UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL LEON POWELL,

      Plaintiff,

v.

                                          Case No. 1:19-cv-627

MICHIGAN DEPARTMENT OF
CORRECTIONS, et al.,

                                          HON. JANE M. BECKERING

      Defendants.

_____/

OPINION AND ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. Several claims have already been dismissed. Defendants remaining in this case—Unknown Doane, Unknown Baker, and Nicholas Radamaker—moved for summary judgment of the Eighth Amendment claims against them. Plaintiff did not file a response to Defendants' motion. The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R), recommending that the motion be granted in part and denied without prejudice in part. The matter is presently before the Court on Plaintiff's 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 objections have been made. The Court denies the objections and issues this Opinion and Order.

Plaintiff objects to the Magistrate Judge's "conclusion that no evidence was presented to the Court" in opposition to Defendants' motion (Pl. Objs., ECF No. 65 at PageID.432). According to Plaintiff, his "Complaint is sufficient evidence," and he points to several allegations in his

Complaint that he claims demonstrate analytical error by the Magistrate Judge (*id.* at PageID.431–432). Plaintiff's objection lacks merit. As the Magistrate Judge set forth, a non-moving party "'may not rest upon [his] mere allegations,' but must instead present 'significant probative evidence' establishing that 'there is a genuine issue for trial'" (R&R, ECF No. 64 at PageID.422–423, quoting *Pack v. Damon Corp.*, 434 F.3d 810, 813-14 (6th Cir. 2006)). Plaintiff did not present any evidence to the Magistrate Judge in opposition to Defendants' motion, which was supported by their affidavits, and Plaintiff's reliance on certain allegations in his Complaint does not serve to demonstrate analytical error by the Magistrate Judge.

Plaintiff also asserts that the Magistrate Judge improperly "shift[ed] the burden" to him and did not view the "facts and evidence in the light most favorable to the Plaintiff" (Pl. Objs., ECF No. 65 at PageID.432). However, Plaintiff does not otherwise elaborate, and Plaintiff's conclusory statement does not serve to demonstrate any analytical error by the Magistrate Judge. The Magistrate Judge accurately set forth the proper standard for reviewing motions for summary judgment and carefully and fairly analyzed the evidence in the record before him.

Accordingly, this Court denies Plaintiff's objections and adopts the Magistrate Judge's Report and Recommendation as the Opinion of this Court. Because this Opinion and Order resolves the last pending claims in this case, 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) and consistent with the Magistrate Judge's recommendation, 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. 65) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 64) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that the Motion for Summary Judgment (ECF No. 61) is GRANTED IN PART as to Plaintiff's Eighth Amendment claims, which are DISMISSED with prejudice, and DENIED IN PART as to Plaintiff's state-law claims, which are DISMISSED without prejudice.

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: November 16, 2022   /s/ Jane M. Beckering
                                                       JANE M. BECKERING
                                                       United States District Judge