

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
WEST VIRGINIA

Robert Logan Michael v. Pamela Givens, Kelly Foster, Sandra May,
Shirley Hamrick, and Wexford Health Sources, Inc.

Michael v. Givens · No. 2:24-cv-00064 · Decided March 26, 2026

SUMMARY

The United States District Court for the Southern District of West Virginia overruled Defendants’ objections to a magistrate judge’s proposed findings and recommendation concerning a motion to dismiss. The Court adopted the recommendation, granting the motion in part and denying it in part, while allowing the plaintiff to replead certain dismissed claims by April 27, 2026.

CASE DETAILS

COURT	United States District Court for the Southern District of West Virginia
JURISDICTION	United States District Court for the Southern District of West Virginia
DECIDED	March 26, 2026
DOCKET	2:24-cv-00064
DISPOSITION	other
PROCEDURAL POSTURE	The district court reviewed objections to a magistrate judge's report and proposed findings and recommendation concerning Defendants' motion to dismiss.
STANDARD OF REVIEW	De novo review under 28 U.S.C. § 636(b)(1) applies to portions of a magistrate judge's proposed findings and recommendations to which a timely, specific objection is made. The court need not conduct de novo review of unobjected-to portions or of general and conclusory objections that fail to identify a specific error.
PRECEDENTIAL VALUE	unknown

TOPICS

- motions to dismiss
- civil procedure
- section 1983
- prisoners rights
- negligence

PRACTICE AREAS

- Civil procedure
- Prisoner civil rights
- Constitutional torts
- Negligence

QUESTIONS PRESENTED

1. Whether Defendants' objections to the PF&R required de novo review and warranted rejecting the magistrate judge's recommendations.
2. Whether the alleged deficiency in the negligence claims required dismissal of the Eighth Amendment claims.
3. Whether the negligence claim against Defendant Foster should be dismissed because she had not yet been served or appeared.
4. Whether Defendants' motion to dismiss should be granted in part and denied in part as recommended in the PF&R.

HOLDINGS

1. The court overruled Defendants' objections because the first objection misunderstood the PF&R and did not identify a specific error, while the second objection was inapposite; the court therefore adopted the PF&R.
2. The court adopted the PF&R and granted in part and denied in part Defendants' motion to dismiss.
3. Plaintiff was permitted, but not required, to file a Second Amended Complaint by April 27, 2026, and any such pleading had to be a single integrated document that superseded the prior pleadings.

KEY QUOTATIONS

“The Court is required “to make a de novo determination of those portions of the report or specified findings or recommendations to which objection is made.”” (Order)

“The Second Amended Complaint will supersede the original Complaint and Amended Complaint and there must be one integrated document that will provide the Defendants with notice of the claims and allegations against them.” (Order)

FACTUAL BACKGROUND

Plaintiff Robert Logan Michael asserted Eighth Amendment, First Amendment, negligence, intentional infliction of emotional distress, and negligent infliction of emotional distress claims arising from alleged conduct by correctional and medical defendants. The magistrate judge recommended allowing some claims to proceed while dismissing other claims because of inadequate factual allegations or because the asserted theory was inapplicable to the alleged circumstances. Defendants objected to the treatment of the negligence and Eighth Amendment claims and to allowing a negligence claim against Defendant Foster to proceed before service.

PROCEDURAL HISTORY

The action was referred to Magistrate Judge Dwane L. Tinsley, who recommended granting in part and denying in part Defendants' motion to dismiss. Defendants timely objected to two aspects of the recommendation. The district court overruled the objections, adopted the PF&R, and granted in part and denied in part the motion to dismiss, permitting Plaintiff to replead dismissed claims.

DISPOSITION

other

REMAND INSTRUCTIONS

The matter was referred anew to Magistrate Judge Dwane L. Tinsley under the terms of the original referral order. Plaintiff could replead dismissed claims by April 27, 2026.

CASES CITED

- Thomas v. Arn, 474 U.S. 140 (1985)
- United States v. De Leon-Ramirez, 925 F.3d 177, 181 (4th Cir. 2019)
- Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989)
- Orpiano v. Johnson, 687 F.2d 44, 47 (4th Cir. 1982)

OPINION

Michael

PER CURIAM.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF WEST VIRGINIA

AT CHARLESTON

ROBERT LOGAN MICHAEL,

Plaintiff, v. CIVIL ACTION NO. 2:24-cv-00064 PAMELA GIVENS and KELLY FOSTER and
SANDRA MAY

Nurse, Mt. Olive Correctional and

SHIRLEY HAMRICK

Director of Nursing, Mt. Olive Correctional and

WEXFORD HEALTH SOURCES, INC.,

Defendants.

ORDER

Pending are Defendants' Wexford Health Sources, Inc. ("Wexford"), Shirley Hamrick, Sandra May, and Pamela Givens Motion to Dismiss [ECF 51], filed April 21, 2025. This action was previously referred to the Honorable Dwane L. Tinsley, United States Magistrate Judge, for submission of proposed findings and a recommendation ("PF&R"). Magistrate Judge Tinsley filed his PF&R on February 11, 2026. [See ECF 59]. Magistrate Judge Tinsley recommended that the Court grant in part and deny in part Defendants' Motion to Dismiss. [Id.]. Magistrate Judge Tinsley recommended the Court deny dismissal of Mr. Michael's Eighth Amendment claims against all Defendants, his First Amendment Claim against Defendant May, and his negligence claims against Defendants Foster¹ and Wexford. [Id. at 18–19, 21, 24, 26, 30, 33]. Further,

Magistrate Judge Tinsley recommended the Court grant without prejudice dismissal of Mr. Michael's negligence claims against Defendants May, Givens, and Hamrick inasmuch as (1) "Plaintiff's Amended Complaint does not address his negligence claims [against them] in any detail. . . . [and] he only summarily alleges that he is asserting negligence claims," and (2) other than the allegation that Defendant Foster had a duty towards him, the "Amended Complaint is otherwise silent as to any specific duties owed to him by" Defendants May, Givens, and Hamrick. [Id. at 26, 28, 30, 33]. Magistrate Judge Tinsley further recommended the Court grant dismissal of Mr. Michael's intentional infliction of emotional distress claim against Defendant May inasmuch as the Amended Complaint lacks factual allegations to support the specific claim. [Id. at 32–33]. Finally, Magistrate Judge Tinsley recommended the Court grant dismissal of Mr. Michael's negligent infliction of emotional distress claims against Defendants Givens and Hamrick inasmuch as the claim is inapplicable to the circumstances alleged in the Amended Complaint. [Id.]. The Court is required "to make a de novo determination of those portions of the report or specified findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). The Court need not 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. See *Thomas v. Arn*, 474 U.S. 140 (1985); see also 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 or recommendations to which objection is made." (emphasis 1 As noted in the PF&R, the allegations against Defendant Foster were screened pursuant to 28 U.S.C. §§ 1915A and 1915(e) (2)(B) inasmuch as she had not yet been served with process or made an appearance. [ECF 59 at 1 n.1]. added)). Failure to file timely objections constitutes a waiver of de novo review and the Petitioner's right to appeal the Court's order. See 28 U.S.C. § 636(b)(1); see also *United States v. De Leon- Ramirez*, 925 F.3d 177, 181 (4th Cir. 2019) (Parties may not typically "appeal a magistrate judge's findings that were not objected to below, as § 636(b) doesn't require de novo review absent objection."); *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989). Further, the Court need not conduct de novo review when a party "makes general and conclusory objections that do not direct the Court to a specific error in the magistrate's proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). Objections in this case were due on March 2, 2026. Defendants filed timely objections on two aspects of the PF&R. [See ECF 61]. Specifically, Defendants urge that if the negligence claims are dismissed based upon the Amended Complaint's deficient allegations, the Eighth Amendment claims must necessarily be dismissed inasmuch as negligence claims are subject to a lower standard than deliberate indifference claims. [Id. at 4–6]. Defendants further object to the recommendation that the negligence claim against Defendant Foster not be dismissed because she has not yet been served. [Id. at 7]. The first objection plainly arises from a misunderstanding of the reasoning contained within the PF&R and fails to "direct the Court to a specific error," *Orpiano*, 687 F.2d at 47, whereas the second objection is inapposite. [See ECF 59 at 1 n.1]. Having carefully reviewed the

materials submitted in this case, including the briefing related to the Motion to Dismiss, [ECF 51], the PF&R, [ECF 59], and Defendants' objections, [ECF 61], the Court **OVERRULES** Defendants' objections. [ECF 61]. Accordingly, the Court **ADOPTS** the PF&R, [ECF 59], and **GRANTS IN PART** and **DENIES IN PART** the Motion to Dismiss. [ECF 51]. Mr. Michael may, if he chooses," replead the dismissed claims on or before April 27, 2026. If Mr. Michael chooses to file a Second Amended Complaint, he is **NOTIFIED** that it will be insufficient for him to simply refer to his past Complaint or Amended Complaint, or additional documentation, or to incorporate the same by reference in the Amended Complaint. The Second Amended Complaint will supersede the original Complaint and Amended Complaint and there must be one integrated document that will provide the Defendants with notice of the claims and allegations against them. The Court **ORDERS** the matter be **REFERRED** anew to Magistrate Judge Tinsley under the terms of the original referral order. The Court directs the Clerk to transmit a copy of this Order to any counsel of record and any unrepresented party. **ENTER:** March 26, 2026 Frank W. Volk Chief United States District Judge 2 Mr. Michael did not submit objections to the PF&R -- potentially as a result of his inability to review it due to his reincarceration and address change. [See ECF 62 ("I received something before my incarceration but was unable to review it. If I could receive it again I would appreciate it.")]]. After receiving the PF&R, Mr. Michael submitted a letter stating, "I am satisfied with the recommendation filed." [ECF 64].