

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ERIC MARTIN,

Plaintiff,

No. 12-cv-14286

vs.

Hon. Gerald E. Rosen

SOFIA KAZULKINA, *et al.*,

Defendants.

_____ /

ORDER REJECTING MAGISTRATE JUDGE'S REPORT
AND RECOMMENDATION, AND RE-REFERRING THE CASE
TO THE MAGISTRATE JUDGE FOR RULING
ON THE MERITS THE PENDING MOTIONS

At a session of said Court, held in
the U.S. Courthouse, Detroit, Michigan
on January 3, 2017

PRESENT: Honorable Gerald E. Rosen
United States District Judge

This matter is presently before the Court on the November 28, 2016 Report and Recommendation of U.S. Magistrate Judge Patricia T. Morris, recommending that the Court deny Defendants' Motions for Summary Judgment (Dkt. Nos. 103 and 109) as MOOT, deny Plaintiff's Motions for Summary Judgment (Dkt. Nos. 112, 127) as MOOT, and deny Plaintiff's Motion to Compel Discovery (Dkt. No. 122) as MOOT, and that the court enter a final judgment dismissing Plaintiff's claims, with prejudice. Plaintiff Martin timely filed Objections to the R&R, to which Defendant Jerry Makin,

M.D., has responded.

Having reviewed the Magistrate Judge's R&R, Plaintiff's Objections, Defendant Makin's Response, and the entire record of this matter, the Court concludes that Magistrate's Report and Recommendation must be rejected.

The Magistrate Judge's recommendation that the Court find the pending motions to be moot is predicated on an erroneous reading of the Sixth Circuit Court of Appeals February 2, 2015 Order addressing Plaintiff's appeal of this Court's order granting the defendants' motions to revoke his *in forma pauperis* status, and its remand of the case to this Court.

To briefly summarize the history of this case, Plaintiff is a prisoner who filed a Section 1983 complaint alleging that the defendants violated his constitutional rights by forcing him to take Haldol, an anti-psychotic medication. He applied for and was granted leave to proceed with his case *in forma pauperis*. Thereafter, Defendants moved to revoke Plaintiff's *ifp* status pursuant to 28 U.S.C. § 1915(g) which provides that a prisoner who has previously had three or more federal lawsuits dismissed as frivolous, malicious, or for failure to state a claim upon which relief can be granted may not again proceed *in forma pauperis* (the "three strikes rule"). Plaintiff admits that he has had three or more federal lawsuits dismissed pursuant to 28 U.S.C. § 1915(g) before he filed this lawsuit. However, he argued that the "imminent danger of physical injury" exception to the three strikes rule applied in his case.

The matter was referred to a Magistrate Judge who recommended that the Court grant Defendants' motions, revoke Plaintiff's *ifp* status, and dismiss his Complaint, without prejudice. The Court adopted the R&R and dismissed the case, without prejudice.

Plaintiff appealed that decision to the Sixth Circuit Court of Appeals.

On February 2, 2015, the Court of Appeals issued its ruling finding that this Court erred in declining to apply the imminent danger exception and accordingly, held that § 1915 did not bar Martin from proceeding *ifp* in this action. *See* CTA Order at Dkt. No. 63. Therefore, the appellate court vacated this Court's judgment and remanded the matter "for further proceedings." *Id.*

Following remand, both Plaintiff and Defendants filed a number of motions. Among these was a a Motion for Temporary Restraining Order, Preliminary Injunction and Permanent Injunction filed by the Plaintiff. The Magistrate Judge issued a Report and Recommendation on January 30, 2016, addressing this motion and also addressing the claim for injunctive relief raised in Plaintiff's complaint. The Magistrate Judge recommended that the Court deny the requested injunctive relief. *See* Dkt. No. 93. The Court adopted the R&R on April 20, 2016. *See* Dkt. No. 106.

Defendants also filed motions for summary judgment. These motions addressed the merits of Plaintiff's claim that his "forced" medication amounted to cruel and unusual punishment in violation of the Eighth Amendment and his claim of violation of his First

Amendment right to free speech. Plaintiff also moved for summary judgment in his favor. Responses and reply briefs were filed. On November 28, 2016, the Magistrate Judge issued an R&R recommending that the Court find all of these motions to be moot. The Magistrate Judge based her R&R on her reading of the Sixth Circuit's February 2, 2015 Order and this Court's Order of April 20, 2016:

[T]he Sixth Circuit, on appeal, found that “the district court erred by declining to apply the imminent danger exception, and § 1915 does not bar [Plaintiff] from proceeding [*in forma pauperis*] in this action,” vacated the district court's judgment, and remanded the matter for further proceedings. ***The result of this remand was to reopen this case as to Plaintiff's requests for preliminary injunctive relief only.***

Thereafter, all pretrial matters were referred to the undersigned Magistrate Judge (Doc. 64). On January 30, 2016, I issued a Report and Recommendation (Doc. 93), to deny Plaintiff's motions to appoint expert witness (Doc. 85), for oral deposition, (Doc. 72), for temporary restraining order, for preliminary injunction, and for permanent injunction (Doc. 76), ***and to dismiss Plaintiff's complaint (Doc. 1).*** On April 20, 2016, District Judge Rosen issued an Order adopting my Report and Recommendation (Doc. 106), thus denying Plaintiff's motions for a preliminary injunction, permanent injunction, temporary restraining order, oral deposition, and appointment of an expert witness. More recently, Judge Rosen issued an Order denying *in forma pauperis* (IFP) status on appeal because any appeal from his Order denying Plaintiff's motion for preliminary injunction (Doc. 106) would be frivolous. (Doc. 135).

Although the case seems to have slipped through the legal cracks, and the parties have filed motions, ***there exist no other issues to resolve. The Report and Recommendation, adopted by District Judge Rosen, resolved all remaining questions in this matter. (Docs. 106, 135). The instant outstanding motions, therefore, are of no consequence.***

[11/28/16 R&R pp. 2-3 (emphasis added).]

The Court finds that the Magistrate Judge has misconstrued the Sixth Circuit's

February 2, 2015 Order and this Court's Order April 20, 2016 adopting the Magistrate Judge's January 30, 2016 R&R.

First, there is nothing in the Sixth Circuit's Order limiting remand of this case only for this Court to rule on Plaintiff's request for preliminary injunctive relief. Rather, the Sixth Circuit's Order broadly states, "[W]e ... remand the matter *for further proceedings.*" [See Dkt. No.63, p. 6 (emphasis added)]. Nor was Plaintiff's complaint limited to a request for injunctive relief. Indeed, the Sixth Circuit expressly noted that in his complaint "Martin sought an injunction ordering all defendants to stop the involuntary administration of the drugs *and compensatory and punitive damages and costs.*" *Id.* at p. 3 (emphasis added).

Second, though the Magistrate Judge states that in her January 30, 2016 R&R addressing Plaintiff's motion for injunctive relief, in addition to recommending that Plaintiff's motion for TRO, preliminary injunction and permanent injunction be denied, she recommended that the Court "dismiss Plaintiff's complaint (Doc. 1)," she made no such recommendation. [See Dkt. No. 93.] Nor did the Court so order in adopting that R&R. [See Dkt. No. 106.]

For all of the foregoing reasons, the Court concludes that the Magistrate Judge erroneously concluded that the only matter remanded by the Sixth Circuit for adjudication by this Court was Plaintiff's request for preliminary injunctive relief, and erroneously concluded that, by virtue of the Court's April 20, 2016 Order denying

Plaintiff's motion for injunctive relief, there exist no other issues to resolve.

Therefore,

The Court hereby REJECTS the Magistrate Judge's Report and Recommendation of November 28, 2016 [**Dkt. No. 136**] and this case is re-referred to the Magistrate Judge for further pretrial proceedings, including for an "on the merits" report and recommendation on Defendants' Motions for Summary Judgment [Dkt. Nos. 103, 109] and Plaintiff's Motions for Summary Judgment [Dkt. Nos. 112, 127], and for hearing and determination of Plaintiff's Motion to Compel Discovery [Dkt. No. 122].

SO ORDERED.

s/Gerald E. Rosen
United States District Judge

Dated: January 3, 2017

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on January 3, 2017, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager, (313) 234-5135