

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JASON SIGERS,

Plaintiff,

Case No. 08-13298

v.

Patrick J. Duggan
United States District Judge

MICHIGAN DEPARTMENT
OF CORRECTIONS,

Michael Hluchaniuk
United States Magistrate Judge

Defendant.

_____ /

**REPORT AND RECOMMENDATION
ON DEFENDANT'S MOTION TO DISMISS (Dkt. 9)**

Plaintiff filed a complaint against defendant Michigan Department of Corrections (MDOC) on July 31, 2008. (Dkt. 1). In lieu of a responsive pleading, the MDOC filed a motion to dismiss on October 2, 2008, asserting that plaintiff's claims against it were barred by the immunity granted to the MDOC under the Eleventh Amendment. (Dkt. 9). District Judge Patrick J. Duggan referred this motion to the undersigned for report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B). (Dkt. 10). Plaintiff then filed a motion for leave to file an amended complaint on October 21, 2008, with a proposed amended complaint that identified several defendants and removed the MDOC as a named defendant.

(Dkt. 13). Judge Duggan also referred the motion to amend to the undersigned for hearing and determination. (Dkt. 14).

Via separate order, the undersigned concluded that plaintiff may amend his complaint as of right and without leave of the Court at this stage of the proceedings pursuant to [Federal Rule of Civil Procedure 15\(a\)](#). (Dkt. 17).

Because the motion to dismiss relates to the original complaint, and plaintiff has been granted leave to file his amended complaint, generally, such a motion to dismiss would be rendered moot. *See e.g., Williams v. Kelly, 2007 WL 2951303, *1 (E.D. Mich. 2007)* (Defendants' motion to dismiss denied as moot where the complaint to which it was directed had been superseded by an amended complaint.). In this case, while the circumstances are slightly different because defendant MDOC is simply not named in the amended complaint, it still appears that the MDOC's motion is moot. That is, by virtue of the acceptance of plaintiff's amended complaint, the MDOC is no longer a party to this action and its motion to dismiss is, therefore, moot.

Based on the foregoing, it is **RECOMMENDED** that defendant MDOC's motion to dismiss be **DENIED** as moot, given that the MDOC is no longer a party to this action by virtue of the acceptance of plaintiff's amended complaint.

The parties to this action may object to and seek review of this Report and Recommendation, but are required to file any objections within 10 days of service, as provided for in [28 U.S.C. § 636\(b\)\(1\)](#) and Local Rule 72.1(d)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. [Thomas v. Arn](#), 474 U.S. 140 (1985); [Howard v. Sec’y of Health and Human Servs.](#), 932 F.2d 505 (6th Cir. 1981). Filing objections that raise some issues but fail to raise others with specificity will not preserve all the objections a party might have to this Report and Recommendation. [Willis v. Sec’y of Health and Human Servs.](#), 931 F.2d 390, 401 (6th Cir. 1991); [Smith v. Detroit Fed’n of Teachers Local 231](#), 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to Local Rule 72.1(d)(2), any objections must be served on this Magistrate Judge.

Within 10 days of service of any objecting party’s timely filed objections, the opposing party may file a response. The response shall not exceed 20 pages in length unless such page limit is extended by the Court. The response shall address specifically, and in the same order raised, each issue contained within the objections by motion and order. If the Court determines any objections are without merit, it may rule without awaiting the response to the objections.

Date: October 31, 2008

s/Michael Hluchaniuk
Michael Hluchaniuk
United States Magistrate Judge

CERTIFICATE OF SERVICE

I certify that on October 31, 2008 I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send electronic notification to the following: Julia R. Bell, and I certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: Jason Sigers, # 445206, COOPER STREET CORRECTIONAL FACILITY, 3100 Cooper Street, Jackson, MI 49201.

s/James P. Peltier _____
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