

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

THEODORE JEZOWSKI, SR, et al.,

Plaintiffs,

Case No. 16-cv-13242

v

Honorable Thomas L. Ludington
Magistrate Judge Patricia T. Morris

COUNTY OF ARENAC, et al.,

Defendants.

/

**ORDER ADOPTING THE REPORT AND RECOMMENDATION AND SUMMARILY
DISMISSING CLAIMS PURSUANT TO 28 U.S.C. § 1915(e)(2)(B)**

On September 8, 2016 Plaintiffs Theodore Jezowski Sr. and Stephanie Jezowski initiated the above-captioned action against the County of Arenac, Arenac County Department of Health and Human Services, Arenac County Sheriff Department, 11 named defendants, and 50 unnamed defendants. *See* ECF No. 1. Asserting claims under 42 U.S.C. § 1983, Plaintiffs allege that Defendants violated their rights under the Fourth and Fourteenth Amendments by searching their home, detaining them, and conspiring to remove their children from their custody. Plaintiffs further allege that the customs and practices of the County were the driving force behind their injuries under *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690-91 (1978).

The matter was referred to Magistrate Judge Patricia T. Morris for pretrial management. *See* ECF No. 4. The magistrate judge then granted Plaintiffs' application to proceed in forma pauperis ("IFP"). *See* ECF No. 5.

Pursuant to the IFP screening procedure set forth in 28 U.S.C. § 1915(e)(2)(B), a complaint must be dismissed *sua sponte* "if the court determined that... the action or appeal (i) is frivolous or malicious, (ii) fails to state a claim upon which relief can be granted; or (iii) seeks

monetary relief against a defendant who is immune from such relief.” *Id.* Applying that rule, on May 15, 2017 the magistrate judge issued a report, recommending that the majority of Plaintiffs’ claims be dismissed for failure to state a claim. *See* ECF No. 26. The magistrate judge reasoned that the County departments were incapable of being sued under § 1983, that Plaintiffs had failed to identify any Arenac County custom or policy that was the driving force behind their injuries, as required by *Monell*. The magistrate judge also recommended that the 50 Doe Defendants be dismissed without prejudice, as Plaintiffs had not asserted any specific claims against them and had not served any of them within the allotted period. Finally, the magistrate judge recommended that the named Defendants be dismissed where Plaintiffs did not assert any specific involvement, and named the Defendants only because of their supervisory roles. The magistrate judge ultimately recommended that Plaintiffs only be allowed to proceed against Defendants Tina Thompson and Randy Schabel in their individual capacities.

Although the magistrate judge’s report explicitly stated that the parties to this action could object to and seek review of the recommendation within fourteen days of service of the report, neither Plaintiffs nor Defendants filed any objections. The election not to file objections to the magistrate judge’s report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). The failure to file objections to the report and recommendation waives any further right to appeal.

Accordingly, it is **ORDERED** that the magistrate judge’s report and recommendation, ECF No. 26, is **ADOPTED**.

It is further **ORDERED** that Plaintiffs’ claims against Defendants County of Arenac, Arenac County Department of Health and Human Services, Arenac County Sheriff Department, Josett Gracey, Matt Engster, Kim Bejcek, Deb Bonnau, Brian Millikin, Steve Yager, Orlene

Hawks, Tobin Miller, Ryan Schmidt, and Does 1-50, are **DISMISSED** for failure to state a claim upon which relief can be granted. Plaintiffs' only remaining claims are individual capacity claims against Tina Thompson and Randy Schabel.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: June 13, 2017

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on June 13, 2017.

s/Kelly Winslow
KELLY WINSLOW, Case Manager