NOT RECOMMENDED FOR PUBLICATION

No. 19-1918

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

GANIYU AYINLA JAIYEOLA, Plaintiff-Appellant, v. TOYOTA MOTOR NORTH AMERICA, INC., et al., Defendants, and TOYOTA MOTOR CORPORATION, a foreign corporation; AISAN INDUSTRY CO., LTD, a foreign corporation, Defendants-Appellees.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN

ORDER

Before: STRANCH, THAPAR, and READLER, Circuit Judges.

Ganiyu Ayinla Jaiyeola, a Michigan resident proceeding pro se, appeals the district court's order denying his motion for summary judgment and awarding summary judgment to Toyota Motor Corporation ("TMC") and Aisan Industry Company, Ltd. ("Aisan"). This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

In November 2016, Jaiyeola filed a lawsuit against several defendants, including TMC and Aisan, in state court, alleging that on November 25, 2013, he was driving a 1996 Toyota Camry in

Portland, Michigan, when it suddenly accelerated, causing him to hit a guardrail and suffer severe injuries. Jaiyeola asserted Michigan state-law claims for gross negligence, negligent production, failure to warn, and breach of implied and express warranty. TMC and Aisan filed separate responsive pleadings before removing the lawsuit to federal court based on diversity jurisdiction. *See* 28 U.S.C. §§ 1331, 1332, 1441(a). Jaiyeola unsuccessfully moved to remand the case back to state court. The district court subsequently terminated all defendants other than TMC and Aisan from the lawsuit due to Jaiyeola's failure to timely serve them with process.

During discovery, the magistrate judge entered a case management order requiring Jaiyeola to identify his expert witnesses and provide their expert reports no later than May 3, 2018. *See* Fed. R. Civ. P. 26(a)(2). Jaiyeola timely submitted his Rule 26 disclosures, identifying John Stilson as a "safety and automotive" expert and Investigating Officer Star Thomas as an "accident investigation and accident reconstruction expert." On June 10, 2018, however, Jaiyeola supplemented his disclosures to identify himself as an expert witness. On TMC and Aisan's motions, the magistrate judge: (1) struck Stilson as an expert witness because Jaiyeola sought to utilize his opinions from a prior, unrelated case; (2) limited Officer Thomas's opinions to accident investigation since she admitted that she was unqualified in accident reconstruction; and (3) struck Jaiyeola as an expert witness because his supplemental Rule 26 disclosure was untimely filed.

In October 2018, TMC and Aisan (collectively, "the defendants") jointly moved for summary judgment, arguing that Jaiyeola failed to meet his burden of establishing a genuine issue of material fact with respect to each of his claims, and that they were therefore entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(a). They specifically argued that Jaiyeola's product-liability claims were subject to the Michigan Product Liability Act ("MPLA"), *see* Mich. Comp. Laws § 600.2945 *et seq.*, and "require[d] expert testimony of proof of some nonconformity and a causal connection between the defect and the purported injury." They contended that, apart from his own conjecture, Jaiyeola presented no admissible expert testimony establishing either that they were responsible for a product defect or that any defect proximately caused his alleged injuries. Jaiyeola filed a response in opposition to the defendants' summary judgment motion, in which he agreed that his claims were subject to the MPLA, but nonetheless asserted that he had established

a design-defect claim under Michigan Compiled Laws § 600.2946(2). To that end, Jaiyeola, who is an engineer, cited a self-authored "expert" report that "identified a specific unsymmetrical rib design defect of the ribs on the Air Cleaner (Intake) Hose . . . of the Camry." According to Jaiyeola, "[t]hat design defect resulted in a [b]roken [h]ose. The [b]roken [h]ose caused [sudden unintended acceleration] of the Camry and a crash after the Camry slid on ice."

Jaiyeola subsequently filed a cross-motion for summary judgment, arguing that he was entitled to judgment as a matter of law because his own "expert report clearly confirmed that the Camry had a design defect and the defect caused all of [his] injuries from the accident of November 25, 2013." The defendants opposed Jaiyeola's cross-motion, in part, because Jaiyeola "failed to timely identify a single expert (consultant or retained) that has not already been struck by the Court, who will opine that a design and/or manufacturing defect existed in the [s]ubject [v]ehicle on the date of the [c]rash or that [Jaiyeola] experienced 'unwanted sudden unintended acceleration' that caused the [c]rash."

The magistrate judge recommended granting the defendants' motion for summary judgment and denying Jaiyeola's cross-motion for summary judgment. Over Jaiyeola's objections, the district court adopted the magistrate judge's report and recommendation and entered judgment in favor of the defendants. *See Jaiyeola v. Toyota Motor N. Am, Inc.*, No. 1:17-cv-562, 2019 WL 3543628 (W.D. Mich. Aug. 5, 2019).

Jaiyeola advances a litany of arguments on appeal. Specifically, he challenges the district court's grant of summary judgment in favor of the defendants and raises claims of judicial bias. He also challenges the district court's rulings on his various motions, such as his motion to remand the case to state court and motions for sanctions, appointment of counsel, and pauper status. Jaiyeola requests oral argument.

The defendants have filed a response brief, also requesting oral argument, to which Jaiyeola filed "errata" and a reply brief. The defendants move to strike those filings for violating this court's order limiting any reply brief to 8,000 words. *See Jaiyeola v. Toyota Motor N. Am., Inc.*, No. 19-1918 (6th Cir. July 9, 2020) (clerk's order). Considering Jaiyeola's pro se status, we deny the defendant's motion to strike. However, to the extent that Jaiyeola's errata or reply brief contain

either evidence not presented to the district court or arguments not advanced in his opening brief, we decline to address them. *See Anton v. Nat'l Union Fire Ins. of Pittsburgh*, 634 F.3d 364, 368 n.2 (6th Cir. 2011).

I. Jurisdiction

Jaiyeola argues that the district court erroneously allowed the defendants to remove the lawsuit to federal court without first "getting a certification" from the Michigan Supreme Court. We review the existence of subject-matter jurisdiction de novo, but review a district court's jurisdictional factual determinations for clear error. *See Rogers v. Wal-Mart Stores, Inc.*, 230 F.3d 868, 871 (6th Cir. 2000).

The federal removal statutes do not require a defendant to obtain authorization from the state courts before removing a lawsuit to federal court. Rather, 28 U.S.C. § 1441(a) simply provides that "any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the . . . defendants, to the district court of the United States for the district and division embracing the place where such action is pending." Federal courts have subject-matter jurisdiction under 28 U.S.C. § 1332(a) when the plaintiff and the defendants are citizens of different states and the amount in controversy exceeds $75,000. For jurisdiction to be proper under § 1332(a), there must be complete diversity of citizenship among the parties—"no party [can] share citizenship with any opposing party." *Safeco Ins. Co. of Am. v. City of White House*, 36 F.3d 540, 545 (6th Cir. 1994).

There is no dispute that the amount in controversy exceeded the jurisdictional limit because Jaiyeola sought $125,000 in damages. Rather, Jaiyeola, who is a citizen of Michigan, alleged below that two of the defendants named in his complaint—Toyota of Grand Rapids and Bosch Automotive Service Solutions Inc.—are also Michigan citizens, which would destroy complete diversity and make removal improper. But 28 U.S.C. § 1446(b)(3) pertinently provides that

> if the case stated by the initial pleading is not removable, a notice of removal may be filed within [thirty] days after receipt by the defendant, through service or otherwise, of a copy of an . . . order or other paper from which it may first be ascertained that the case is one which . . . has become removable.

The district court adopted the magistrate judge's conclusion that Jaiyeola's lawsuit became removable to federal court although it may not have been removable at its inception. In reaching that conclusion, the magistrate judge noted that all the defendants other than TMC and Aisan were automatically dismissed from the state lawsuit in May 2017, *before* this matter was removed. This was because, pursuant to Michigan Court Rule 2.102(E)(1), if a summons expires before service of process can be effected, "the action is deemed dismissed without prejudice" as to such defendant. The magistrate judge noted that Jaiyeola was required to serve all the defendants with process no later than May 21, 2017, and that TMC and Aisan were the only defendants served before that deadline. Jaiyeola failed to rebut that finding. Consequently, TMC and Aisan were the only defendants remaining when they removed this lawsuit to federal court in June 2017. Jaiyeola acknowledged in his complaint that TMC and Aisan are not citizens of Michigan. Accordingly, TMC and Aisan's removal to federal court was proper.

II. Summary Judgment

We review a district court's grant of summary judgment de novo, viewing the facts in the light most favorable to the non-moving party. *Flagg v. City of Detroit*, 715 F.3d 165, 178 (6th Cir. 2013). Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *see Estate of Smithers ex rel. Norris v. City of Flint*, 602 F.3d 758, 761 (6th Cir. 2010). If the moving party satisfies this burden, the burden then shifts to the non-moving party to set forth "specific facts showing that there is a genuine issue for trial." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (emphasis omitted) (quoting Fed. R. Civ. P. 56(e)). "Where, as here, subject matter jurisdiction is based on diversity of citizenship, we apply the substantive law of the forum state." *Fox v. Amazon.com, Inc.*, 930 F.3d 415, 422 (6th Cir. 2019).

The district court adopted the magistrate judge's conclusion that Jaiyeola failed to discharge his reciprocal burden by not putting forth any admissible expert evidence in support of his Michigan product-liability claims. *See, e.g.*, *Green v. Jerome-Duncan Ford, Inc.*, 491 N.W.2d 243, 247 (Mich. Ct. App. 1992) (per curiam) (granting summary disposition to the defendant when the plaintiff failed to offer expert testimony that the product was defective). Recognizing this fatal

omission, Jaiyeola contends that the district court should have appointed a neutral expert. A district court's decision not to appoint an expert in a civil case is subject to reversal only for abuse of discretion. *See Dodson v. Wilkinson*, 304 F. App'x 434, 442 (6th Cir. 2008). "A district court abuses its discretion when it 'relies on erroneous findings of fact, applies the wrong legal standard, misapplies the correct legal standard when reaching a conclusion, or makes a clear error of judgment.'" *Ondo v. City of Cleveland*, 795 F.3d 597, 603 (6th Cir. 2015) (citing *Reeb v. Ohio Dep't of Rehab. & Corr.*, 435 F.3d 639, 644 (6th Cir. 2006)). The magistrate judge determined that Jaiyeola "had ample opportunity to secure the services of expert witnesses in this matter." Indeed, Jaiyeola waited until June 28, 2018—nearly two months *after* the expiration of the court's expert-disclosure deadline—to file his motion for a court-appointed expert. The magistrate judge did not abuse her discretion in denying Jaiyeola's motion.

Jaiyeola also argues that he would have survived summary judgment had the district court not improperly struck his untimely supplemental Rule 26 disclosures in which he identified himself as an expert. We review discovery orders for an abuse of discretion. *Bill Call Ford, Inc. v. Ford Motor Co.*, 48 F.3d 201, 209 (6th Cir. 1995). If a party fails to provide information as required by Rule 26(e), the party is not allowed to use that information to supply evidence on a motion "unless the failure was substantially justified or is harmless." Fed. R. Civ. P. 37(c)(1). However, a party who does not comply with the discovery rules may avoid sanctions if "there is a reasonable explanation of why Rule 26 was not complied with or [if] the mistake was harmless." *Howe v. City of Akron*, 801 F.3d 718, 747 (6th Cir. 2015) (quoting *Bessemer & Lake Erie R.R. v. Seaway Marine Transp.*, 596 F.3d 357, 370 (6th Cir. 2010)).

In assessing whether a party's untimely disclosure was justified or harmless, we analyze five factors:

> (1) the surprise to the party against whom the evidence would be offered; (2) the ability of that party to cure the surprise; (3) the extent to which allowing the evidence would disrupt the trial; (4) the importance of the evidence; and (5) the nondisclosing party's explanation for its failure to disclose the evidence.

Id. at 748 (quoting *Russell v. Absolute Collection Servs., Inc.*, 763 F.3d 385, 396-97 (4th Cir. 2014)). Jaiyeola did not explain why it took him over a month after the expiration of the expert-disclosure deadline to identify himself as an expert. He argued instead that the defendants were not prejudiced by his untimely supplemental disclosures. The district court disagreed because, in addition to being untimely, Jaiyeola's supplemental disclosures failed to include a "written report" as required by Rule 26(a)(2)(B). The district court noted that Jaiyeola had yet to proffer an expert report as of August 5, 2019. Thus, the prejudice to the defendants stemming from Jaiyeola's failure to comply with Rule 26 was still ongoing more than two years into the litigation. The district court did not abuse its discretion by striking Jaiyeola's untimely supplemental Rule 26 disclosures.

Jaiyeola further contends that the magistrate judge wrongly denied his motions to compel TMC to both evaluate his Camry's air-cleaner hose and to translate certain company documents into English. But as the magistrate judge aptly noted, although Jaiyeola "was permitted to conduct tests on the part in question," *see* Fed. R. Civ. P. 34(a)(2), he "failed to demonstrate that any efforts on his part to conduct tests on the part in question were denied or otherwise thwarted." He also failed to show that the air-cleaner hose was in TMC's "possession, custody, or control." Fed. R. Civ. P. 34(a)(1). Lastly, Jaiyeola failed to show that TMC did not produce the documents in question "as they [were] kept in the usual course of business." Fed. R. Civ. P. 34(b)(2)(E)(i). The magistrate judge did not abuse her discretion by denying Jaiyeola's motions to compel.

Because Jaiyeola failed to put forth any admissible expert evidence in support of his claims, the district court properly granted the defendants' motion for summary judgment and denied his cross-motion for summary judgment. *See Green*, 491 N.W.2d at 247. Although Jaiyeola argues that the district court erred by denying as moot his motion for leave to file a reply in support of his summary judgment motion, as well as his motions to exclude TMC's experts under *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993), such arguments are meritless. Given that the record lacked any admissible expert evidence in support of Jaiyeola's claims, no argument in a reply brief or favorable ruling on a *Daubert* motion would have enabled him to survive summary judgment.

III. Bias and Misconduct Claims

Jaiyeola alleges that the magistrate judge and the district court judge were both biased against him, thus requiring their recusal or disqualification. A judge's conduct may be "characterized as 'bias' or 'prejudice'" if "it is so extreme as to display clear inability to render fair judgment." *Liteky v. United States*, 510 U.S. 540, 551 (1994). Additionally, a judge's frustration with a litigant does not give rise to an inference of bias or partiality absent some indication of personal animosity on the part of the judge. *See United States v. Griffin*, 84 F.3d 820, 830-31 (7th Cir. 1996); *accord Gordon v. Lafler*, 710 F. App'x 654, 664 (6th Cir. 2017). Jaiyeola has failed to make such a showing. To the extent that Jaiyeola takes issue with the various adverse rulings below, it is well-settled that "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion." *Liteky*, 510 U.S. at 555. While Jaiyeola argues that it was improper for the magistrate judge to issue her report and recommendation prior to ruling on his pending motion for her to recuse herself due to alleged bias, he cannot show prejudice arising therefrom because the district court subsequently considered his recusal motion and denied it on the merits.

Next, Jaiyeola argues that the district court clerk violated his due-process rights by not filing several pleadings that he had submitted in November and December 2018—before the magistrate judge issued her report and recommendation. But the magistrate judge explicitly informed Jaiyeola that she had examined the pleadings in question and ordered the clerk to reject them and return them to him. This was because Jaiyeola tried filing those pleadings *after* the magistrate judge had issued an order on November 5, 2018, explicitly stating that "[n]o additional motions may be filed by any party without leave of court" due to the large number of motions then pending. In any event, as the district court rightly observed, Jaiyeola failed to explain how the pleadings in question would have altered "the outcome of the substantive legal claims," or how their absence from the record "denied him due process with respect to the cross-motions for summary judgment." *Jaiyeola*, 2019 WL 3543628, at *2.

Jaiyeola further argues that, upon entering judgment in this matter, the district court wrongly denied his pending motions for sanctions against defense counsel on mootness grounds. We "review the district court's decision whether to impose sanctions . . . for abuse of discretion."

Jones v. Ill. Cent. R.R. Co., 617 F.3d 843, 850 (6th Cir. 2010). "A court abuses its discretion when it commits a clear error of judgment, such as applying the incorrect legal standard, misapplying the correct legal standard, or relying upon clearly erroneous findings of fact." *Id.* (quoting *In re Ferro Corp. Derivative Litig.*, 511 F.3d 611, 623 (6th Cir. 2008)). A district court retains jurisdiction to consider collateral issues, such as sanctions, even after entry of judgment on the merits. *Knight Capital Partners Corp. v. Henkel AG & Co., KGaA*, 930 F.3d 775, 787 (6th Cir. 2019) (citing *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990)). But the district court may deny sanctions as moot where the requested relief relates to the merits. *See e.g., Prewitt v. Hamline Univ.*, 764 F. App'x 524, 527 (6th Cir. 2019) (permitting the denial of a sanctions motion as moot where the requested relief was an extension of discovery deadlines).

Of the nine motions denied as moot by the district court, two related to sanctions requests: *Plaintiff's motion to strike the defendants response because it contains lies against plaintiff and sanction the defendants attorneys for misconduct* (R. 264) and *Plaintiff's motion to sanction the defendants' attorney Carmen M. Bickerdt for misconduct* (R. 265). The first motion (R. 264) alleges fraud on the court by defense counsel and requests the district court strike Defendants' response to one of Jaiyeola's previous motions and sanction defense counsel for misconduct. The second motion (R. 265) alleges *Brady* violations and makes an unspecified request for sanctions. Neither motion makes explicit reference to attorney fees or monetary sanctions. The first motion, however, requests that the court strike a filing *and* sanction defense counsel. It seems to delineate between relief on a merits issue and relief on a collateral issue. As to the relief on a collateral issue, "[t]he district court should have considered and ruled on the merits of" that request, which is separate from Jaiyeola's request for relief on a merits issue. *Knight Capital Partners Corp.*, 930 F.3d at 787. The second motion, however, does not specify what relief is requested. Considering that the underlying accusations relate to evidentiary matters, we cannot say the district court abused its discretion in construing the requested relief as related to the merits, and thus moot.

IV. Remaining Claims

Jaiyeola argues that the district court's cumulative errors require that his case be remanded for further proceedings in front of a different judge. *See Beck v. Haik*, 377 F.3d 624, 644-45 (6th

Cir. 2004) (extending the cumulative-error doctrine to civil cases), *overruled on other grounds by Adkins v. Wolever*, 554 F.3d 650 (6th Cir. 2009) (en banc). But the cumulative-error doctrine does not warrant reversal here because we have identified only one error (which itself does not concern the district court's decision on the merits of Jaiyeola's claims).

He also contends that the district court erred by not permitting him to proceed in forma pauperis on appeal. This court has already resolved this issue, concluding that the district court properly denied pauper status to Jaiyeola. *See Jaiyeola*, 2020 U.S. App. LEXIS 6140 (6th Cir. Feb. 27, 2020) (order).

Finally, Jaiyeola argues that the district court erred by not appointing him counsel in this matter. However, counsel should not be appointed in a civil case unless exceptional circumstances exist. *Lavado v. Keohane*, 992 F.2d 601, 606 (6th Cir. 1993). No exceptional circumstances warranted the appointment of counsel in this matter.

Accordingly, we **DENY** the request for oral argument and the defendants' motion to strike Jaiyeola's reply brief and **AFFIRM** the district court's judgment. However, we **REVERSE** and **REMAND** Jaiyeola's sanctions motion (R. 264) for consideration as to the request for sanctions related to issues collateral to the merits.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GANIYU AYINLA JAIYEOLA,

Plaintiff,

v.

TOYOTA MOTOR NORTH AMERICA, INC., et al.,

Defendants.
_____/

Case No. 1:17-cv-562

HON. JANET T. NEFF

OPINION AND ORDER

This matter is before the Court on Plaintiff's Appeal (ECF No. 252) of a Magistrate Judge order denying reconsideration, and Plaintiff's Objections (ECF No. 291) to a Report and Recommendation of the Magistrate Judge, recommending that Plaintiff's Motion for Summary Judgment be denied; Defendants' Motion for Summary Judgment be granted; and this case be terminated. Plaintiff has also since filed nine additional various motions, including for further reconsideration and sanctions. The Court has reviewed the Magistrate Judge's order for error and has performed de novo consideration of those portions of the Report and Recommendation to which objection has been made. *See* 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3). The Court denies the Appeal and the Objections. None of Plaintiff's various subsequent motions affect this result, and they are therefore denied as moot. This case is properly terminated.

I. Plaintiff's Appeal

Plaintiff appeals the Magistrate Judge's order denying Plaintiff's motion for reconsideration of Plaintiff as an expert witness in this case. This Court will reverse an order of

the Magistrate Judge only where it is shown that the decision is "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A); *see also* FED. R. CIV. P. 72(a); W.D. Mich. LCivR 72.3(a). "'A finding is 'clearly erroneous' when, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.'" *United States v. Mabry*, 518 F.3d 442, 449 (6th Cir. 2008) (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)).

The Magistrate Judge denied reconsideration of her decision that Plaintiff's Rule 26 disclosure of himself as an expert witness was untimely and that Plaintiff is precluded from testifying in this matter as an expert witness. Plaintiff asserts that the Magistrate Judge "got the facts" wrong on "Plaintiff's untimeliness" because Plaintiff was not required to formally file his Rule 26 disclosures (ECF No. 252 at PageID.6126). Nonetheless, Plaintiff acknowledges that he was untimely in identifying himself as an expert, and argues his untimeliness was harmless (*id.* at PageID.6130).

Plaintiff has failed to show that the Magistrate Judge's order was clearly erroneous or contrary to law and that Defendants were not prejudiced by his untimeliness. As set forth in Defendants' Response (ECF No. 272), the Magistrate Judge's decision is fully supported by the record. The Magistrate Judge noted that Plaintiff conceded his Rule 26(a)(1) disclosures were untimely, but argued that Defendants were not prejudiced by Plaintiff's untimely attempt to identify himself as an expert witness (ECF No. 245 at PageID.5716). The Magistrate Judge further noted that Plaintiff's untimely disclosure did not comply with the requirements of Rule 26, and that the disclosure must be accompanied by a written report, as expressly required in the Case Management Order (*id.*). Plaintiff's failure to provide the requisite expert report was prejudicial to Defendants (*id.* at PageID.5717). Moreover, Plaintiff's failure to provide the written report was

continuing, and therefore the prejudice to Defendants continued (*id.*). The Magistrate Judge properly denied reconsideration—Plaintiff failed to "demonstrate a palpable defect by which the Court and the parties have been misled" and, that "a different disposition of the case must result from a correction thereof." W.D.Mich. LCivR 7.4(a) (*see* ECF No. 245 at PageID.5716).

Plaintiff makes additional arguments, such as that the Magistrate Judge erred in treating Defendants' objection to Plaintiff identifying himself as an expert, as a motion, but none of these arguments change the outcome. Plaintiff's Appeal is denied.

II. Plaintiff's Objections

After lengthy proceedings in this case, the Magistrate Judge issued a Report and Recommendation, recommending that Defendants' motion for summary judgment be granted and Plaintiff's motion for summary judgment be denied. The Magistrate Judge determined that Plaintiff's claims, for (1) negligent production; (2) breach of implied warranty; (3) gross negligence; (4) breach of express warranty; and (5) failure to warn, were in effect, a product liability action, as Plaintiff acknowledged (ECF No. 260 at PageID.6189-6190). However, Plaintiff had failed to submit any expert testimony or expert evidence in support of his claims, as required to maintain a product liability action under Michigan law (*id.* at PageID.6190). The only "evidence" cited by Plaintiff was his own "expert report," which was held inadmissible (*id.*). Thus, Plaintiff had failed to present or identify any admissible evidence creating a genuine factual dispute necessitating a trial, and Defendants were entitled to summary judgment (*id.*).

Plaintiff sets forth four objections to the Report and Recommendation: (1) the Magistrate Judge should have recused herself from this case before the Report and Recommendation was filed; (2) the Report and Recommendation was premature because it was filed before many of Plaintiff's pleadings; (3) the Magistrate Judge failed to properly apply the summary judgment

standards in analyzing the parties' cross-motions; and (4) the Magistrate Judge denied Plaintiff's his due process rights by not applying any legal standard or analysis to back up the recommendation that this case be "terminated." None of the arguments raised by Plaintiff in his objections undermines the Magistrate Judge's analysis or conclusion that Plaintiff's substantive legal claims fail as a matter of law.

As set forth in Defendants' Response, nothing of record establishes personal bias or prejudice such that the Magistrate Judge was required to recuse herself from this case. At most, Plaintiff takes issue with the Magistrate Judge's adverse rulings. "[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion." *Liteky v. United States*, 510 U.S. 540, 555 (1994); *see Traficant v. C.I.R.*, 884 F.2d 258, 267 (6th Cir. 1989). Further, Plaintiff fails to show how any pleadings he submitted—that allegedly were filed by the Clerk after the Report and Recommendation or that were not considered by the Magistrate Judge—change the outcome of the substantive legal claims or denied him due process with respect to the cross-motions for summary judgment.

This Court finds no merit in Plaintiff's argument that the Magistrate Judge failed to properly apply the standards for summary judgment. The Magistrate Judge set forth, and correctly applied, the summary judgment standards in the Report and Recommendation (*see* ECF No. 260 at PageID.6188-6189). The Magistrate Judge properly determined that there was no "genuine factual dispute necessitating a trial" (*id.* at PageID.6190). Plaintiff's mere disagreement with the outcome does not establish a valid objection. Finally, Plaintiff's objection to the termination of this case likewise is without merit. Having determined that Plaintiff's legal claims fail, and Defendants are entitled to summary judgment, this case is properly terminated.

The Magistrate Judge's decision is sound and is supported by the record and the governing law. Therefore, the Court denies the Objections and adopts the Magistrate Judge's Report and Recommendation as the Opinion of this Court.

To the extent that Plaintiff relies on his *in forma pauperis* status in further litigating this case, the Court also certifies pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of this Judgment would not be taken in good faith. *See McGore v. Wrigglesworth*, 114 F.3d 601, 610-11 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 211-12 (2007).

III. Plaintiff's Motions

Plaintiff has filed numerous motions for leave to seek reconsideration of rulings in this case, as well as for sanctions, to make additional filings, and to strike Defendants' filings subsequent to the Report and Recommendation. This case has been thoroughly litigated and properly decided on the record. None of Plaintiff's pending motions affect the outcome and they are therefore denied as moot.

A Judgment will be entered consistent with this Opinion and Order. *See* Fed. R. Civ. P. 58.

Therefore:

IT IS HEREBY ORDERED that Plaintiff's Appeal (ECF No. 252) is DENIED.

IT IS FURTHER ORDERED that Plaintiff's Objections (ECF No. 291) are DENIED, and the Report and Recommendation of the Magistrate Judge (ECF No. 260) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Plaintiff's various subsequent Motions (ECF Nos. 264, 265, 266, 268, 277, 279, 281, 283, 285) are DENIED as moot.

IT IS FURTHER ORDERED that this Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this decision would not be taken in good faith.

IT IS FURTHER ORDERED that Plaintiff is placed on notice that this case is now TERMINATED upon entry of this Opinion and Order and the Judgment, and if Plaintiff files motions, notices or other documents that lack any appropriate legal and/or factual basis after this case is terminated, such filings will be summarily denied or rejected by the Court.

Dated: August 5, 2019

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge

APPENDIX C

No. 19-1918

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Mar 16, 2021
DEBORAH S. HUNT, Clerk

GANIYU AYINLA JAIYEOLA,

Plaintiff-Appellant,

v.

TOYOTA MOTOR NORTH AMERICA, INC., ET AL.,

Defendants,

TOYOTA MOTOR CORPORATION, A FOREIGN CORPORATION; AISAN INDUSTRY CO., LTD, A FOREIGN CORPORATION,

Defendants-Appellees.

ORDER

BEFORE: STRANCH, THAPAR, and READLER, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GANIYU JAIYEOLA,

Plaintiff,

v.

TOYOTA MOTOR CORP., et al.,

Defendants.
_____/

Hon. Janet T. Neff

Case No. 1:17-cv-562

REPORT AND RECOMMENDATION

This matter is before the Court on Defendants' Motion for Summary Judgment, (ECF No. 226), and Plaintiff's Motion for Summary Judgment, (ECF No. 247). This action arises from an incident on November 25, 2013, in which Plaintiff was driving a 1996 Toyota Camry which allegedly "experienced a[n] unwanted sudden unintended acceleration," resulting in a motor vehicle accident. Plaintiff initiated this action in state court asserting various claims under Michigan law, but the matter was subsequently removed to this Court. The only defendants remaining in this case, Toyota Motor Corporation (TMC) and Aisan Industry Co., Ltd. (Aisan), now move for summary judgment. In accordance with 28 U.S.C. § 636(b), authorizing United States Magistrate Judges to submit proposed findings of fact and recommendations for resolution of dispositive motions, the undersigned recommends that Defendants' motion be **granted**, Plaintiff's motion be **denied**, and this matter **terminated**.

SUMMARY JUDGMENT STANDARD

Summary judgment "shall" be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed.

R. Civ. P. 56(a). A party moving for summary judgment can satisfy its burden by demonstrating "that the respondent, having had sufficient opportunity for discovery, has no evidence to support an essential element of his or her case." *Minadeo v. ICI Paints*, 398 F.3d 751, 761 (6th Cir. 2005). Once the moving party demonstrates that "there is an absence of evidence to support the nonmoving party's case," the non-moving party "must identify specific facts that can be established by admissible evidence, which demonstrate a genuine issue for trial." *Amini v. Oberlin College*, 440 F.3d 350, 357 (6th Cir. 2006).

While the Court must view the evidence in the light most favorable to the non-moving party, the party opposing the summary judgment motion "must do more than simply show that there is some metaphysical doubt as to the material facts." *Amini*, 440 F.3d at 357. The existence of a mere "scintilla of evidence" in support of the non-moving party's position is insufficient. *Daniels v. Woodside*, 396 F.3d 730, 734-35 (6th Cir. 2005). The non-moving party "may not rest upon [his] mere allegations," but must instead present "significant probative evidence" establishing that "there is a genuine issue for trial." *Pack v. Damon Corp.*, 434 F.3d 810, 813-14 (6th Cir. 2006).

Moreover, the non-moving party cannot defeat a properly supported motion for summary judgment by "simply arguing that it relies solely or in part upon credibility determinations." *Fogerty v. MGM Group Holdings Corp., Inc.*, 379 F.3d 348, 353 (6th Cir. 2004). Rather, the non-moving party "must be able to point to some facts which may or will entitle him to judgment, or refute the proof of the moving party in some material portion, and. . .may not merely recite the incantation, 'Credibility,' and have a trial on the hope that a jury may disbelieve factually uncontested proof." *Id.* at 353-54. In sum, summary judgment is

appropriate "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Daniels*, 396 F.3d at 735.

While a moving party without the burden of proof need only show that the opponent cannot sustain his burden at trial, a moving party with the burden of proof faces a "substantially higher hurdle." *Arnett v. Myers*, 281 F.3d 552, 561 (6th Cir. 2002). Where the moving party has the burden, "his showing must be sufficient for the court to hold that no reasonable trier of fact could find other than for the moving party." *Calderone v. United States*, 799 F.2d 254, 259 (6th Cir. 1986). The Sixth Circuit has emphasized that the party with the burden of proof "must show the record contains evidence satisfying the burden of persuasion and that the evidence is so powerful that no reasonable jury would be free to disbelieve it." *Arnett*, 281 F.3d at 561. Accordingly, summary judgment in favor of the party with the burden of persuasion "is inappropriate when the evidence is susceptible of different interpretations or inferences by the trier of fact." *Hunt v. Cromartie*, 526 U.S. 541, 553 (1999).

ANALYSIS

In his complaint, Plaintiff has asserted five separate causes of action under Michigan law: (1) negligent production; (2) breach of implied warranty; (3) gross negligence; (4) breach of express warranty; and (5) failure to warn. While Plaintiff's claims sound in common law tort principles, Michigan has enacted product liability legislation which "established certain evidentiary standards for a product liability action." *Duronio v. Merck & Co., Inc.*, 2006 WL 1628516 at *2 (Mich. Ct. App., June 13, 2006). Under Michigan law, a "product liability action" is defined as "an action based on a legal or equitable theory of liability brought for the death of a

person or for injury to a person or damage to property caused by or resulting from the production of a product." *Tuck v. Wixom Smokers Shop*, 2017 WL 1034551 at *2 (Mich. Ct. App., Mar. 16, 2017) (quoting Mich. Comp. Laws § 600.2945). Defendants argue that Plaintiff's claims all satisfy this statutory definition of a "product liability action." Plaintiff expressly acknowledges that such is the case. (ECF No. 242 at PageID.5475).

A plaintiff asserting a product liability action under Michigan law "may proceed under either a negligence or warranty theory, but must demonstrate that the defendant supplied a product that was defective and that the defect was the cause of the injury." *Tuck*, 2017 WL 1034551 at *2. Plaintiff alleges that his injuries were caused by a specific product defect, "an unsymmetrical design defect of the ribs on the Air Cleaner Hose" of his vehicle. (ECF No. 242 at PageID.5474-75). Because the alleged defect in question "presents technical issues that are beyond the common experience and understanding of the common juror," Plaintiff is obligated to support his claims with relevant expert testimony. *See, e.g., Dow v. Rheem Mfg. Co.*, 2011 WL 4484001 at *22 (E.D. Mich., Sept. 26, 2011); *Lawrenchuk v. Riverside Arena, Inc.*, 542 N.W.2d 612, 614 (Mich. Ct. App. 1995) (same).

Plaintiff, however, has failed to submit any expert testimony or expert evidence in support of his claims. In fact, the only "evidence" which Plaintiff cites in support of his claims is his own "expert report" which the Court has held is inadmissible. (ECF No. 183, 245). In sum, Plaintiff has failed to present or identify any admissible evidence creating a genuine factual dispute necessitating a trial. Accordingly, the undersigned recommends that Defendants' motion be granted and Plaintiff's motion be denied.

CONCLUSION

For the reasons articulated herein, the undersigned recommends that Defendants' Motion for Summary Judgment, (ECF No. 226), be **granted**; Plaintiff's Motion for Summary Judgment, (ECF No. 247), be **denied**; and this matter **terminated**.

OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within fourteen (14) days of the date of service of this notice. 28 U.S.C. § 636(b)(1)(C). Failure to file objections within the specified time waives the right to appeal the District Court's order. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir.1981).

Respectfully submitted,

Dated: December 6, 2018

/s/ Ellen S. Carmody
ELLEN S. CARMODY
United States Magistrate Judge

Additional material from this filing is available in the Clerk's Office.