

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT WAYNE ANNABEL II
#414234,

Plaintiff,

v

PATRICIA CARUSO, et al.,

Defendants.

Case No. 1:09-cv-176

HON. JANET T. NEFF

OPINION AND ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983 involving Defendants’ alleged violations of Plaintiff’s religious rights under the First Amendment and the Religious Land Use and Institutionalized Persons Act (RLUIPA), and his right of access to the courts (R & R, Dkt 97 at 1). On February 4, 2011, Plaintiff filed a “Third Motion for Preliminary Injunction,” requesting that the Court order Defendants to provide him with “a religious diet of grape juice and unleavened bread . . .” from April 17 to April 25, 2011 (Pl. Mot., Dkt 89 at 1). The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R & R), recommending that this Court deny Plaintiff’s Motion (R & R, Dkt 97).

The matter is before the Court on Plaintiff’s Objections to the Report and Recommendation (Pl. Obj., Dkt 101). In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation

to which objections have been made. The Court denies the objections and issues this Opinion and Order.

The Court first notes that the dates listed in Plaintiff's Third Motion for Preliminary Injunction, April 17 through April 25, have now passed (Pl. Mot., Dkt 89 at 1). The Court also notes that Plaintiff's Objections changed the dates for the requested relief to May 17 through May 25 (Pl. Obj., Dkt 101 at 2). Plaintiff's Objections provide no explanation or basis for changing the dates of the relief sought. Plaintiff's Motion and his Objections are moot, since even the new dates of relief have now passed.

Even if Plaintiff's Objections were not moot, the Court finds them without merit. Plaintiff's Objections offer little more than conclusory challenges. Plaintiff objects to the Magistrate Judge's determinations that Plaintiff (1) provided no evidence to support injunctive relief, (2) failed to show that he is likely to prevail, and (3) failed to show that he will suffer irreparable harm. The Magistrate Judge properly considered the factors to be balanced by the court in deciding whether to grant injunctive relief. *See Samuel v. Herrick Mem'l Hosp.*, 201 F.3d 830, 833 (6th Cir. 2000).

The Magistrate Judge did not find that Plaintiff had failed to offer evidence showing violations of Plaintiff's First Amendment rights, but instead found that Plaintiff failed to offer evidence showing that a preliminary injunction was warranted (R & R, Dkt 97 at 2). Upon consideration of the relevant factors and Plaintiff's Objections, the Court finds no error in the Magistrate Judge's conclusion that injunctive relief is unwarranted based on the minimal showing made. Accordingly, this Court adopts the Magistrate Judge's Report and Recommendation as the Opinion of this Court. Because this action was filed *in forma pauperis*, this Court certifies, pursuant

to 28 U.S.C. § 1915(a)(3), that an appeal of this decision would not be taken in good faith. *See McGore v. Wigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997).

Therefore:

IT IS HEREBY ORDERED that the Objections (Dkt 101) are DENIED and the Report and Recommendation (Dkt 97) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Plaintiff's Third Motion for Preliminary Injunction (Dkt 89) is DENIED.

IT IS FURTHER ORDERED that the Court certifies pursuant to 28 U.S.C. § 1915(a) that an appeal of this Opinion and Order would not be taken in good faith.

Dated: June 14, 2011

/s/ Janet T. Neff

JANET T. NEFF

United States District Judge