

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**JACK RAY WAGNER,**

**Plaintiff,**

v.

**Civil Action No. 2:09cv28**

**WEXFORD MEDICAL HEALTH SERVICE,  
TRISTEN TENNEY, DAVID PROCTOR,  
and TERESA WAID,**

**Defendants.**

**ORDER**

It will be recalled that on June 15, 2009, Magistrate Judge David J. Joel filed his Report and Recommendation, wherein the Plaintiff was directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation. No objections to the Magistrate Judge's Report and Recommendation have been filed. Accordingly, the Court will proceed with consideration of the Report and Recommendation reviewing for clear error.<sup>1</sup>

Upon examination of the report from the Magistrate Judge, it appears to the Court that this matter was properly considered by Magistrate Judge Joel in his Report and Recommendation. Moreover, the Court, upon a review for clear error of all matters now before it, is of the opinion that the Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in this action. Therefore, it is

**ORDERED** that Magistrate Judge Joel's Report and Recommendation be, and the same hereby is, accepted in whole and that this civil action proceed in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

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<sup>1</sup>The failure of a party to object to a Report and Recommendation waives the party's right to appeal from a judgment of this Court based thereon and, additionally, relieves the Court of any obligation to conduct a *de novo* review of the issues presented. See Wells v. Shriners Hospital, 109 F.3d 198, 199-200 (4<sup>th</sup> Cir. 1997); Thomas v. Arn, 474 U.S. 140, 148-153 (1985).

**ORDERED** that Plaintiff's claims against Defendants Waid and Wexford Medical Health Service shall be, and the same are hereby, **DISMISSED with prejudice** pursuant to 28 U.S.C. §1915A and 1915(e) for the failure to state a claim for which relief may be granted. It is further

**ORDERED** that the Plaintiff's claims against Defendants Tenney and Dr. Proctor shall proceed. Accordingly, the Clerk of Court is hereby directed to Serve Defendants Tenney and Dr. Proctor with a copy of a twenty (20) day summons and the complaint in this civil action through the United States Marshal Service. It is further

**ORDERED** that the Clerk shall enter judgment for Defendants Waid and Wexford Medical Health Service.

The Clerk of the Court is directed to transmit a copy of this Order to all parties appearing herein.

**ENTER:** December 3<sup>rd</sup>, 2009

/s/ Robert E. Maxwell  
United States District Judge