

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CARL LEE JONES,

Plaintiff,

v.

WILLIE SMITH, et al.,

Defendants.

Case No. 1:15-cv-1308

HON. JANET T. NEFF

OPINION AND ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983 involving Plaintiff's Eighth Amendment claims. The remaining Defendants, Dr. Craig Hutchinson and Dr. Roger Gerlach, filed a motion for summary judgment (ECF No. 41). The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R), recommending Defendants' motion be granted and this action be terminated (ECF No. 51). The matter is presently before the Court on Plaintiff's objections to the Report and Recommendation (ECF No. 54). Defendants have filed a Response (ECF No. 57).¹ 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.

¹Although Plaintiff did not seek leave to file a reply to Defendants' Response to Objection, *see* W.D. Mich. LCivR 72.3(b), the Court has nonetheless considered it, and it does not alter the Court's determination.

Plaintiff's objections take the form of reiterated arguments that have been properly considered by the Magistrate Judge. Plaintiff's first objection is a reassertion of his disagreement with the medical care he received (ECF No. 54 at PageID.1336-1339). Plaintiff essentially states that the corticosteroid injections caused his knee to worsen (*id.* at PageID.1336). However, Plaintiff failed to bring forth any evidence to show "deliberate indifference" to his serious medical needs (ECF No. 51 at pageID.1324). The Magistrate Judge carefully considered the facts before the court and properly concluded that Defendants are entitled to summary judgment since Plaintiff "simply disagrees with the treatment he received" (*id.*), which fails to establish an Eighth Amendment claim.

Plaintiff's next objection is to the denial of his motion for medical experts and discovery (ECF No. 54-1 at PageID.1340-1341). The Magistrate Judge in the Report and Recommendation considered this general lack-of-evidence argument under FED. R. CIV. P. 56(d), and properly noted that Plaintiff had ample time for discovery and failed to submit the required affidavit or declaration in support of a Rule 56(d) claim (ECF No. 51 at PageID.1329). The Magistrate Judge's reasoning and conclusions were sound.

Finally, Plaintiff objects to the denial of his request to appoint counsel (ECF No. at PageID.1342). This request was previously and properly denied by the undersigned (ECF No. 25 at PageID.182). Plaintiff has failed to show the exceptional circumstances necessary to warrant the appointment of counsel (*see id.*).

Plaintiff's arguments fail to demonstrate any factual or legal error in the Magistrate Judge's analysis or conclusion. The Magistrate Judge properly concluded that Plaintiff fails to demonstrate a violation of his Eighth Amendment rights (ECF No. 51). Accordingly, this Court adopts the Magistrate Judge's Report and Recommendation as the Opinion of this Court. Because all claims

in this case have been resolved, a Judgment will be entered consistent with this Opinion and Order. See FED. R. CIV. P. 58. Further, 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. 54) are DENIED, and the Report and Recommendation of the Magistrate Judge (ECF No. 51) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that the Motion for Summary Judgment (ECF No. 41) is GRANTED.

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: September 26, 2017

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