

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

MICHAEL ELLIOT,

Plaintiff,

v.

KEITH SNYDER,

Defendant.

CASE No. 2:18-cv-85

HON. ROBERT J. JONKER

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**ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION**

The Court has reviewed the Magistrate Judge’s Report and Recommendation (ECF No. 16) and Defendant’s Objection to it. (ECF No. 17). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, “[t]he district judge . . . has a duty to reject the magistrate judge’s recommendation unless, on de novo reconsideration, he or she finds it justified.” 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997). Specifically, the Rules provide that:

[t]he district judge must determine de novo any part of the magistrate judge’s disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b)(3). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself; and Defendant’s objection. The Magistrate Judge

recommends that defense motion for summary judgment on the basis of failure to exhaust be denied because Plaintiff cannot be required to grieve non-grievable issues. After its review, the Court finds that Magistrate Judge Kent's Report and Recommendation is factually sound and legally correct.

Defendant objects that the Magistrate Judge misconstrued his argument, and that an improperly filed grievance (which is what he asserts Plaintiff has done here) cannot serve to exhaust a prisoner's claims. (ECF No. 17). Defendants draw too fine a line. The Magistrate Judge did not misconstrue the defense argument, rather he correctly determined that the argument was without merit. The Court agrees, on de novo review, that Plaintiff has not failed to exhaust his claim for the very reasons detailed by the Magistrate Judge.

ACCORDINGLY, IT IS ORDERED:

1. The Report and Recommendation of the Magistrate Judge (ECF No. 16) is **APPROVED and ADOPTED** as the Opinion of this Court.
2. Defendant's motion for summary judgment for failure to exhaust (ECF NO. 8) is **DENIED.**

Dated: May 16, 2019

/s/ Robert J. Jonker
ROBERT J. JONKER
CHIEF UNITED STATES DISTRICT JUDGE