

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID WAYNE HOKENSON,

Plaintiff,

v.

CITY OF LANSING, et al.,

Defendants.

Case No. 1:24-cv-601

HON. JANE M. BECKERING

MEMORANDUM OPINION AND ORDER

Plaintiff, proceeding pro se, initiated this action against four Defendants: the City of Lansing, Ordinance Officer Bryce Dawsey (Dawsey), and City Attorney Jim Smiertka (Smiertka) (collectively the “City Defendants”); and Defendant Eric’s Refuse, Inc. The City Defendants filed a motion to dismiss the federal claims against them in Plaintiff’s Amended Complaint. Plaintiff, who did not serve Defendant Eric’s Refuse, Inc., did not file a response to the City Defendants’ motion, although he filed a motion to again amend his pleading. The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R), recommending that this Court (1) grant the City Defendants’ motion, (2) dismiss Eric’s Refuse, Inc. because the Amended Complaint does not state a cause of action against this Defendant, (3) deny Plaintiff’s motion for leave to file a second amended complaint, (4) decline to exercise supplemental jurisdiction over Plaintiff’s state-law claims against the City Defendants, and (5) terminate this action. 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 Memorandum Opinion and Order.

In his scant one-page objections, Plaintiff argues that his “claims could be corrected by amendment” and points out that leave to amend should be “freely given” (Pl. Objs., ECF No. 23 at PageID.158, quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

Rule 15 directs that leave to amend shall be freely given “when justice so requires.” FED. R. CIV. P. 15(a). There are circumstances where justice counsels against amendment, including “futility of amendment.” *Stanley v. W. Michigan Univ.*, 105 F.4th 856, 867 (6th Cir. 2024) (quoting *Foman, supra*). “An amendment is futile ‘when, after including the proposed changes, the complaint still could not withstand a Rule 12(b)(6) motion to dismiss.’” *Id.* (citation omitted). Here, upon examination of Plaintiff’s proposed second amended complaint (ECF No. 19-2), the Magistrate Judge properly determined that the new factual allegations and other minor changes made to the claims therein does not alter the conclusion that Plaintiff failed to state plausible causes of action against Defendants (R&R, ECF No. 22 at PageID.155). Plaintiff’s mere disagreement does not serve to demonstrate error in the Magistrate Judge’s analysis. Accordingly, this Court adopts the Magistrate Judge’s Report and Recommendation as the Opinion of this Court.

Additionally, a Judgment will be entered consistent with this Memorandum Opinion and Order. *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. 23) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 22) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that the City Defendants' Motion to Dismiss (ECF No. 16) is GRANTED, and the federal claims against the City Defendants in Plaintiff's Amended Complaint (ECF No. 13) are DISMISSED WITH PREJUDICE.

IT IS FURTHER ORDERED, pursuant to 28 U.S.C. § 1367(c), that this Court DECLINES to exercise supplemental jurisdiction over Plaintiff's state-law claims against the City Defendants, which are DISMISSED WITHOUT PREJUDICE.

IT IS FURTHER ORDERED, pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), that the claims against Eric's Refuse, Inc. in the Amended Complaint (ECF No. 13) are DISMISSED for failure to state any plausible claim.

IT IS FURTHER ORDERED that Plaintiff's motion for leave to file a second amended complaint (ECF No. 19) is DENIED.

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: March 6, 2025

/s/ Jane M. Beckering
JANE M. BECKERING
United States District Judge