

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Jeffrey Lee Bonga,

Plaintiff,

v.

Case No. 16-13685

Badawi Abdellatif, M.D., *et al.*,

Sean F. Cox

United States District Court Judge

Defendants.

**ORDER ADOPTING 7/2/18 R&R AND DISMISSING CLAIMS AGAINST
DEFENDANTS PARSONS AND SCOTT**

Plaintiff Jeffrey Lee Bonga is currently incarcerated at the Michigan Department of Corrections Earnest C. Brooks Correctional Facility. Acting *pro se*, on October 13, 2016, Bonga filed this action against multiple defendants. Bonga is proceeding without prepayment of the filing fee for this action, pursuant to 28 U.S.C. § 1915(a)(1). This Court has referred the matter to Magistrate Judge Anthony Patti for all pretrial proceedings.

On May 26, 2017, Bonga filed a Motion seeking leave to file an amended complaint. (D.E. No. 36). On that same date, however, Bonga also filed an amended complaint, wherein he added claims against Defendants K. Parsons and L. Scott. (D.E. No. 37). Bonga's May 26, 2017 amended complaint, however, expressly acknowledges that he had not exhausted administrative remedies against K. Parsons or L. Scott. (*Id.* at Pg ID 213) ("Mr. Bonga has exhausted his administrative remedies with respect to all claims and all Defendants, except HI Scott, and GC K. Parsons.").

In an Opinion & Order issued on December 11, 2017, the magistrate judge denied

Bonga's motion seeking leave to file an amended complaint. He explained that he was doing so because, according to the express language of the amended complaint, Bonga had failed to exhaust administrative remedies as to Parsons and Scott and those claims were therefore futile. The magistrate judge denied the motion without prejudice and struck the amended complaint that Bonga had filed.

Bonga filed objections to the magistrate judge's December 11, 2017 Opinion & Order, arguing that he had an absolute right to file his amended complaint on May 26, 2017. This Court ultimately agreed with Bonga and ordered the May 26, 2017 amended complaint reinstated. This Court's order further advised that, after the amended complaint is reinstated, the magistrate should then review the claims in the May 26, 2017 amended complaint in light of the screening obligations under § 1915.

Bonga has not sought to further amend his complaint in this action and, therefore, the May 26, 2017 amended complaint is the operative complaint.

In a Report and Recommendation ("R&R") issued on July 2, 2018, the magistrate judge recommended that this Court dismiss the claims against Parsons and Scott as futile for failure to exhaust administrative remedies, again directing the Court to the express language of Bonga's amended complaint acknowledging his failure to exhaust those claims. The magistrate further concluded that even if he had exhausted administrative remedies, the claims against Parsons and Scott "lack the clarity required by Fed. R. Civ. P. 8, which requires enough specificity for the defendants to understand the nature of the claims against them so that they can adequately defend themselves." (R&R at Pg ID 981).

In his objections to that R&R, Bonga asserts that he "*erroneously* stated that he had yet to

exhaust his administrative remedies.” (Objections, D.E. No. 98, at Pg ID 1020-21) (emphasis added).

Bonga has been on notice since December 11, 2017, that his May 26, 2017 amended complaint fails to state claims against Parsons and Scott because it expressly acknowledges that Bonga did not exhaust his administrative remedies prior to filing his amended complaint. If that acknowledgment of his failure to exhaust were in error, Bonga could have sought leave to amend. He did not do so. The Court concludes that the magistrate properly performed the screening function required by § 1915 as to the operative complaint in this action and overrules Bonga’s objections.

Accordingly, the Court **ADOPTS** the magistrate judge’s July 2, 2018 R&R (D.E. No. 93) and **DISMISSES** Bonga’s May 26, 2017 claims against Defendants Parsons and Scott for failure to state a claim on which relief may be granted.

IT IS SO ORDERED.

s/Sean F. Cox
Sean F. Cox
United States District Judge

Dated: August 21, 2018

I hereby certify that a copy of the foregoing document was served upon counsel of record on August 21, 2018, by electronic and/or ordinary mail.

s/J. McCoy
Case Manager