

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN ARTHUR HARRIS, JR.,

Plaintiff,

Case No. 1:12-cv-1208

v.

HON. JANET T. NEFF

FREDRIC F. BALGOOYEN, et al.,

Defendants.

OPINION AND ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. On December 5, 2012, the Magistrate Judge filed a Report and Recommendation (Dkt 4), recommending that the action be dismissed upon initial screening pursuant to 28 U.S.C. § 1915(e)(2) on grounds that the complaint failed to state a claim upon which relief may be granted. The matter is presently before the Court on Plaintiff's objections (Dkt 6) to the Report and Recommendation and the supplement to his objections (Dkt 7). 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.

Plaintiff raises two objections to the Magistrate Judge's Report and Recommendation. First, Plaintiff asserts that his contempt proceeding was a violation of the double jeopardy clause¹ (Dkt 6) and, second, he contends this grants federal subject matter jurisdiction (Dkt 7).

Plaintiff's first objection, that his contempt hearing for failure to pay child support violated "the double jeopardy clause" (Dkt 6 at 2), is without merit. Plaintiff refers to two proceedings regarding the enforcement of his child support obligations. One proceeding was a show cause hearing in response to a petition by the mother of Plaintiff's child (Dkt 6 at 1-2). This hearing resulted in a modification of the order (*id.* at 2). The other proceeding was apparently a criminal proceeding initiated by the State that resulted in conviction (*id.*). Even accepting as true Plaintiff's contention that the contempt prosecution was for a null and void order, Plaintiff has not shown any way in which these facts implicate double jeopardy. Because Plaintiff failed to state a claim for any Constitutional violations, this objection is denied. The Magistrate Judge properly concluded that "the facts alleged in Plaintiff's complaint, even if accepted as true, fail to state a claim upon which relief may be granted" (R & R, Dkt 4 at 3).

Plaintiff's second objection is also without merit. Because Plaintiff has not presented any facts that plausibly allege a constitutional violation, the Magistrate Judge properly concluded that Plaintiff has failed to establish federal subject matter jurisdiction. *See e.g., Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 89 (1998) (quoting *Oneida Indian Nation of N.Y. v. Cnty. of Oneida*,

¹Plaintiff also references equal protection and due process violations as well as ineffective assistance of counsel (Dkt 1 at 4; Dkt 6 at 2-3). However, Plaintiff has failed to state a claim regarding any of these alleged violations as well. Furthermore, Plaintiff has not alleged any error in the Magistrate Judge's Report and Recommendation regarding these claims, he has merely restated the facts and allegations contained in the Complaint. To the extent that Plaintiff's objections merely reargue his claims, they are not proper objections to the Report and Recommendation.

414 U.S. 661, 666 (1974)) (no federal subject matter jurisdiction where “the claim is ‘so insubstantial, implausible, foreclosed by prior decisions of this Court, or otherwise completely devoid of merit as not to involve a federal controversy’”). Accordingly, this objection is also denied.

A Judgment will be entered consistent with this Opinion and Order. *See* FED. R. CIV. P. 58. For the above reasons and because this action was filed *in forma pauperis*, this Court also certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this Judgment would not be taken in good faith. *See McGore v. Wrigglesworth*, 114 F.3d 601, 610-11 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 211-12 (2007).

Accordingly:

IT IS HEREBY ORDERED that the objections (Dkts 6, 7) are DENIED and the Report and Recommendation (Dkt 4) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that the Complaint (Dkt 1) is DISMISSED pursuant to 28 U.S.C. § 1915(e)(2) for the reasons stated in the Report and Recommendation.

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

Dated: April 3, 2013

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