

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

ORDER

Pending before the Court is Plaintiff's Motion to Renew Motions (Dkt 53), filed June 28, 2010, in which Plaintiff seeks to vacate two orders of the Court on the sole grounds that he allegedly did not receive copies of either the Order or the underlying Report and Recommendation:

- (1) Order (Dkt 45) denying his Motion for Leave to Pursue Interrogatories (Dkt 42), and
- (2) Order (Dkt 51) Approving Report and Recommendation, denying Plaintiff's Second Motion for Preliminary Injunction (Dkt 33).

Plaintiff provides no basis for vacating the above orders.¹ Plaintiff has not shown that he was prejudiced by the delayed receipt of the documents at issue nor has he offered any grounds for vacating the orders as to the substantive matters addressed.

¹Plaintiff questions whether his failure to receive copies has anything to do with the Magistrate Judge's [alleged] hostility toward Plaintiff's religion; however, the mailing of copies to a pro se party is a ministerial function handled automatically by the Clerk's Office, not the Magistrate Judge. Moreover, the court docket shows that copies of the documents at issue were timely sent to Plaintiff via U.S. Mail (*see* docket entry for May 17, 2010).

With respect to the first Order (Dkt 45), the Court denied Plaintiff's Motion for Leave to Pursue Interrogatories because there was no indication that Plaintiff ever submitted a discovery request to Defendants, which was a necessary prerequisite to the relief sought. The Court essentially denied the relief as premature, and the Court stated that Plaintiff could refile his motion if appropriate. Plaintiff has not shown any substantive grounds for vacating this order.

Plaintiff argues that the second order, Order Approving Report and Recommendation (Dkt 51), should be vacated because he was denied fundamental fairness since he never received the Report and Recommendation (Dkt 44) issued on May 14, 2010. Plaintiff states that he learned about the Report and Recommendation on June 21, 2010 in the order (presumably, Dkt 51) received from the Clerk.

While the Court agrees that the failure to receive the Report and Recommendation may raise a question of fairness with respect to the timeliness of objections to the Report and Recommendation, it does not automatically warrant vacating the June 17, 2010 Order. Plaintiff has not sought to file objections to the Report and Recommendation concerning his Second Motion for Preliminary Injunction, nor has he indicated any basis for his entitlement to relief on the merits, i.e., that the Court erred in denying his Second Motion for Preliminary Injunction. Thus, unless and until Plaintiff objects to the Report and Recommendation, and shows a meritorious basis for his objections, the Court finds no reason to vacate the June 17, 2010 Order (Dkt 51).

Because it is unclear from Plaintiff's motion and the record whether Plaintiff has since received copies of the documents at issue, the Court will direct the Clerk's Office to once again mail copies.

THEREFORE, IT IS ORDERED that Plaintiff's Motion to Renew Motions (Dkt 53) is DENIED.

IT IS FURTHER ORDERED that the Clerk's Office shall again mail Plaintiff a copy of the Order (Dkt 45) denying his Motion for Leave to Pursue Interrogatories and a copy of the Report and Recommendation (Dkt 44).

Date: July 28, 2010

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge