

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

AUTUMN ROSANNE SMITH,

Plaintiff,

v.

CITY OF BATTLE CREEK, et al.,

Defendants.

Case No. 1:24-cv-853

HON. JANE M. BECKERING

MEMORANDUM OPINION AND ORDER

Plaintiff, proceeding pro se, initiated this action on August 20, 2024 with the filing of a Complaint, alleging a violation of her civil rights arising from the denial of her requests to fly different flags from the City of Battle Creek's flagpoles (ECF No. 1). On August 26, 2024, the Magistrate Judge issued a Report and Recommendation, recommending that this action be dismissed upon initial screening pursuant to 28 U.S.C. § 1915(e)(2) on grounds that the Complaint fails to state any plausible claim. On September 10, 2024, Plaintiff filed a combined "Notice of Objection to Judicial 'Report and Recommendation' and Request for Leave to Amend Original Complaint" (ECF No. 9). The Court granted Plaintiff's request for leave to file an amended complaint, as allowed by Rule 15(a)(1) of the Federal Rules of Civil Procedure (Order, ECF No. 10). Plaintiff filed an Amended Complaint on December 16, 2024 (ECF No. 11). On December 18, 2024, the Magistrate Judge issued a Supplemental Report and Recommendation, recommending that this Court dismiss the Amended Complaint for failure to state any plausible claim (ECF No. 12). The matter is presently before the Court on Plaintiff's objections. The Court

has reviewed the objections and the Magistrate Judge's decision in accordance with 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b)(3). Plaintiff's objections are properly denied.

As the Magistrate Judge acknowledged (Supp. R&R, ECF No. 12 at PageID.67), Plaintiff's Amended Complaint is now the operative pleading because the Amended Complaint supersedes Plaintiff's earlier Complaint. *See In re Refrigerant Compressors Antitrust Litig.*, 731 F.3d 586, 589 (6th Cir. 2013). The Magistrate Judge determined that, for the reasons stated in her Supplemental Report and Recommendation as well as those stated in the August 26, 2024 Report and Recommendation, the Amended Complaint is properly dismissed (Supp. R&R, ECF No. 12 at PageID.69). Specifically, the Magistrate Judge determined that although Plaintiff cited additional constitutional provisions in her Amended Complaint, Plaintiff supplied "no facts to support cognizable claims" (*id.*). In her Objections, Plaintiff delineates the same constitutional amendments and provisions upon which she relied in her Amended Complaint; however, she fails to demonstrate any error in the Magistrate Judge's analysis or ultimate conclusion. Therefore, the objections are properly denied.

This Court will adopt the Magistrate Judge's decision as its own Opinion, and a Judgment will be entered consistent with this Memorandum Opinion and Order. *See* FED. R. CIV. P. 58. For the above reasons and because this action was filed *in forma pauperis*, this Court also certifies, pursuant to 28 U.S.C. § 1915(a)(3) and consistent with the Magistrate Judge's recommendation, that an appeal of this Judgment would not be taken in good faith. *See McGore v. Wrigglesworth*, 114 F.3d 601, 610-11 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 211-12 (2007). Accordingly:

IT IS HEREBY ORDERED that the Objections (ECF Nos. 9 & 13) are DENIED and the Report and Recommendation of the Magistrate Judge, as supplemented (ECF Nos. 8 & 12) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that the Amended Complaint (ECF No. 11) is DISMISSED pursuant to 28 U.S.C. § 1915(e)(2); specifically, Plaintiff's federal claims are dismissed WITH PREJUDICE, and the Court declines to exercise supplemental jurisdiction over any state-law claims therein, *see* 28 U.S.C. § 1367(c)(3), 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: January 28, 2025

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