

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TRAVIS HARDEN,

Plaintiff,

v.

DAVID GENDERNALIK et al.,

Defendants.

Case No. 1:09-cv-1025

Hon. Janet T. Neff

OPINION AND ORDER

Plaintiff, proceeding *pro se*, filed this prisoner civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to the Magistrate Judge, who issued a Report and Recommendation on June 2, 2010, recommending that this Court grant defendant Jozlin's Motion for Summary Judgment, or, alternatively, dismiss Plaintiff's claims against Jozlin without prejudice for failure to exhaust administrative remedies (Dkt 30). Further, the Magistrate Judge recommended that Plaintiff's claims against defendants Kmron, Taglia, Patil, Evans, and Kearey be dismissed without prejudice for failure to timely effect service. No objections having been filed, the Court approved and adopted the Report and Recommendation and entered a Judgment on June 24, 2010 (Dkt 33). A one-page handwritten document from plaintiff was received later in the day on June 24, 2010 and docketed on the morning of June 25, 2010 as Plaintiff's Objections to the Magistrate Judge's Report and Recommendation (Dkt 34). The matter is presently before the Court on a June 28, 2010 letter from Plaintiff, which was docketed as a Motion for Extension of Time (Dkt 36).

Although not entirely clear, Plaintiff's June 28, 2010 letter-motion was presumably filed with

the intent to persuade this Court to accept and review the untimely objections filed four days earlier.¹ A district court is authorized to extend the fourteen-day objection period provided by FED. R. CIV. P. 72(a) for filing objections to a Report and Recommendation. FED. R. CIV. P. 6(b); *Patterson v. Mintzes*, 717 F.2d 284, 286-87 (6th Cir. 1983). In its discretion, the Court grants Plaintiff's motion and vacates its June 24, 2010 Judgment to consider the merits of Plaintiff's June 24, 2010 Objections to the Report and Recommendation.

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 plaintiff has made objections. Plaintiff's one-page objection to the Magistrate Judge's recommendation is essentially his assertion that he did not have "sufficient opportunity for discovery."² However, Plaintiff does not explain how he was deprived of a full opportunity for discovery in this case and only belatedly makes this current request, after the Report and Recommendation that defendant Jozlin's motion for summary judgment be granted. The Court, therefore, denies the Objections and again adopts the Report and Recommendation of the Magistrate Judge as the Opinion of the Court.

Accordingly:

¹In his June 28, 2010 letter-motion (Dkt 36), Plaintiff states that "the first package" was lost in the mail and that he hoped to have "this package" in the mail by July 2, 2010. The Court is unaware of the contents of the package(s). However, in reviewing the entirety of this case, the Court determines that Plaintiff's June 28, 2010 letter-motion implicates his June 24, 2010 objections to the Report and Recommendation.

²To the extent Plaintiff also "resubmits" prior motions and documents filed in this case, the arguments therein are not properly considered objections to the Report and Recommendation. *See* W.D. Mich. LCivR 72.3(b) (A party objecting to a report and recommendation "shall file and serve written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objections are made and the basis for such objections.")

IT IS HEREBY ORDERED that the Motion for Extension of Time (Dkt 36) is GRANTED, and this Court's Judgment Approving and Adopting the Magistrate Judge's Report and Recommendation (Dkt 33) is therefore VACATED.

IT IS FURTHER ORDERED that Plaintiff's Objections to the Magistrate Judge's Report and Recommendation (Dkt 34) are DENIED and the Report and Recommendation of the Magistrate Judge (Dkt 30) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that defendant Stephen Jozlin's Motion for Summary Judgment (Dkt 20) is GRANTED for the reasons stated in the Report and Recommendation

IT IS FURTHER ORDERED that Plaintiff's claims against Kmron, Taglia, Patil , Evans, and Kearey are DISMISSED WITHOUT PREJUDICE for failure to timely effect service.

Dated: October 14, 2010

/s/ Janet T. Neff

JANET T. NEFF

United States District Judge