

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DEAN WILSKE,

Plaintiff,

Case No. 08-13270

Hon. Marianne O. Battani

v.

Magistrate Judge Donald A. Scheer

JENNIFER GRANHOLM,
et al.,

Defendants.

**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
AND DENYING PLAINTIFF'S MOTION TO AMEND CAPTION**

Plaintiff Dean Wilske filed this action alleging that his civil rights had been violated, which the Court dismissed for failure to state a claim upon which relief could be granted. Plaintiff subsequently filed a Motion to Amend Caption, which the Court referred to Magistrate Judge Donald A. Scheer for a Report and Recommendation.

In a Report and Recommendation ("R&R") dated October 15, 2008, Magistrate Judge Scheer recommended that the motion be denied. See Doc. No. 8. The caption of a lawsuit simply "is not considered part of the pleader's statement of the claim." R&R at 2. Consequently, the Magistrate Judge Scheer concluded that altering the caption would not extend Plaintiff's cause of action to the twelve individuals Wilske sought to add.

Under 28 U.S.C. § 636(b)(1) and E.D. Mich. LR 72.1(d)(2), a party seeking review of a magistrate judge's report and recommendation is required to act within ten days of service of the R&R. Plaintiff timely filed an objection, asserting that he reserved the right to amend his petition at any time. In addition, Wilske asserted that he had not received

the Court's dismissal order and he objected to the Court's reasoning in that order as well.

The Court has reviewed the pleadings and has conducted a *de novo* review of the R&R. The Court finds the R&R accurately articulates the law and presents a well-reasoned, persuasive analysis of the application of governing law to the facts of this case, and the Court **ADOPTS** the Report and Recommendation. Accordingly, the Court **REJECTS** Plaintiff's Objection and finds amendment of the caption of the Complaint unwarranted.

The Court further considers Wilske's objection to the Court's dismissal of his complaint, which it construes as timely filed given Plaintiff's assertion that he did not receive the Court's order. This Court agrees with the Magistrate Judge's observation in the R&R, that even if Plaintiff's motion were construed as a motion to amend the complaint itself, it would have to be denied as futile.

Specifically, Plaintiff has failed to provide any basis upon which the Court could reach a different conclusion about the viability of his Complaint. Although Plaintiff restates the relief requested in his Complaint, the shortcoming was not the relief sought by Plaintiff, but the failure to assert a claim for which he would be entitled to the requested relief. Even under the less stringent standard applied to a pro se prisoner's pleadings, he fails to state a claim against Jennifer Granholm, Governor of the State of Michigan, Patricia Caruso, Director of the Michigan Department of Corrections, and the Michigan Department of Corrections. Case law is clear: Section 1983 will not support a claim based on a respondeat superior theory of liability. Polk County v. Dodson, 454 U.S. 312, 325 (1981) (citing Monell v. New York City Dept. of Social Services, 436 U.S. 658, 694 (1978)).

Further, the Motion to Amend Caption did not include factual allegations against the defendants Plaintiff sought to add to the caption. Wilske did attach copies of documents from disciplinary proceedings. Nevertheless, the Magistrate Judge correctly applied the law and procedural rules in reaching his conclusion that although the documents included the names of some of the individuals Plaintiff sought to add, those individuals would not have fair notice of the claims or the factual grounds upon which the claims would rest. Therefore, Plaintiff's objection to the dismissal of his Complaint lacks merit.

Accordingly, the Court **REJECTS** Plaintiff's Objection, **ADOPTS** the Report and Recommendation, and **DENIES** Plaintiff's Motion to Amend.

IT IS SO ORDERED.

s/Marianne O. Battani
MARIANNE O. BATTANI
UNITED STATES DISTRICT JUDGE

DATE: November 7, 2008

CERTIFICATE OF SERVICE

Copies of this Order were mailed and/or e-filed to Plaintiff and counsel of record on this date.

s/Bernadette M. Thebolt
Deputy Clerk