

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLIAM GENTRY FRISKE,

Plaintiff,

No. 07-CV-13747-DT

vs.

Hon. Gerald E. Rosen

WARDEN SCUTT, et al.,

Defendants.

ORDER AFFIRMING MAGISTRATE JUDGE'S ORDER
DENYING PLAINTIFF'S MOTION TO AMEND COMPLAINT

At a session of said Court, held in
the U.S. Courthouse, Detroit, Michigan
on December 11, 2008

PRESENT: Honorable Gerald E. Rosen
United States District Judge

This matter is before the Court on Plaintiff's November 25, 2008 "Objection to Order Denying Motion to Amend Complaint," which the Court construes as an appeal from Magistrate Judge Michael Hluchaniuk's November 6, 2008 Amended Order Denying Plaintiff's Motion to Amend Complaint (Dkt. 39, 41)."

Having reviewed and considered Plaintiff's Motion and the Magistrate Judge's Order, the Court finds that the Magistrate Judge's rulings were not clearly erroneous or contrary to law. *See* 29 U.S.C. § 636(b)(1)(A). Plaintiff proposed to amend his complaint to add unexhausted claims arising out of events that occurred long after the filing of this action. As the Magistrate Judge observed in his November 6, 2008, although

a party generally may amend his complaint once, as a matter of course, before being served with a responsive pleading, “the Court is not required to allow amendments that assert obviously frivolous claims or claims that could not withstand a motion to dismiss.” [11/6/08 Amended Order, p. 3, quoting *Griffith v. Whitesell*, 2008 WL 3852415 at *5 (M.D. Tenn. 2008) (citing *Neighborhood Development v. Advisory Council, Etc.*, 632 F.2d 21, 23 (6th Cir. 1980)). Further, “the patent failure to exhaust, apparent in the face of the proposed supplemental pleading is a[n]. . . independent reason to deny leave to supplement or amend a complaint.” *Id.*, quoting *Green v. Tudor*, 2008 WL 1732959 at *2 (W.D. Mich. 2008). In this case, Plaintiff specifically alleges in his motions to amend that the new claims he proposes to add to his complaint involve a grievance that was initiated long after this lawsuit was filed and for which the grievance process has not yet been exhausted. Therefore, it is clear that the Magistrate Judge did not err in denying Plaintiff’s Motions to Amend his Complaint. Accordingly,

For all of the foregoing reasons,

IT IS HEREBY ORDERED that the Magistrate Judge’s November 6, 2008 Amended Order Denying Plaintiff’s Motion to Amend Complaint (Dkt. 39, 41) is AFFIRMED.

s/Gerald E. Rosen
United States District Judge

Dated: December 11, 2008

I hereby certify that a copy of the foregoing document was served upon counsel of record on December 11, 2008, by electronic and/or ordinary mail.

s/LaShawn R. Saulsberry
Case Manager