

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

DYLAN JOHN EARICK.,

Plaintiff,

v.

ROBERT PICKELL, et al.,

Defendants.

Case No. 1:23-cv-10032

Honorable Thomas L. Ludington
United States District Judge

Honorable Kimberly G. Altman
United States Magistrate Judge

**OPINION AND ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION, GRANTING DEFENDANTS' MOTION TO DISMISS,
GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, AND
DISMISSING PLAINTIFF'S COMPLAINT**

On January 6, 2023, Plaintiff Dylan John Earick—an inmate at G. Robert Cotton Correctional Facility in Jackson, Michigan—filed a *pro se* Complaint against (1) Genesee County; (2) Genesee County Sheriff Christopher Swanson; (3) former Sheriff Robert Pickell; (4) Genesee County Undersheriff Michael Tocarchick; (5) former Genesee County Jail administrator Jason Gould; (6) Genesee County Counsel Brian MacMillan; and (7) Genesee County Jail Deputy Todd Lanning. *See* ECF No. 1. Generally, Plaintiff alleges Defendants violated 42 U.S.C. § 1983 by depriving him of his First, Fourth, Sixth, and Fourteenth Amendment rights. *Id.* Plaintiff also alleges Defendants violated the Michigan Constitution; the Federal Wiretapping Act, 18 U.S.C. §§ 2510 *et seq.*; and various state statutes, MICH. COMP. LAWS §§ 780.991(a)(2) and 750.539. *Id.*; *see also* ECF No. 32 at PageID.479.

Specifically, Plaintiff alleges that, in 2017, the Genesee County Jail installed two surveillance cameras with audio-recording capabilities in an area where attorney-client conversations frequently occur. ECF No. 1 at PageID.3. Thus, Plaintiff alleges, the public could

obtain audio recordings by making FOIA requests, and the Government had access to privileged conversations Plaintiff had with his attorney while he was a pretrial detainee at the Jail. *Id.* at PageID.4.

All pretrial matters were referred to Magistrate Judge Kimberly G. Altman. ECF No. 9. On September 25, 2023, Defendants filed a joint Motion to Dismiss, ECF No. 26, and a joint Motion for Summary Judgment, ECF No. 27.

On April 2, 2024, Judge Altman issued a report (R&R) recommending that this Court dismiss Plaintiff's Complaint for failure to prosecute or, in the alternative, dismiss Plaintiff's Complaint by granting Defendants' Motions on the merits. ECF No. 32.

Judge Altman recommended dismissing Plaintiff's Complaint for failure to prosecute because (1) "[s]ince initiating this case on January 6, 2023, [Plaintiff] has only submitted one other filing, which was later determined to be a discovery response," *id.* at PageID.480 (internal citations omitted); (2) "[s]ince his release from prison, [P]laintiff has not provided the Court with his new address, despite being warned" in January 2023 that his case could be dismissed if he did not update his address, *id.*; *see also* ECF No. 7; and (3) Plaintiff did not respond to Defendants' Motions, despite being expressly directed to respond in September 2023. ECF No. 32 at PageID.483; *see also* ECF Nos. 28; 29.

Alternatively, after thoroughly analyzing related cases brought by other inmates at the Genesee County Jail against this group of Defendants concerning the Jail's security cameras, Judge Altman recommended granting Defendants' Motion to Dismiss, ECF No. 26, and Motion for Summary Judgment, ECF No. 27, because Plaintiff "cannot prevail in a lawsuit under the facts as they have been presented." ECF No. 32 at PageID.493–94. *see also* *Butler v. Pickell*, No. 1:21-CV-10817, 2022 WL 3337170 (E.D. Mich. May 11, 2022), *report and recommendation adopted*,

No. 1:21-CV-10817, 2022 WL 2835833 (E.D. Mich. July 20, 2022); *Earick v. MacMillian*, No. No. 21-CV-10819 (E.D. Mich. July 22, 2021), ECF No. 6; *Reed v. Swanson*, No. 21-CV-11392, 2022 WL 4598501 (E.D. Mich. Sept. 30, 2022).

Judge Altman provided the Parties 14 days to object, but the Parties did not do so. Thus, they have forfeited their right to appeal Judge Altman’s findings. *See Berkshire v. Dahl*, 928 F.3d 520, 530–31 (6th Cir. 2019) (citing *Thomas v. Arn*, 474 U.S. 140, 149 (1985)). There is no clear error in Judge Altman’s R&R.

Accordingly, it is **ORDERED** that Magistrate Judge Kimberly G. Altman’s Report and Recommendation, ECF No. 32, is **ADOPTED**.

Further, it is **ORDERED** that Defendants’ Motion to Dismiss, ECF No. 26, is **GRANTED**.

Further, it is **ORDERED** that Defendants’ Motion for Summary Judgment, ECF No. 27, is **GRANTED**.

Further, it is **ORDERED** that Plaintiff’s Complaint, ECF No. 1, is **DISMISSED WITH PREJUDICE**.

This is a final order and closes the above-captioned case.

Dated: April 24, 2024

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