

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Christine M. Arguello**

Civil Action No. 17-cv-00884-CMA-STV

CHAYCE AARON ANDERSON,

Plaintiff,

v.

CARA BOXBERGER, in her individual capacity,
JASON SHUTTERS, in her individual capacity,

Defendants.

**ORDER GRANTING PLAINTIFF'S MOTION TO RECONSIDER AND
AMENDED ORDER ADOPTING REPORT AND RECOMMENDATION OF UNITED
STATES MAGISTRATE JUDGE**

Before the Court is Plaintiff's Motion to Contest Time of Service of Recommendation and Order (Doc. # 78), wherein Plaintiff Chayce Aaron Anderson essentially requests that this Court reconsider its Order (Doc. # 76) denying Plaintiff's request for an extension of time to file an objection to the Recommendation of Magistrate Judge Varholak (Doc. # 60, 62).

Having thoroughly considered the issue, the Court grants Plaintiff's request that it reconsider the Order (Doc. # 78) and accepts Plaintiff's Objection (Doc. # 75) as timely filed. It appears that, based on previous orders issued in this case, Plaintiff was under the impression that he would be served at both the Larimer County Jail and the Arkansas Valley Correctional Facility. In the future, however, Plaintiff will only be

served at the facility where he resides and at the address that he provides this Court. The Court therefore reminds Plaintiff of his continued responsibility to keep this Court apprised of his change in address. D.C.COLO.LCivR 5.1(c).

Because the Court has accepted Plaintiff's Objection as timely, the Court now amends its Order (Doc. # 66) adopting and affirming Magistrate Judge Varholak's Recommendation (Doc. ## 60, 62). Because Plaintiff's challenges the Recommendation in its entirety, the Court reviews that Recommendation *de novo*. Based on that *de novo* review, the Court finds and concludes that Plaintiff's Objections are without merit. The Court addresses each of Plaintiff's objections in turn.

First, Plaintiff objects to Magistrate Judge Varholak's recommended dismissal of Plaintiff's Claim Four. The Court overrules this objection. Claim Four alleges that Defendant Boxberger violated Plaintiff's due process and privacy rights when she slandered and defamed him. Magistrate Judge Varholak dismissed Claim Four because "defamation, by itself, is not actionable in a §1983 claim." (Doc. # 60 at 8.)¹ The Court agrees. Indeed, the United States Supreme Court has concluded that "[d]efamation, by itself, is . . . not a constitutional deprivation." *Siegert v. Gilley*, 500 U.S. 226, 233 (1991); *see also Angel v. Torrance Cty. Sheriff's Dep't*, 183 F. App'x 707, 708 (10th Cir. 2006) ("[D]efamation alone does not amount to an actionable § 1983 claim."). The Court therefore dismisses Claim Four.

¹ Contrary to Plaintiff's first and third formal objections, Magistrate Judge Varholak did not dismiss Plaintiff's Claim Four based on Judge Babcock's previous dismissal. Plaintiff's objections are, therefore, misplaced, and the Court declines to address them.

Second, Plaintiff objects to Magistrate Judge Varholak's recommended dismissal of Claim Three. The Court overrules this objection. Claim Three alleges that Defendants Boxberger and Shuttles improperly disclosed Plaintiff's juvenile records in violation of the Federal Juvenile Delinquency Act, 18 U.S.C. § 5038; Colorado's juvenile sealing laws, and his Constitutional rights to "due process and equal protection." (Doc. # 50-1 at 25–27.) Magistrate Judge Varholak dismissed Claim Three because § 5038 does not create a private right of action and Colorado juvenile sealing laws do not give rise to a Constitutionally-protected liberty interest. Again, the Court agrees. *See, e.g., Andrews v. Heaton*, 483 F.3d 1070, 1076 (10th Cir. 2007) (dismissal of claims alleging violations of criminal statutes proper if criminal statutes do not provide for a private right of action). With respect to § 5038, as Judge Babcock previously noted, Plaintiff does not allege he was the subject of any federal juvenile delinquency proceedings to which that statute applies, nor has Plaintiff demonstrated that a private right of action exists under that statute. With respect to Colorado's record-sealing laws, Plaintiff includes no statutory reference or legal authority, nor has the Court found any, for the proposition that those laws give him a protected liberty interest. Indeed, as Magistrate Judge Varholak concluded, many courts have rejected that argument. *See Hester v. W. Virginia*, No. 5:07-CV-00401, 2008 WL 4298471, at *18 (S.D.W. Va. Sept. 18, 2008), *aff'd*, 305 F. App'x 109 (4th Cir. 2008) (collecting cases). The Court therefore dismisses Claim Three.

Third, Plaintiff objects to Magistrate Judge Varholak's recommended dismissal of Claim Five. Claim Five alleges that Defendants Shuttters and Boxberger violated Plaintiff's due process rights and committed the tort of intentional infliction of emotional distress because their actions forced Plaintiff to relive his past when Plaintiff was a victim of sexual assault. With respect to Defendant Boxberger, the only relevant "actions" mentioned in the Second Amended Complaint are her initiation and litigation of state charges against Plaintiff. Although Plaintiff's Objection contends otherwise, he does not therein detail any other "actions" to which this Claim is directed. (Doc. # 75 at 9.) The Court therefore agrees with Magistrate Judge Varholak that the challenged actions are intimately tied to Defendant Boxberger's prosecutorial function. Claim Five as asserted against her is therefore barred by absolute immunity. *See Imbler v. Packman*, 424 U.S. 409, 431 (1976). The Court accordingly dismisses Claim Five.

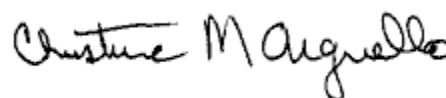
Last, Plaintiff objects to the recommended dismissal of Claim Six. Claim Six, which is lodged at Defendant Boxberger's conduct during Plaintiff's bond reduction hearing, is also tied to her role in prosecuting his case. Contrary to Plaintiff's Objection, the Claim is clearly barred by absolute immunity and dismissal is warranted.

For the foregoing reasons, the Court GRANTS Plaintiff's Motion to Contest Time of Service of Recommendation; OVERRULES Plaintiff's Objection to the Recommendation (Doc. # 75); and AFFIRMS and ADOPTS Magistrate Judge Varholak's Recommendation (Doc. ## 60, 62). It is

FURTHER ORDERED that Claims Three, Four, and Six in the Second Amended Complaint are DISMISSED WITH PREJUDICE; Claim Five, as asserted against Defendant Boxberger is DISMISSED WITH PREJUDICE; and Defendant Boxberger is DISMISSED as a party to this lawsuit.²

DATED: April 2, 2018

BY THE COURT:



CHRISTINE M. ARGUELLO
United States District Judge

² Dismissal without affording the plaintiff an opportunity to amend is proper only “when it is ‘patently obvious’ that the plaintiff could not prevail on the facts alleged, and allowing him an opportunity to amend his complaint would be futile.” *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). Such is the case here.