

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

JEANNE MARIE DRULEY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. CIV-13-1191-D
	)	
JUSTIN JONES, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**ORDER**

This matter comes before the Court for review of the Report and Recommendation issued by United States Magistrate Judge Shon T. Erwin on January 21, 2015, pursuant to 28 U.S.C. § 636(b)(1)(B)-(C). Judge Erwin recommends dismissal of Plaintiff's official-capacity claims against the director and employees of the Oklahoma Department of Corrections, dismissal of Plaintiff's claims against certain individuals for failure to state a claim upon which relief can be granted, dismissal of the equal protection claim asserted as Count II of the Complaint for failure to exhaust administrative remedies, and summary judgment in favor of the medical doctor who treated Plaintiff on her claim for deliberate indifference to serious medical needs. Judge Erwin further recommends denial of Plaintiff's motions for an entry of default against certain individual defendants because Defendants' dispositive motion was timely filed on their behalf, and granting Defendants' motion to permit one of their attorneys to withdraw from the case.

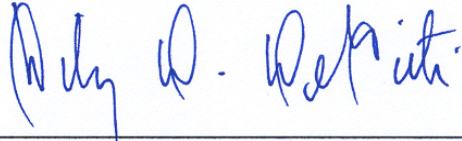
Despite receiving an additional 30 days to object to the Report and Recommendation, Plaintiff has failed to file a written objection within the required time period. Therefore, the

Court finds that Plaintiff has waived further review of all factual and legal issues addressed in Judge Erwin's Report. Further, upon the Court's review of Judge Erwin's analysis of the issues, the Court fully agrees with his findings and conclusions. Plaintiff's official-capacity claims are the same as claims against a state agency, which is not a "person" subject to suit under 42 U.S.C. § 1983. The Complaint fails to allege sufficient facts to state a claim against Defendants Justin Jones, Don Suttmiller, Michael Addison, Buddy Honaker, or James Keithley. The record is clear that Plaintiff failed to exhaust her available administrative remedies for the equal protection claim asserted in Count II of the Complaint, which must be dismissed without prejudice pursuant to 42 U.S.C. § 1997e(a). Finally, the undisputed facts shown by the evidence of record establish that Defendant Joel B. McCurdy did not act with deliberate indifference to Plaintiff's serious medical needs; Plaintiff merely disagrees with Dr. McCurdy's medical judgment. Therefore, Dr. McCurdy is entitled to summary judgment.

IT IS THEREFORE ORDERED that the Report and Recommendation [Doc. No. 53] is ADOPTED in its entirety. Defendants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment [Doc. No. 30] is GRANTED, as set forth herein. Judgment shall be entered accordingly.

IT IS FURTHER ORDERED that Plaintiff's Motions for Entry of Default [Doc. Nos. 45, 47 & 49] are DENIED and Defendants' Motion to Allow Withdrawal [Doc. No. 52] is GRANTED. Attorney Wilson D. McGarry is withdrawn as counsel for Defendants.

IT IS SO ORDERED this 17<sup>th</sup> day of March, 2015.



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TIMOTHY D. DEGIUSTI  
UNITED STATES DISTRICT JUDGE