NOT RECOMMENDED FOR PUBLICATION

No. 20-1480

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOHNNY TIPPINS,

Plaintiff-Appellant,

v.

HEIDI E. WASHINGTON, MDOC Director; CATHERINE S. BAUMAN, Warden,

Defendants,

and

ANTHONY IMMEL, Deputy Warden, et al.,

Defendants-Appellees.

FILED
Apr 20, 2021
DEBORAH S. HUNT, Clerk

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN

ORDER

Before: NORRIS, DONALD, and THAPAR, Circuit Judges.

Johnny Tippins, a *pro se* Michigan prisoner, appeals the district court's grant of summary judgment to the defendant prison officials and employees in his 42 U.S.C. § 1983 civil-rights action. Tippins moves to expedite his case and for remand. 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 January 2018, Tippins was incarcerated at the Chippewa Correctional Facility when a fellow inmate informed him that another prisoner, known as Ray-Ray, was planning to attack him in retaliation for the murder that Tippins was in prison for committing. Tippins requested protection, and he was transferred to Alger Correctional Facility. In February, at Alger, Tippins overheard a conversation between prisoners that led him to believe that Ray-Ray was planning to

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Deborah S. Hunt
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Filed: April 20, 2021

Ms. Jessica Ellen Pelto
Office of the Attorney General
of Michigan
P.O. Box 30217
Lansing, MI 48909

Mr. Johnny Tippins
Oaks Correctional Facility
1500 Caberfae Highway
Manistee, MI 49660

Re: Case No. 20-1480, *Johnny Tippins v. Heidi Washington, et al*
Originating Case No. 2:18-cv-00069

Dear Mr. Tippins & Ms. Pelto,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Virginia Lee Padgett
Case Manager
Direct Dial No. 513-564-7032

cc: Mr. Thomas Dorwin

Enclosure

Mandate to issue

have another inmate, known as "A-1," attack him. Tippins requested protection at Alger and transfer to another facility, and he was placed in protective segregation. Prison Counselor Keith Chamberlin investigated the matter, but Tippins could not identify any of the prisoners he overheard. And while Tippins stated that "Ray-Ray's" last name was Raymond, Chamberlin could not find a prisoner with that name at Chippewa at the same time as Tippins. Consequently, Deputy Warden Anthony Immel and Resident Unit Manager Gregory Schram, as members of the Security Classification Committee, determined that Tippins did not need protection. Deputy Warden Scott Sprader likewise denied Tippins's request to be transferred to another prison. When Tippins was ordered to move out of protective segregation, he refused and was issued a misconduct ticket for disobeying an order. He remained in protective segregation.

In May 2018, Tippins filed a complaint against Chamberlin, Immel, Schram, and Sprader, as well as Director of the Michigan Department of Corrections Heidi Washington and Warden Catherine S. Bauman. He alleged that the defendants violated his Eighth Amendment rights by failing to protect him and wrongly giving him misconduct tickets. He requested an injunction ordering his transfer to another facility, as well as $130,000 in damages.

The district court reviewed Tippins's complaint, *see* 28 U.S.C. §§ 1915(e)(2), 1915A, and held that he failed to state a claim upon which relief may be granted against Washington and Bauman because he did not allege that they personally engaged in any actions that harmed him. *Tippins v. Washington*, No. 2:18-CV-69, 2018 WL 4574832, at *2 (W.D. Mich. Sept. 25, 2018). The district court also denied Tippins's request for an injunction ordering his immediate transfer, holding that he was in administrative segregation and thus not in danger. *Id.* at *3.

While the parties engaged in discovery, Tippins again moved for injunctive relief, this time seeking to prevent his transfer to Oaks Correctional Facility. A magistrate judge recommended denying that motion on the merits while noting that Tippins had already been transferred to Oaks. *Tippins v. Immel*, No. 2:18-CV-00069, 2019 WL 8407447, at *2 (W.D. Mich. May 30, 2019) (report and recommendation). Meanwhile, the remaining defendants moved for summary judgment, and Tippins filed several miscellaneous motions, including one seeking a hearing about

alleged spoliation of evidence and another seeking additional discovery, as well as a motion under Federal Rule of Civil Procedure 56(d) asking for additional discovery before the district court resolved the defendants' summary-judgment motion. A magistrate judge recommended denying Tippins's motions and granting the defendants' motion for summary judgment. *Tippins v. Immel*, No. 2:18-CV-00069, 2019 WL 8407448 (W.D. Mich. Nov. 20, 2019) (report and recommendation). The district court adopted the magistrate judge's recommendations over Tippins's objections, denied Tippins's motions, granted summary judgment to the defendants, and dismissed Tippins's case. *Tippins v. Washington*, No. 2:18-CV-69, 2020 WL 614044 (W.D. Mich. Feb. 10, 2020).

On appeal, Tippins raises three arguments: (1) the defendants retaliated against him by transferring him to a facility to participate in a program for prisoners with serious mental illness, even though he has not been diagnosed with such an illness, and the district court erred in denying his motion for an injunction ordering his transfer to another facility; (2) the district court erred in granting summary judgment to the defendants and by denying his Rule 56(d) motion for additional discovery; and (3) the magistrate judge erred in denying his spoliation-related motions.

We review a district court's grant of summary judgment *de novo*. *Huckaby v. Priest*, 636 F.3d 211, 216 (6th Cir. 2011). Summary judgment is appropriate when "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). In resolving a summary judgment motion, we view the evidence in the light most favorable to the non-moving party. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

"To establish [an Eighth Amendment] violation based on failure to protect, a prison inmate first must show that the failure to protect from risk of harm is objectively 'sufficiently serious.'" *Bishop v. Hackel*, 636 F.3d 757, 766 (6th Cir. 2011) (quoting *Farmer v. Brennan*, 511 U.S. 825, 833 (1994)). Next, a plaintiff must show that the prison official was deliberately indifferent to his health or safety; that is, that the official "knows of and disregards an excessive risk to inmate health or safety." *Id.* (quoting *Farmer*, 511 U.S. at 837).

Taking Tippins's second appellate argument first, the district court granted the defendants' motion for summary judgment on his failure-to-protect claim because he did not point to evidence that could establish that the defendants knew of a serious risk to his safety yet failed to take reasonable steps to abate it. The magistrate judge noted that the defendants placed Tippins in segregation when he reported hearing that an inmate was planning to attack him, they investigated his claim, and they declined to provide him with protection or to transfer him to another prison only after his allegations could not be substantiated and it was determined that he did not face any risk to his safety. *Tippins*, 2019 WL 8407448, at *4. The court stated that "Tippins honestly believes that some prisoners are planning to attack him," but he did not show that the defendants "subjectively perceiv[ed] facts from which to infer a substantial risk to" him and that they disregarded that risk. *Id.*

In his appellate brief, Tippins does not so much contest this ruling as argue that the district court erred in denying his Rule 56(d) motion to refrain from ruling on the summary-judgment motion until he received additional discovery. Rule 56(d) states that "[i]f a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may: (1) defer considering the motion or deny it; (2) allow time to obtain affidavits or declarations or to take discovery; or (3) issue any other appropriate order."

The magistrate judge determined that Tippins had failed to show that he needed additional discovery to respond to the defendants' motion. Tippins had previously sought the discovery in several motions that the district court denied. In recommending their denial, the magistrate judge explained that Tippins had engaged in extensive discovery and was given great leeway in the process yet repeatedly failed to abide by discovery rules.

In his Rule 56(d) motion, Tippins sought discovery about Chamberlin allegedly having removed one name from a screenshot of his search of the State's Offender Management Network Information System, which he performed when investigating Tippins's claim about "Ray-Ray" or "Raymond." This is also the subject of Tippins's third appellate argument, in which he claims that the district court erred in denying his motion for a hearing about spoliation. Chamberlin's

screenshot of a page of search results did not show one of the two inmates named "Raymond" who were at the same prison at the same time as Tippins, and so Tippins argued that Chamberlin must have therefore altered the results.

In denying his spoliation-hearing motion, the district court found that the defendants had merely committed a clerical error by not including the second page of search results. The affidavit accompanying the search results discusses the inmate associated with the missing record, making it unlikely that the defendants omitted the second page in bad faith. The district court also noted that the system is open to the public, and the court performed its own search, which confirmed that the missing record was on the second page of results. Moreover, Tippins was aware of this prisoner, so the information was not destroyed or hidden. The district court also noted that Tippins had alleged that the defendants had altered evidence related to these searches even before the defendants produced the screenshot in question.

Tippins also asked for more discovery before the district court ruled on the summary-judgment motion because the defendants did not properly respond to some of his discovery requests. But the district court held that he had not properly raised that issue in a motion to compel. *Tippins*, 2019 WL 8407448, at *3.

Given that the parties engaged in extensive discovery, that Tippins repeatedly failed to abide by discovery rules, and because the additional evidence that Tippins sought would not tend to show that the defendants were deliberately indifferent to his safety, the district court did not abuse its discretion in denying his Rule 56(d) motion. *See Cardinal v. Metrish*, 564 F.3d 794, 797 (6th Cir. 2009) (analyzing the previous version of the rule in Federal Rule of Civil Procedure 56(f)). Furthermore, Tippins has not shown that the district court erred in granting summary judgment to the defendants on his failure-to-protect claim.

In Tippins's third argument, he claims that the district court erred in denying his discovery and spoliation motions about the allegedly altered screenshot. He also states that the district court erred in denying several more of his many non-dispositive motions. But Tippins dedicates his third argument nearly entirely to the spoliation issue. Thus, by failing to make "some effort at

developed argumentation," he has forfeited review of those matters. *EPLET, LLC v. DTE Pontiac N., LLC*, 984 F.3d 493, 502 (6th Cir. 2021). And, for the reasons cited above, the district court did not abuse its discretion in holding that Tippins had failed to show that Chamberlin tampered with the screenshot or destroyed evidence. *See Hohman v. Eadie*, 894 F.3d 778, 781 (6th Cir. 2018). Tippins also argues that the district court did not review some of the arguments that he raised in unauthorized reply briefs. Tippins makes this same argument in his motion for remand. Yet, as the court explained in denying his motion for relief from judgment, the district court considered Tippins's arguments in his various reply briefs, including those about the spoliation issue, and rejected them.

Finally, in his first argument, Tippins maintains that the district court erred in denying his motion for a preliminary injunction either preventing his transfer to or ordering his transfer from the Oaks facility. We review for an abuse of discretion a district court's decision on a motion for a preliminary injunction. *Bays v. City of Fairborn*, 668 F.3d 814, 819 (6th Cir. 2012). In deciding whether to grant a preliminary injunction, a court weighs four factors: "(1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury absent the injunction; (3) whether the injunction would cause substantial harm to others; and (4) whether the public interest would be served by the issuance of an injunction." *Id.* at 818-19.

The magistrate judge determined that Tippins did not show a likelihood of success on his Eighth Amendment claim, that he did not show that he would suffer irreparable injury given that he could only speculate about the presence of a potentially dangerous fellow inmate, and that the court was hesitant to disrupt the administration of the state prison system. *Tippins*, 2019 WL 8407447, at *2. In his appellate brief, Tippins argues that the prison staff at Oaks is violating his First Amendment rights by placing him in segregation and preventing him from researching his legal claims. He also asserts that he has been placed incorrectly in a program for prisoners with mental illness. But Tippins did not raise these claims in his pleadings to the district court, so they could not support his request for an injunction in this failure-to-protect case. Tippins also

argues that the district court did not review his spoliation argument before denying his injunction motion, but, as the defendants point out, he did not raise that argument in his motion for an injunction. In any event, the argument is meritless. Moreover, as explained above, Tippins did not show a likelihood of success on the merits of his Eighth Amendment suit. Therefore, the district court did not abuse its discretion in denying his motion for a preliminary injunction.

Accordingly, we **DENY** Tippins's motion to remand, **DENY** the motion to expedite as moot, and **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

APPENDIX B

Sixth Circuit Order denying Petitions
for Panel Rehearing and Rehearing En banc
dated June 17, 2021

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Deborah S. Hunt
Clerk

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Filed: June 17, 2021

Johnny Tippins
Oaks Correctional Facility
1500 Caberfae Highway
Manistee, MI 49660

Re: Case No. 20-1480, *Johnny Tippins v. Heidi Washington, et al*
Originating Case No.: 2:18-cv-00069

Dear Mr. Tippins,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Beverly L. Harris
En Banc Coordinator
Direct Dial No. 513-564-7077

cc: Ms. Jessica Ellen Pelto

Enclosure

No. 20-1480

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jun 17, 2021
DEBORAH S. HUNT, Clerk

JOHNNY TIPPINS,

Plaintiff-Appellant,

v.

HEIDI E. WASHINGTON, MDOC DIRECTOR; CATHERINE S. BAUMAN, WARDEN,

Defendants,

ANTHONY IMMEL, DEPUTY WARDEN, ET AL.,

Defendants-Appellees.

ORDER

BEFORE: NORRIS, DONALD, and THAPAR, 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
NORTHERN DIVISION

JOHNNY TIPPINS,

Plaintiff,

v.

HEIDI WASHINGTON, et al,

Defendants.
_____/

Case No. 2:18-cv-69

HON. JANET T. NEFF

ORDER

Now pending before the Court in this closed prisoner civil rights case is Plaintiff's Motion to Set Aside or Vacate Judgment (ECF No. 180). Defendants did not file a response to the motion. For the following reasons, the Court denies Plaintiff's motion.

On February 10, 2020, this Court entered an Opinion and Order (ECF No. 177), which granted Plaintiff's motions to supplement but denied his objections to the Reports and Recommendations. Consistent with the Reports and Recommendations, the Court therefore granted Defendants' motion for summary judgment and denied Plaintiff's motions seeking a temporary restraining order, additional discovery, and declaratory judgment (*id.*). Last, this Court's Opinion and Order denied Plaintiff's appeal from a Magistrate Judge's Order that resolved seven pretrial motions filed by Plaintiff (*id.*). As the February 10, 2020 Opinion and Order resolved all pending claims, this Court also entered a Judgment to terminate this case (ECF No. 178).

Pursuant to Federal Rule of Civil Procedure 59(e), Plaintiff filed the instant motion at bar, seeking reconsideration of this Court's February 10, 2020 decision. "A district court may grant a

Rule 59(e) motion only to (1) correct a clear error of law, (2) account for newly discovered evidence, (3) accommodate an intervening change in the controlling law, or (4) otherwise prevent manifest injustice." *Moore v. Coffee Cty., TN*, 402 F. App'x 107, 108 (6th Cir. 2010). Rule 59(e) "does not permit parties to effectively 're-argue a case.'" *Howard v. United States*, 533 F.3d 472, 475 (6th Cir. 2008) (quoting *Sault Ste. Marie Tribe of Chippewa Indians v. Engler*, 146 F.3d 367, 374 (6th Cir. 1998)). "Disagreement with the Court's interpretations of facts, or applications of the correct law, rarely provide a sound basis for a motion for reconsideration." *Fleet Eng'rs, Inc. v. Mudguard Tech., LLC*, No. 1:12-CV-1143, 2013 WL 12085183, at *1 (W.D. Mich. Dec. 31, 2013).

Here, Plaintiff merely reiterates his prior arguments. Plaintiff has not demonstrated that the Court's decision was contrary to law, nor has Plaintiff identified any new evidence, an intervening change in controlling law, or manifest injustice. Accordingly:

IT IS HEREBY ORDERED that Plaintiff's Motion to Set Aside or Vacate Judgment (ECF No. 180) is DENIED.

Dated: April 15, 2020

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

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

JOHNNY TIPPINS,

Plaintiff,

v.

HEIDI WASHINGTON, et al.,

Defendants.
_____/

Case No. 2:18-cv-69

HON. JANET T. NEFF

OPINION AND ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed numerous motions, and the Defendants remaining in this case—Defendants Chamberlin, Immel, Scheam, and Sprader—moved for summary judgment. The matter was referred to the Magistrate Judge who issued two Reports and Recommendations (R&R) regarding these motions. The Magistrate Judge recommends that the Court deny Plaintiff's motions and grant Defendants' Motion for Summary Judgment. Additionally, Plaintiff has filed an appeal from the Magistrate Judge's Order issued on November 15, 2019. The matter is presently before the Court on Plaintiff's objections to the Reports and Recommendations, Plaintiff's appeal, and Plaintiff's motions to supplement one set of objections and his appeal. Defendants filed responses to the latter set of objections and Plaintiff's appeal, and Plaintiff, albeit without leave, filed replies. The Court grants the motions to supplement, denies the objections, denies the appeal, and issues this Opinion and Order.

I. Plaintiff's Objections

In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Reports and Recommendations to which objections have been made. The Court denies the objections.

A. Objections to May 30, 2019 Report and Recommendation (ECF No. 108)

Objection One. Plaintiff argues that the "Magistrate Judge factually and or legally erred in its [sic] analysis by not considering Plaintiff's Reply Brief" regarding the likelihood-of-success-on-the-merits factor (ECF No. 109 at PageID.535). However, the Magistrate Judge did not exclude Plaintiff's Reply but expressly referenced the Reply in the Report and Recommendation (ECF No. 108 at PageID.529). Accordingly, Plaintiff's objection one is denied.

Objection Two. Next, Plaintiff argues that the Magistrate Judge erred in determining that Plaintiff failed to allege sufficient facts to establish irreparable harm (ECF No. 109 at PageID.541). Plaintiff concedes in his Objection that "[a]n 'objection' that does nothing more than disagree with a magistrate judge's determination, 'without explaining the source of the error,' is not considered a valid objection" (*id.* at PageID.534, citing *Howard v. Sec'y of Health and Human Servs.*, 932 F.2d 505, 509 (6th Cir. 1991)). Here, Plaintiff merely disagrees with the Magistrate Judge's analysis of the irreparable harm in this case, without identifying any factual or legal error in the analysis. Objection two is therefore denied.

Objection Three. Third, "Plaintiff argues that the Magistrate Judge erred in [his] failure to consider his Reply Brief where Mr. Tippins addressed the fact that this issue regarding transfer is not moot" (ECF No. 109 at PageID.543). Again, the Magistrate Judge expressly ". . . consider[ed] Plaintiff's motion and the supplements . . ." (R&R, ECF No. 108 at PageID.531). Therefore, Plaintiff's third objection is denied.

Objection Four. Plaintiff fails to state an objection under his caption "Objection #4" (ECF No. 109 at PageID.546). Plaintiff does not identify any portion of the Report and Recommendation with which he disagrees, nor has Plaintiff demonstrated any factual or legal error in the Magistrate Judge's analysis. Objection four is denied.

Accordingly, this Court adopts the Magistrate Judge's May 30, 2019 Report and Recommendation (ECF No. 108) as the Opinion of this Court.

B. Objections to November 20, 2019 Report and Recommendation (ECF No. 155)

Objection One. Plaintiff argues that the Magistrate Judge erred in denying Plaintiff's motion to compel (ECF No. 159 at PageID.969). Plaintiff disagrees with the Magistrate Judge's determination that additional time was not needed for discovery (*id.*) Plaintiff contends that the denial of certain discovery documents creates the need (*id.*). Plaintiff's objection relies on the fact that he ". . . submitted a 'Notice to Appeal the Magistrate Judge's Decision . . .'" (*id.*). However, the Notice to Appeal was filed on November 27, 2019, after the Report and Recommendation's filing date of November 20, 2019. Objection one is therefore denied.

Objection Two. Plaintiff argues that the Magistrate Judge made a factual error when issuing the November 15, 2019 Order denying Plaintiff's motion for a failure to show that any evidence was "destroyed or altered" (Objs., ECF No. 159 at PageID.971-972; Order, ECF No. 154). Plaintiff states that the Magistrate Judge incorrectly found that certain inmate information would have been on the second page of the screenshot from the Offender Tracking Information System (OTIS) website (ECF No. 159 at PageID.971-972). Plaintiff alleges, without any supporting evidence, that Defendants tampered with the OTIS database (*id.* at PageID.972). Plaintiff's argument identifies no error in the Magistrate Judge's conclusion that no evidence has

been presented to discredit Defendants (R&R, ECF No. 155 at PageID.930). Therefore, objection two is denied.

Objection Three. Plaintiff's third objection to the Report and Recommendation fails to include any developed argument (ECF No. 159 at PageID.972-973). Plaintiff instead provides details regarding his document discovery and requests the Court reconsider a previous issue within Plaintiff's March 2019 appeal (Pl. Obj., ECF No. 159 at PageID.972-973; Appeal, ECF No. 61). This Court already reviewed this appeal and issued an Opinion and Order on April 12, 2019 (ECF No. 75). Plaintiff's "objection" three is denied.

Objection Four. Plaintiff argues that the Magistrate Judge erred by not concluding that "Defendants filed their Summary Judgment prematurely in terms of not providing Plaintiff with discovery material within the discovery phase" (ECF No. 159 at PageID.974). Plaintiff's argument represents a misunderstanding of the law. The Magistrate Judge correctly found that Defendants complied with the deadlines provided in the May 14, 2019 Order (ECF No. 100) and that those deadlines were unchanged (R&R, ECF No. 155 at PageID.931). Plaintiff also argues within his fourth objection that the lack of discovery creates the need for "a hearing on spoliation of evidence" (ECF No. 159 at PageID.974). However, the Magistrate Judge already decided Plaintiff's Motion for Hearing on Spoliation of Evidence (ECF No. 112) and denied such for the reasons stated in the November 15, 2019 Order (ECF No. 154 at PageID.912-915). Objection four is denied.

Objection Five. Plaintiff argues that the "Magistrate Judge erroneously found that Defendants adequately investigated this matter" and that ". . . the Court failed to acknowledge the deleted names from OTIS. . ." (ECF No. 159 at PageID.975). Plaintiff's objection presents unsupported allegations that Defendants did not perform an investigation. Because Plaintiff does not identify any error to be reviewed, objection five is denied.

Objection Six. Plaintiff argues that "[t]he Magistrate Judge was in err[or] not finding that there was a constitutional violation" (ECF No. 159 at PageID.976). As set forth by the Magistrate Judge, an Eighth Amendment failure-to-protect claim requires a plaintiff to prove that a defendant showed "'deliberate indifference' to inmate health or safety" (R&R, ECF No. 155 at PageID.932, citing *Farmer v. Brennan*, 511 U.S. 825, 834 (1994)). Plaintiff asserts that Defendants knowingly wrote false misconduct reports with the purpose of sending him back to a prison where the serious threat existed (ECF No. 159 at PageID.976). However, Plaintiff fails to demonstrate how the Magistrate Judge erred in analyzing the facts supported by the record in this case. Objection six is denied.

Objection Seven. Plaintiff begins his seventh objection by rearguing his Eighth Amendment claim and spoliation of evidence issue (ECF No. 159 at PageID.977). These arguments were already addressed in objections six and four, respectively. To the extent Plaintiff also requests a "declaratory judgment ... because LMF employees and the administration does [sic] not handle protection requests from African Americans appropriately" (*id.* at PageID.978), Plaintiff's request is misplaced as he concedes that he is personally no longer affected by the LMF staff, due to his transfer.

Accordingly, this Court adopts the Magistrate Judge's Report and Recommendation (ECF No. 155) as the Opinion of this Court.

II. Plaintiff's Appeal from Order (ECF No. 154)

Plaintiff appeals from the Magistrate Judge's November 15, 2019 Order (ECF No. 154), which denied seven motions filed by Plaintiff (ECF No. 156). In his appeal, Plaintiff specifically challenges the Magistrate Judge's resolution of six of the seven motions (ECF Nos. 112, 125, 126, 127, 134 & 144). This Court will reverse an order of a 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)).

Motion for Hearing on Spoliation of Evidence. On June 10, 2019, Plaintiff filed a Motion for Hearing on Spoliation of Evidence (ECF No. 112). The Magistrate Judge denied the motion, determining it "was simply a clerical error not to include the second page of the OTIS screenshot" and that Plaintiff ". . . failed to show that any evidence was altered or destroyed" (ECF No. 154 at PageID.914). In Plaintiff's appeal from the Magistrate Judge's Order, Plaintiff argues that because the discrepancy between provided documents and a particular inmate's information was only located on one of two documents, the Magistrate Judge erred in his findings (ECF No. 156 at PageID.938-939; ECF No. 171). However, Plaintiff's mere conclusory statements that the discrepancies on the OTIS list indicate alteration by Defendants fails to demonstrate that the Magistrate Judge's order was either clearly erroneous or contrary to law.

Motion to Amend Complaint. On July 3, 2019, Plaintiff filed a motion to amend his Complaint (ECF No. 125). The Magistrate Judge denied the motion, determining that amending the Complaint would result in both (1) an undue delay and prejudice to Defendants and (2) futility (ECF No. 154 at PageID.916). In his appeal, Plaintiff argues that his need to exhaust administrative remedies before filing a federal claim supersedes the requirement of the Court to manage undue delays (ECF No. 156 at PageID.940). Plaintiff's argument lacks merit. The Magistrate Judge correctly applied the law in *Crawford v. Roane*, 53 F.3d 750, 753 (6th Cir. 1995), stating that "[t]he court may deny leave to amend a complaint when the amendment . . . will result

in undue delay or prejudice to the opposing party..." (ECF No. 154 at PageID.915-916). Plaintiff also disagrees that the amendment would be futile (ECF No. 156 at PageID.942). However, Plaintiff fails to demonstrate that the bases for the Magistrate Judge's decision are either clearly erroneous or contrary to law.

Motion to Appoint Counsel. On July 3, 2019, Plaintiff filed his fifth motion to appoint counsel (ECF No. 126). The Magistrate Judge denied the motion, determining Plaintiff's ". . . reasons do not rise to the level of exceptional circumstances warranting the appointment of counsel as described in *Lavado v. Keohane*, 992 F.2d 601, 604-05 (6th Cir. 1993)" (ECF No. 154 at PageID.923). In his appeal from the Magistrate Judge's Order, Plaintiff opines that the unavailability of requested documents is an exceptional circumstance (ECF No. 156 at PageID.949). Plaintiff's argument again demonstrates merely his disagreement with the Magistrate Judge's resolution of his motion. Plaintiff's argument does not demonstrate that the Magistrate Judge's decision is either clearly erroneous or contrary to law.

Motion to Compel Production. On July 3, 2019, Plaintiff filed a Motion to Compel Production of Electronically Stored Information and Answer Interrogatories (ECF No. 127). The Magistrate Judge's Order denied the motion in its entirety (ECF No. 154 at PageID.922). In Plaintiff's appeal from the Magistrate Judge's Order, Plaintiff makes seven arguments in support of his position that the denial of the motion was clearly erroneous (ECF No. 156 at PageID.942).

First, Plaintiff argues that the Magistrate Judge erred in finding Plaintiff did not meet the production requirements of Federal Rule of Civil Procedure 34 (ECF No. 156 at PageID.943). The Magistrate Judge pointed out that the Local Rules required Plaintiff to include Defendants' responses and/or objections with his discovery motion and that Plaintiff failed to do so here (ECF No. 154 at PageID.919; W.D. Mich. LCivR 7.1(b)). Plaintiff asserts that no responses and/or

objections were received that could be produced (ECF No. 156 at PageID.943), but Plaintiff does not otherwise identify a factual error by the Magistrate Judge.

Second, Plaintiff expresses his opinion regarding the exhibits and his stance towards Defendants (*id.*). Plaintiff does not identify any error by the Magistrate Judge.

Third, Plaintiff argues that the "Magistrate Judge erred by failing to identify Mr. Tippins['s] request for production of the Critical Incident Report . . ." (*id.*). The Magistrate Judge pointed out that a remedy for a production request is only available if a plaintiff names the MDOC as a party in the suit and a causal connection is demonstrated between the MDOC's policy and the constitutional deprivation (ECF No. 154 at PageID.921). Court filings show that the MDOC is not a party in this suit, and Plaintiff concedes that his "complaint does not allege (in words) [that] the constitutional deprivations were the result of a policy or custom of the MDOC" (ECF No. 156 at PageID.944). Plaintiff identifies no factual or legal error by the Magistrate Judge.

Fourth, Plaintiff opines that "Mr. Tippins can not [sic] afford the cost and fees associated with the subpoena" and asserts why the subpoena would be valuable (ECF No. 156 at PageID.945). Plaintiff does not identify any error by the Magistrate Judge.

Fifth, Plaintiff requests that the Court reconsider its decision to appoint a third-party expert (ECF No. 156 at PageID.945-946). The Magistrate Judge found that Plaintiff failed to show why the Court should reconsider its previous ruling (ECF No. 154 at PageID.921). While Plaintiff disagrees with the Magistrate Judge's decision, he again fails to demonstrate that the decision was either clearly erroneous or contrary to law.

Sixth, Plaintiff sets forth an explanation about why he was unable to follow the Local Rules (ECF No. 156 at PageID.948). The Magistrate Judge concluded that Plaintiff ". . . did not comply with the Local Rules because Plaintiff did not include Defendants' responses or objections to the discovery requests" (ECF No. 154 at PageID.922). In his appeal from the Magistrate Judge's

Order, Plaintiff states ". . .he was unable to provide the Court the verbatim language of the request because he was unable to find it and he was back and forth going to court" (ECF No. 156 at PageID.948). Plaintiff does not identify any error by the Magistrate Judge, but merely explains the reason for his lack of compliance.

Seventh, Plaintiff argues that there is an unutilized interrogatory granted by the court (*id.* at PageID.949). Plaintiff explains that he never submitted "interrogatory #4" from his first set, and asserts that he should be allowed to utilize it as a remaining interrogatory to compel Defendants to respond to a supplemental interrogatory (*id.*). However, the Magistrate Judge found that "Tippins has exceeded the number of interrogatories by submitting interrogatories with multiple subparts" (ECF No. 154 at PageID.922). Plaintiff identifies no clear error by the Magistrate Judge.

Motion to File Charges. On August 1, 2019, Plaintiff submitted a Motion to File Federal Criminal Charges on a MDOC employee (ECF No. 134). The Magistrate Judge denied the motion, determining that the Court did not have the authority to initiate criminal charges over an unnamed defendant (ECF No. 154 at PageID.923). In his appeal from the Magistrate Judge's Order, Plaintiff argues that the Court does have jurisdiction, due to a separate pending case in the court system (ECF No. 156 at PageID.950). Plaintiff's appeal does not demonstrate any legal error in the Magistrate Judge's jurisdictional analysis.

Motion for Order to Show Cause. On August 21, 2019, Plaintiff filed a motion for order to show cause (ECF No. 144). The Magistrate Judge denied the motion, determining the motion was without merit (ECF No. 154 at PageID.924). In his appeal from the Magistrate Judge's Order, Plaintiff argues that the motion has merit because "the Magistrate Judge arrived at erroneous findings and [the] decision was contrary to the law regarding Plaintiff's Motion of Hearing on Spoliation of Evidence and Motion to Compel" (ECF No. 156 at PageID.951). For the reasons

previously stated, Plaintiff has not demonstrated that the Magistrate Judge's Orders are either clearly erroneous or contrary to law. Accordingly, Plaintiff concomitantly fails to demonstrate any error in the Magistrate Judge's analysis of Plaintiff's show-cause motion.

In sum, Plaintiff's appeal from the Magistrate Judge's November 15, 2019 Order (ECF No. 154) is properly denied.

III. Conclusion

Because this Order and Opinion resolves all pending claims, a Judgment will also be entered. *See* FED. R. CIV. P. 58. The Court declines to certify pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of the Judgment would not be taken in good faith. *See McGore v. Wrigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 211-12 (2007). Therefore:

IT IS HEREBY ORDERED that Plaintiff's Motion to Supplement the June 2019 Objection (ECF No. 117) is GRANTED.

IT IS FURTHER ORDERED that Plaintiff's Motion to Supplement the November 2019 Appeal (ECF No. 171) is GRANTED.

IT IS FURTHER ORDERED that Plaintiff's Objections (ECF Nos. 109 & 117) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 108) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Plaintiff's Motion Seeking Temporary Restraining Order (ECF Nos. 77, 78 & 83) is DENIED.

IT IS FURTHER ORDERED that Plaintiff's Objections (ECF No. 159) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 155) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Defendants' Motion for Summary Judgment (ECF No. 140) is GRANTED.

IT IS FURTHER ORDERED that Plaintiff's Motion for Additional Discovery (ECF No. 142) is DENIED.

IT IS FURTHER ORDERED that Plaintiff's Motion for Declaratory Judgment (ECF No. 150) is DENIED.

IT IS FURTHER ORDERED that Plaintiff's Appeal (ECF Nos. 154 & 171) from the Magistrate Judge's Order (ECF No. 156) is DENIED.

Dated: February 10, 2020

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

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

JOHNNY TIPPINS #342855,

Plaintiff,

v.

ANTHONY IMMEL, et al.,

Defendants.
_____/

Case No. 2:18-cv-00069

Hon. Janet T. Neff
U.S. District Judge

REPORT AND RECOMMENDATION

This is a civil rights action brought by state prisoner Johnny Tippins pursuant to 42 U.S.C. § 1983. Plaintiff filed a "Motion to Compel the Court to Issue Order Restraining Defendants From Transferring Plaintiff to State Facility That Does Not Meet Tippins Needs[.]" (ECF No. 77.) Plaintiff also filed two supplements. (ECF Nos. 78, 83.) Defendants then filed a response (ECF No. 98), and Plaintiff filed a reply. (ECF No. 104.) For the reasons stated below, the undersigned recommends that the Court DENY Plaintiff's motion.

Injunctive Relief Standard

Preliminary injunctions are "one of the most drastic tools in the arsenal of judicial remedies." *Bonnell v. Lorenzo*, 241 F.3d 800, 808 (6th Cir. 2001) (quoting *Hanson Trust PLC v. ML SCM Acquisition Inc.*, 781 F.2d 264, 273 (2d Cir. 1986)). The issuance of preliminary injunctive relief is committed to the discretion of the district court. *Ne. Ohio Coal. v. Blackwell*, 467 F.3d 999, 1009 (6th Cir. 2006); *Nader v. Blackwell*, 230 F.3d 833, 834 (6th Cir. 2000). In exercising that discretion, a court

must consider whether plaintiff has established the following elements: (1) a strong or substantial likelihood of success on the merits; (2) the likelihood of irreparable injury if the preliminary injunction does not issue; (3) the absence of harm to other parties; and (4) the protection of the public interest by issuance of the injunction. *Id.* These factors are not prerequisites to the grant or denial of injunctive relief, but factors that must be "carefully balanced" by the district court in exercising its equitable powers. *Frisch's Rest., Inc. v. Shoney's, Inc.*, 759 F.2d 1261, 1263 (6th Cir. 1985); *Ne. Ohio Coal.*, 467 F.3d at 1009.

In addition, where a prison inmate seeks an order enjoining state prison officials, the court is required to proceed with the utmost care and must recognize the unique nature of the prison setting. *Glover v. Johnson*, 855 F.2d 277, 284 (6th Cir. 1988); *Kendrick v. Bland*, 740 F.2d 432, 438 n.3 (6th Cir. 1984). "The federal courts do not sit to supervise state prisons, the administration of which is acute interest to the States." *Meachum v. Fano*, 427 U.S. 215, 229 (1976). The party seeking injunctive relief bears a heavy burden of establishing that the extraordinary and drastic remedy sought is appropriate under the circumstances. *Overstreet v. Lexington-Fayette Urban Cnty. Gov't*, 305 F.3d 566, 573 (6th Cir. 2002); *Stenberg v. Cheker Oil Co.*, 573 F.2d 921, 925 (6th Cir. 1978).

Discussion

Initially, Plaintiff's motion appears to be moot because he originally sought an order preventing him from being transferred from the Alger Correctional Facility (LMF) to the Oaks Correctional Facility (ECF). Plaintiff has already been transferred

and is currently housed at ECF. Nonetheless, the undersigned will consider Plaintiff's motion and the supplements as a motion seeking a transfer from ECF.

Plaintiff's "initial burden" in demonstrating entitlement to preliminary injunctive relief is a showing of a strong or substantial likelihood of success on the merits of his Section 1983 action. *NAACP v. City of Mansfield, Ohio*, 866 F.2d 162, 167 (6th Cir. 1989). Here, Plaintiff previously filed several motions seeking prison transfers from LMF. (ECF Nos. 1, 17, 20, 24, 40.) The Court has denied the motions, finding in part that Plaintiff has no made a showing of strong or substantial likelihood of success on the merits. (ECF Nos. 53, 75.) In his new motion and supplements, Plaintiff again fails to show a strong or substantial likelihood of success on the merits.

Next, a plaintiff's harm from the denial of a preliminary injunction is irreparable only if it is not fully compensable by monetary damages. *Overstreet*, 305 F.3d at 578. Plaintiff has failed to assert sufficient facts that establish that he will suffer irreparable harm in the absence of an injunction. Instead, Plaintiff states that "it is believed" that "prisoner Al" was transferred to ECF and "it is only a matter of time" until Plaintiff is assaulted. Plaintiff does not offer any support to his vague allegation.

In addition, a party seeking a preliminary injunction must show a relationship between the irreparable injury claimed in the motion and the claims pending in his complaint. *Colvin v. Caruso*, 605 F.3d 282, 299-300 (6th Cir. 2010): A motion for preliminary injunction is not the means by which a plaintiff already in court on one claim can seek redress for all other conditions of confinement that he finds actionable.

Simply put, a plaintiff is not entitled to a preliminary injunction on claims not pending in the complaint. *Ball v. Famiglio,* 396 F. App'x 836, 837 (3d Cir. 2010). In this case, Plaintiff argues in part that he cannot receive the necessary medical treatment at ECF. This allegation is wholly unrelated to the failure to protect and retaliation claims that he asserts in this case.

Finally, in the context of a motion impacting on matters of prison administration, the interests of identifiable third parties and the public at large weigh against the granting of an injunction. Any interference by the federal courts in the administration of state prison matters is necessarily disruptive. The public welfare therefore militates against the issuance of extraordinary relief in the prison context, absent a sufficient showing of a violation of constitutional rights. *Glover v. Johnson*, 855 F.2d 277, 286-87 (6th Cir. 1988). That showing has not been made here.

Recommendation

Accordingly, the undersigned recommends that Plaintiff's motion (ECF No. 77) be DENIED.

NOTICE TO PARTIES: Objections to this Report and Recommendation must be served on opposing parties and filed with the Clerk of the Court within fourteen (14) days of receipt of this Report and Recommendation. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b); W.D. Mich. LCivR 72.3(b). Failure to file timely objections constitutes a waiver of any further right to appeal. *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). *See also Thomas v. Arn*, 474 U.S. 140 (1985).

Dated: May 30, 2019

/s/ Maarten Vermaat
Maarten Vermaat
U.S. MAGISTRATE JUDGE