

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RICHARD MCDUFF,

Plaintiff,

v.

PATRICIA WILLARD, et al.,

Defendants.

Case No. 1:22-cv-20

HON. JANET T. NEFF

OPINION AND ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. Defendant E’Coe Hill filed a combined motion for summary judgment for failure to exhaust administrative remedies and motion to dismiss pursuant to FED. R. CIV. P. 12(b)(6) (ECF No. 25). The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R) (ECF No. 39), recommending Defendant Hill’s motion be granted in part and denied in part. The matter is presently before the Court on Plaintiff’s objections (ECF No. 45). 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 R&R to which objections have been made. The Court denies the objections and issues this Opinion and Order.

Plaintiff raises four objections to the R&R (ECF No. 45). His first three objections concern whether he properly exhausted his administrative remedies. First, he argues that the Magistrate Judge did not properly apply *Reed-Bey v. Pramstaller*, 603 F.3d 322 (6th Cir. 2010) (ECF No. 45 at PageID.299). Second, he argues that the Magistrate Judge erred in determining that Grievance

LCF 21-04-0494-28e¹ did not exhaust his administrative remedies against Defendant Hill (*id.* at PageID.302). Third, he argues that the Magistrate Judge erred in determining that he was required to allege misconduct or wrongdoing (*id.* at PageID.304).

Plaintiff's first three objections are without merit. The record establishes that Plaintiff filed three relevant grievances. The Magistrate Judge adequately addressed each grievance (ECF No. 39 at PageID.273-276). Notably, Plaintiff failed to allege any unconstitutional act or omission by Defendant Hill in any of his grievances. To the contrary, Plaintiff alleged only that Defendant Hill refused a request to remove Plaintiff from the special diet in the one Step I grievance where he identified Defendant Hill (ECF No. 25-1 at PageID.177). As Plaintiff correctly states, administrative exhaustion is meant to give the party being grieved a "fair opportunity to correct" his or her errors. *See Reed-Bey*, 603 F.3d at 325-26. This requires Plaintiff to have alleged unconstitutional actions against Defendant Hill in his grievance before bringing this suit. Plaintiff failed to do so. Because Plaintiff's grievances did not give prison officials a "fair opportunity" to address Plaintiff's claims against Defendant Hill, Plaintiff's first three objections are denied.

In his fourth objection, Plaintiff argues that the Magistrate Judge incorrectly applied the summary judgment standard (ECF No. 45 at PageID.309). The Magistrate Judge stated the correct summary judgment standard in the R&R (ECF No. 39 at PageID.268-269). Moreover, the Court finds no error in the Magistrate Judge's application in the R&R. Because the Magistrate Judge stated the proper summary judgment standard and correctly applied that standard, Plaintiff's fourth objection is denied.

For the reasons stated above, Plaintiff's objections to the R&R granting Defendant Hill's motion are denied.

¹ Plaintiff also identifies this Grievance as "0409" (ECF No. 45 at PageID.302).

Therefore:

IT IS HEREBY ORDERED that Plaintiff's Objections (ECF No. 45) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 39) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Defendant's Motion for Summary Judgment and Motion to Dismiss (ECF No. 25) is GRANTED IN PART and DENIED IN PART. Plaintiff's claims against Defendant Hill are DISMISSED WITHOUT PREJUDICE for failure to exhaust administrative remedies.

Dated: March 14, 2023

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