

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT STEVEN NICKLAY,

Plaintiff,

Case No. 1:08-CV-328

v.

Hon. Robert J. Jonker

ELIZABETH HOOGSTRA, et al.,

Defendants.

ORDER AND JUDGMENT
APPROVING REPORT AND RECOMMENDATION

The Court has reviewed the Magistrate Judge's Report and Recommendation (docket # 27), Plaintiff's Objections (docket # 30) and all other pertinent matters of record. Under the Federal Rules of Civil Procedure, when a party has objected to portions of a Report and Recommendation, "[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified." 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997).

Specifically, the Rules provide that:

The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b)(3). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981).

The Report and Recommendation concludes that both defendants are indisputably entitled to immunity. In particular, the Report and Recommendation concludes that Defendant

Chief Probation Officer Hoogstra is entitled to quasi-judicial immunity for any alleged errors in preparation of a pre-sentence report involving Plaintiff, and that Defendant 56-A District Court is entitled to Eleventh Amendment sovereign immunity. The Court has reviewed de novo the claims and evidence presented to Magistrate Judge Brenneman; the Report and Recommendation itself; and Plaintiff's objections. After its review, the Court finds Magistrate Judge Brenneman's Report and Recommendation to be both factually sound and legally correct.

Plaintiff's only objection to the Report and Recommendation is that Defendant Hoogstra is not immune because she allegedly failed to interview him face-to-face for the pre-sentence report, and because she allegedly included false information in the report. These objections do not undercut the quasi-judicial immunity to which Defendant Hoogstra is entitled in preparing a pre-sentence report. The Report and Recommendation recites the authority establishing this immunity and nothing in Plaintiff's objections even addresses this authority. Plaintiff does not directly contest the Magistrate Judge's conclusion that the 56-A District Court of the State of Michigan is entitled to Eleventh Amendment sovereign immunity, and the Court discerns no basis for any proper objection to application of sovereign immunity in any event.

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge is **APPROVED AND ADOPTED** as the opinion of the Court.

IT IS FURTHER ORDERED that Plaintiff's complaint is **DISMISSED WITH PREJUDICE** under 28 U.S.C. § 1915(e)(2) on grounds of immunity. The Court finds no good-faith basis for appeal within the meaning of 28 U.S.C. § 1915(a)(3).

Dated: September 3, 2008

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE