEREFORE ORDERED that the Report and Recommendation of the United States Magistrate Judge (ECF No. 18) is ACCEPTED pursuant to 28 U.S.C. § 636(b)(1) such that Defendants The City of Bulverde, Bulverde Police Department, Sgt.

Bryan Harshman, Officer Aron Benoy and Officer Liam Ortman's First Amended Motion to Dismiss (ECF No. 14) is GRANTED. IT IS FURTHER ORDERED that the above styled and numbered cause is DISMISSED WITH PREJUDICE. IT IS FINALLY ORDERED that remaining motions pending with the Court, if any, are Dismissed as Moot and this case is CLOSED. It is so ORDERED. SIGNED this 28th day of January, 2026.

Feet CF D BIERY UNITED STATES DISTRICT JUDGE -2-