

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MAINE**

**KRISTIN DOUGLAS, a/k/a TINA** )  
**BETH MARTIN,** )  
 )  
**Plaintiff** )  
 )  
**v.** )  
 )  
**YORK COUNTY, et al.,** )  
 )  
**Defendants** )

**Docket No. 02-102-P-S**

**RECOMMENDED DECISION ON DEFENDANTS' MOTION FOR ENTRY OF  
SUMMARY JUDGMENT**

The defendants, York County and the York County Sheriff's Department, move again for summary judgment on the grounds raised in their first motion for summary judgment, which was filed on January 17, 2003. Docket No. 16. On April 17, 2003 I issued a recommendation that that motion be granted on the basis of my conclusion that the plaintiff had not been suffering from a mental illness that imposed an overall inability to function in society that prevented her from protecting her legal rights during the period from the date on which her cause of action accrued in 1971 through May 4, 1996 (six years before this action was filed). Recommended Decision on Defendants' Motion for Summary Judgment (Docket No. 37) at 11. In reaching that conclusion, I assumed *arguendo* that the plaintiff was mentally ill at the time the cause of action accrued. *Id.*

The plaintiff objected to the recommended decision, Docket No. 38, and oral argument was held before Judge Hornby, who subsequently affirmed the recommended decision but on the ground that the plaintiff had not submitted evidence that would allow a factfinder to conclude that she had

been mentally ill at the time the cause of action accrued. Order Affirming Recommended Decision of the Magistrate Judge (“Affirming Order”) (Docket No. 42) at 3-4. Judge Hornby stated specifically that he did not reach the ground on which I based my recommended decision. *Id.* at 4.

The plaintiff appealed, and the First Circuit, after noting that Judge Hornby did not address the issue discussed in the recommended decision, *Douglas v. York County*, 360 F.3d 286, 289 n.1 (1st Cir. 2004), reversed, noting that, in the course of dealing with the objection to the recommended decision, the court had “injected a new issue into the case without giving notice and an opportunity to respond,” *id.* at 290. The First Circuit specifically declined to address the issue discussed in the recommended decision. *Id.* at 291. After remand, Judge Hornby recused himself. Docket No. 57.

The defendants have now moved for summary judgment “on grounds previously raised.” Motion for Entry of Summary Judgment on Alternative Grounds (“Motion”) (Docket No. 56) at 1. The parties have not filed any new or additional statements of material facts and their arguments are essentially identical to those they raised in connection with the initial motion for summary judgment. *Compare* Motion at 3-10 *with* Motion for Summary Judgment and Memorandum of Law (Docket No. 16) at 2-16 *and* Plaintiff’s Memorandum of Law in Opposition to Defendants’ Motion for Entry of Summary Judgment on Alternative Grounds (“Opposition”) (Docket No 59) at 3-15 *with* Plaintiff’s Memorandum of Law in Opposition to Defendants’ Motion for Summary Judgment (Docket No. 25) at 1-12.

The plaintiff does present one new argument in her opposition to the current motion for summary judgment. She asserts that Judge Hornby “implicitly and explicitly recognized” that she “has been, for purposes of tolling, mentally ill subsequent to the 1971” events that give rise to her cause of action. Opposition at 1-2. This is so, she contends, because Judge Hornby “could have easily stated, if [he] so determined, that the Plaintiff had failed to establish her mental illness within

the meaning of 14 M.R.S.A. ¶ [sic] 853 subsequent to” those events. *Id.* at 2. However, as noted above, Judge Hornby specifically declined to reach that issue. Affirming Order at 4. His order cannot reasonably be read to hold, implicitly or explicitly, that the summary judgment record contained one or more disputed issues of material fact with respect to the plaintiff’s alleged mental illness over the 30-year period between the events giving rise to her cause of action and the filing of this lawsuit.

The plaintiff also cites statements made by Judge Hornby during oral argument on her objection to the recommended decision as demonstrating that the “Court obviously determined that a factual issue had been created by Plaintiff with respect to her mental status subsequent to” the 1971 events. Opposition at 2. However, it is the written ruling itself, not remarks or questions by the judge during oral argument, that determines what the court’s ruling was. *See, e.g., United States v. Podolsky*, 158 F.3d 12, 17 (1st Cir. 1998). Contrary to the plaintiff’s one-sentence argument, Opposition at 3, the doctrine of law of the case is not implicated here, *see generally Field v. Mans*, 157 F.3d 35, 40 (1st Cir. 1998).

Under these circumstances, I adopt and incorporate herein by reference my original recommended decision on the defendants’ motion for summary judgment. Recommended Decision on Defendants’ Motion for Summary Judgment (Docket No. 37). For the reasons stated therein and here, I recommend that the defendants’ renewed motion for summary judgment be **GRANTED**.

#### **NOTICE**

***A party may file objections to those specified portions of a magistrate judge’s report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.***

*Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.*

Dated this 17th day of May 2004.

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David M. Cohen  
United States Magistrate Judge

**Plaintiff**

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*aka*  
**TINA BETH MARTIN**

V.

**Defendant**

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