

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GEORGE LEE LACY, JR.,

Plaintiff,

Case No. 1:14-cv-537

v.

HON. JANET T. NEFF

RANDY DUELL, et al.,

Defendants.

/

OPINION AND ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff's claims have all been dismissed save his claim against Defendant Duell that he was transferred to the Chippewa Correctional Facility for improper retaliatory reasons. Defendant Duell filed a motion for summary judgment of the claim against him. The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R), recommending that Defendant's motion be granted and this matter terminated. The matter is presently before the Court on Plaintiff's objections to the Report and Recommendation (ECF No. 91). 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 Magistrate Judge determined that there is no evidence to support the proposition that Plaintiff's transfer resulted in the type of consequences sufficient to maintain a claim of retaliation (R&R, ECF No. 87 at PageID.798). In his objections to the Magistrate Judge's Report and

Recommendation, Plaintiff argues that the Magistrate Judge erred where his evidence supports a retaliatory transfer claim (ECF No. 91 at PageID.808-809). Specifically, Plaintiff asserts that he submitted exhibits and verified affidavits about “a series of events from which it could be inferred the existence of a constitutional violation” (*id.* at PageID.809-810). Plaintiff emphasizes that “a prisoner’s family will have a very difficult” time visiting the upper Michigan prison and that the prison is “known for the damaging of prisoner’s personal and legal property” (*id.* at PageID.810). Plaintiff argues that he “also confirmed with evidence that there was a causal connection with the protected conduct and the adverse action” (*id.* at PageID.810). Last, Plaintiff points out that Defendant Duell, in contrast, “has not supplied any facts or affidavits” (*id.* at PageID.811).

Plaintiff’s objection fails to demonstrate any factual or legal error in the Magistrate Judge’s application of the rule of law that a transfer to a less desirable prison that is more restrictive or that places a prisoner farther away from family is not sufficiently adverse to maintain a retaliation claim (R&R, ECF No. 87 at PageID.800-801). *See Hix v. Tennessee Dep’t of Corr.*, 196 F. App’x 350, 358 (6th Cir. 2006) (holding that allegations pertaining to transfers generally fail to allege adverse action that would deter a person of ordinary firmness from engaging in constitutionally protected conduct because “a prisoner is expected to endure more than the average citizen and enjoys no protected right to remain incarcerated in a given correctional facility”). Because Plaintiff did not establish an adverse action sufficient to support a claim for retaliatory transfer, it was unnecessary for the Magistrate Judge to address the issue of causation. Therefore, Plaintiff’s objection is properly denied.

Accordingly, this Court adopts the Magistrate Judge’s Report and Recommendation as the Opinion of this Court. Because this Opinion and Order resolves the last pending claim in this matter, a Judgment will also be entered. *See* FED. R. CIV. P. 58. 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. Wrigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 211-12 (2007).

Therefore:

IT IS HEREBY ORDERED that the Objections (ECF No. 91) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 87) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Defendant Duell's Motion for Summary Judgment (ECF No. 64) is GRANTED for the reasons stated in the Report and Recommendation.

IT IS FURTHER ORDERED that 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.

Dated: June 27, 2017

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