

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
OKLAHOMA

Bobby Dale Simmons v. Jim Weir, et al.

Simmons · No. CIV-24-1309-R · Decided December 16, 2025

SUMMARY

The United States District Court for the Western District of Oklahoma adopts the magistrate judge’s Report and Recommendation and dismisses Bobby Dale Simmons’s amended civil rights complaint for failure to state a claim. The court finds that Simmons’s objections were timely under the prisoner mailbox rule but did not specifically challenge the magistrate judge’s substantive findings or provide a basis for rejecting the recommendation.

CASE DETAILS

COURT	United States District Court for the Western District of Oklahoma
JURISDICTION	United States District Court for the Western District of Oklahoma
DECIDED	December 16, 2025
DOCKET	CIV-24-1309-R
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiff objected to a magistrate judge's Report and Recommendation recommending dismissal of his amended prisoner civil-rights complaint for failure to state a claim. The district court conducted de novo review of the portions specifically objected to, rejected the objections, adopted the Report and Recommendation, and dismissed the amended complaint.
STANDARD OF REVIEW	De novo review of the portions of the magistrate judge's Report and Recommendation to which a specific objection is made under 28 U.S.C. § 636(b)(1)(C). General or nonspecific objections do not preserve issues for de novo or appellate review.
PRECEDENTIAL VALUE	Unpublished federal district court order; precedential status is unknown.
PARTIES	Bobby Dale Simmons v. Jim Weir, Grady County Board of County Commissioners, et al.

TOPICS

cruel and unusual punishment

prisoners rights

section 1983

pleadings

civil procedure

PRACTICE AREAS

Civil procedure

Prisoner civil rights

Constitutional law

QUESTIONS PRESENTED

1. Whether Plaintiff's objection to the Report and Recommendation was timely under the prisoner mailbox rule.
2. Whether Plaintiff's nonspecific objections provided a valid basis to reject the Report and Recommendation or preserved review of its substantive findings.
3. Whether the district court should adopt the Report and Recommendation and dismiss the amended complaint for failure to state a claim.

HOLDINGS

1. An inmate's objection is deemed filed when deposited into the appropriate prison mailing system; because Plaintiff certified that he placed the objection in the prison mailbox on November 8, 2025, the objection was timely despite later postmarks on the envelope.
2. A party waives further review of a Report and Recommendation's findings by failing to make timely and specific objections to those findings.
3. The alleged failure to receive a complaint form, the claim that the wrong amended complaint was reviewed, the two-week period before issuance of the recommendation, and alleged outstanding pleadings did not provide a valid basis to reject the Report and Recommendation.

KEY QUOTATIONS

"Giving Plaintiff the benefit of the prisoner mailbox rule, see Lockaby v. Young, 42 Fed. App'x 313, 318 (10th Cir. 2002) (unpublished) (citing Houston v. Lack, 487 U.S. 266, 275-76 (1988)) ("[A]n inmate's pleadings are deemed filed as of the date on which they are deposited into the appropriate prison mailing system."), the Court deems the Objection timely "filed" on November 8, 2025."

"And because Plaintiff failed to specifically object to any of Judge Erwin's substantive findings, he has waived this Court's review of those findings."

FACTUAL BACKGROUND

Bobby Dale Simmons, proceeding pro se and as a prisoner, alleged that Defendants were deliberately indifferent to his serious medical needs because of a delay in providing dental care while he was incarcerated in Grady County, Oklahoma. The magistrate judge recommended dismissal of the operative amended complaint for failure to state a claim. Simmons objected that he had not received the proper forms, that the magistrate judge considered the wrong pleading, and that the recommendation was issued prematurely, but the record showed that a blank § 1983 form had been mailed to him and that he filed the operative amended complaint on October 7, 2025.

PROCEDURAL HISTORY

Plaintiff was granted leave to file an amended complaint, and he filed a document designated as his Amended Complaint on October 7, 2025, which was docketed on October 10, 2025. Magistrate Judge Shon T. Erwin reviewed the operative amended complaint and recommended dismissal for failure to state a claim. Plaintiff objected, asserting that he had not received the necessary forms, that the magistrate judge reviewed the wrong complaint, and that the recommendation was premature. The district court found the objection timely under the prisoner mailbox rule but substantively inadequate, concluded that Plaintiff waived review of the Report's substantive findings by failing to specifically object to them, adopted the Report, and dismissed the Amended Complaint.

DISPOSITION

dismissed

CASES CITED

- Hall v. Miller, No. CIV-25-00518-JD, 2025 WL 2630738, at *1 (W.D. Okla. Sept. 12, 2025)
- United States v. 2121 E. 30th St., 73 F.3d 1057, 1059-60 (10th Cir. 1996)
- Lockaby v. Young, 42 Fed. App'x 313, 318 (10th Cir. 2002)
- Houston v. Lack, 487 U.S. 266, 275-76 (1988)
- Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991)
- Whitney v. New Mexico, 113 F.3d 1170, 1173-74 (10th Cir. 1997)

OPINION

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF OKLAHOMA BOBBY DALE SIMMONS,)) Plaintiff,)) vs.) Case No. CIV-24-1309-R) JIM WEIR, et al.,)) Defendants.) ORDER This matter is before the Court for review of the Report and Recommendation issued by United States Magistrate Judge Shon T. Erwin [Doc. No. 51]. Plaintiff Bobby Dale Simmons alleges that his Eighth Amendment right to be free from cruel and unusual punishments was violated while he was incarcerated in Grady County, Oklahoma, where he experienced deliberate indifference to his serious medical needs due to a delay of dental care.

Judge Erwin recommends dismissal of Plaintiff’s Amended Complaint for failure to state a claim. Plaintiff filed an Objection to Judge Erwin’s recommendation [Doc. No. 53] to which Defendants Jim Weir and the Grady County Board of County Commissioners responded [Doc. No. 54]. Plaintiff filed a Reply to Defendants’ Response [Doc. No. 55].¹ The Court must now make a de novo determination of the portions of the Report to which a specific objection is made.

28 U.S.C. § 636(b)(1). 1 The Court has considered the arguments in Plaintiff’s Reply and finds they would not change its decision to adopt the Report and dismiss the Amended Complaint. LEGAL STANDARD When a magistrate judge has issued a report and recommendation on a

dispositive motion or prisoner petition, parties may object to the findings before the district court reviews them.

See FED. R. CIV. P. 72(b). “[A] party’s objections to the magistrate judge’s report and recommendation must be both timely and specific to preserve an issue for de novo review by the district court or for appellate review.” *Hall v. Miller*, No. CIV-25- 00518-JD, 2025 WL 2630738, at *1 (W.D. Okla. Sept. 12, 2025) (quoting *United States v. 2121 E. 30th St.*, 73 F.3d 1057, 1060 (10th Cir.

1996)). “A specific objection ‘enables the district judge to focus attention on those issues—factual and legal—that are at the heart of the parties’ dispute.’” *Id.* (quoting 2121 E. 30th St., 73 F.3d at 1059). “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.” 28 U.S.C. § 636(b) (1)(C).

A party waives further review of a Report and Recommendation where he fails to specifically object to it. 2121 E. 30th St., 73 F.3d at 1060. Because Plaintiff proceeds pro se, the Court will construe his filings liberally but cannot serve as his advocate. *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991) (citation omitted). DISCUSSION Judge Erwin recommends dismissal of Plaintiff’s Amended Complaint [Doc.

No. 47] for failure to state a claim against any Defendants. Plaintiff objects, contending that Judge Erwin prematurely issued his Report and did not review the Amended Complaint he gave Plaintiff leave to file. Defendants respond, arguing the Objection is untimely and contains unfounded assertions.

As an initial matter, the Report indicated Plaintiff was required to file an Objection by November 10, 2025, or his right to appellate review would be waived. Defendants argue that Plaintiff’s Objection is untimely because the mailing envelope is stamped with the dates “18 NOV 2025” and “22 NOV 2025.” However, Plaintiff’s Objection includes a Certificate of Mailing in which he affirms that he placed his Objection in his prison’s mailbox on November 8, 2025, two days before the deadline.

Giving Plaintiff the benefit of the prisoner mailbox rule, see *Lockaby v. Young*, 42 Fed. App’x 313, 318 (10th Cir. 2002) (unpublished) (citing *Houston v. Lack*, 487 U.S. 266, 275-76 (1988)) (“[A]n inmate’s pleadings are deemed filed as of the date on which they are deposited into the appropriate prison mailing system.”), the Court deems the Objection timely “filed” on November 8, 2025.

Regardless of the Objection’s timeliness, it fails to provide a valid reason for denial of Judge Erwin’s Report. Most of Plaintiff’s Objection revolves around his assertions that he never received

the necessary forms to complete the Amended Complaint and that the Amended Complaint reviewed by Judge Erwin is not the Amended Complaint Plaintiff was granted leave to file.

Defendants respond that the record indicates Plaintiff's claims are unfounded and that he did file his Amended Complaint. The Court agrees with Defendants. On September 26, 2025, Judge Erwin granted Plaintiff's Motion to File an Amended Complaint [Doc. Nos. 36, 43]. And, contrary to Plaintiff's assertions, the record reflects that a blank § 1983 complaint form was mailed to Plaintiff on September 26, 2025.

On October 7, 2025, Plaintiff placed into the prison's legal mail system a Pro Se Prisoner Civil Rights Complaint form that he himself designated as his "Amended" Complaint. Doc. No. 47. That Complaint was entered into the record and designated as Plaintiff's Amended Complaint on October 10, 2025. *Id.* Judge Erwin's Report, issued on October 24, 2025, clearly states that Judge Erwin reviewed the operative Amended Complaint.² Plaintiff also asserts Judge Erwin "prematurely" issued his Report.

Defendants respond, and this Court agrees, that the two weeks between the filing of the Amended Complaint on October 10, 2025, and the issuance of the Report on October 24, 2025, were ample time to review the Amended Complaint.³ Plaintiff also argues numerous outstanding pleadings would assist in formulating a proper amended complaint in accordance with Judge Erwin's Order granting Plaintiff leave to file an Amended Complaint.

Defendants respond that all pertinent motions were ruled upon in that Order and no pleadings are outstanding that would bear upon the Amended Complaint. Even if Plaintiff did not receive the necessary forms from the Clerk of Court, Judge Erwin's recommendation is premised on Plaintiff's pleading deficiencies, not on his failure to use the proper form. ³ In his Reply, Plaintiff argues he thought the Court would guide him in correcting his Complaint through setting forth the proper parties and allegations to allow him to pursue his case.

In the Order granting Plaintiff leave to file an Amended Complaint, Judge Erwin included relevant pleading requirements and indicated the allegations must be on the same complaint form normally required by the Court [Doc. No. 43]. A blank § 1983 form was mailed to Plaintiff with the Order. Judge Erwin acted properly in informing Plaintiff of the proper procedures and standards required for his Amended Complaint.

Were the Court to go further by providing Plaintiff with substantive arguments, it would be improperly serving as Plaintiff's advocate. *Hall*, 935 F.2d at 1110. See also *Whitney v. New Mexico*, 113 F.3d 1170, 1173-74 (10th Cir. 1997) (courts may construe pleadings liberally but "will not supply additional factual allegations to round out a plaintiff's complaint").

Complaint. This Court agrees. The record reflects there were no outstanding pleadings or motions when Judge Erwin considered Plaintiff's Amended Complaint on the merits.* Plaintiff's

arguments regarding his Amended Complaint and alleged outstanding motions have failed to provide a valid basis for denial of Judge Erwin's Report. And because Plaintiff failed to specifically object to any of Judge Erwin's substantive findings, he has waived this Court's review of those findings.

The Court therefore fully ADOPTS the Report and Recommendation [Doc. No. 51]. Plaintiff's Amended Complaint [Doc. No. 47] is DISMISSED. IT IS SO ORDERED this 16 day of December, 2025. DAVID L. RUSSELL UNITED STATES DISTRICT JUDGE * In his Reply, Plaintiff specifies he is still awaiting a ruling on his Motion to Appoint Counsel.

The record reflects that Plaintiff's request for appointment of counsel [Doc. No. 33] was denied by Judge Erwin [Doc. No. 44]. Plaintiff's renewed Motion to Appoint Counsel [Doc. No. 39] was also stricken [Doc. No. 43]. Even if a motion to appoint counsel was outstanding, it would be mooted because Plaintiff's Amended Complaint is dismissed.