

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

PHILLIP TANNER,

Plaintiff,

v.

L. BUCKHOLZ,

Defendant.

Case No. 2:20-cv-156

HON. JANET T. NEFF

OPINION AND ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. On November 23, 2020, Defendant filed a motion for summary judgment, arguing that Plaintiff failed to exhaust his administrative remedies (ECF No. 13) and attaching an MDOC Prisoner Step III Grievance Report demonstrating that Plaintiff had not filed a grievance that he pursued through Step III of the grievance process (ECF No. 13-3). Plaintiff did not timely file a response to Defendant's motion. The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R) on March 31, 2021, recommending that this Court grant Defendant's motion (ECF No. 19). The matter is presently before the Court on Plaintiff's April 12, 2021 letter, which was docketed as his objections to the Report and Recommendation (ECF No. 20). Defendant filed a response to Plaintiff's objections (ECF No. 21). On April 22, 2021, Plaintiff filed another letter, which was docketed as a "supplement" to his prior submission (ECF No. 22). Defendant also filed a response to Plaintiff's supplement (ECF No. 23). For the following reasons, the Court denies Plaintiff's objections and issues this Opinion and Order.

An objecting party is required to “specifically identify the portions of the proposed findings, recommendations or report to which objections are made and the basis for such objections.” W.D. Mich. LCivR 72.3(b). The court’s task is to “make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” W.D. Mich. LCivR 72.3(b). However, district courts need not provide de novo review of frivolous, general, or conclusive objections. *Weiler v. U.S. Dep’t of Treasury-Internal Revenue Serv.*, No. 19-3729, 2020 WL 2528916, at *1 (6th Cir. Apr. 24, 2020) (Order); *Bell v. Huling*, 52 F.3d 324, at *1 (6th Cir. 1995); *Mira v. Marshall*, 806 F.2d 636, 637 (6th Cir. 1986) (per curiam).

In his objections, Plaintiff conceded that it is “true” that he was “unable” to exhaust his administrative remedies before filing this lawsuit (ECF No. 20 at PageID.81). According to Plaintiff, his inability to exhaust his administrative remedies was due to the “grievance officer doing anything and everything to make it impossible for me to” (*id.*). As Defendant points out in his response (ECF No. 21), Plaintiff’s unspecified obstacle to exhausting his administrative remedies does not warrant rejection of the Magistrate Judge’s Report and Recommendation.

Next, in his supplement to his objections, Plaintiff asserts that certain mistakes in the grievance identifier numbers is evidence of the grievance officer’s interference (ECF No. 22). However, as Defendant sets forth in more detail in his response, Plaintiff’s submission instead serves to demonstrate that Plaintiff was still pursuing his administrative remedies of his claims when he filed his complaint in this case (ECF No. 23 at PageID.99). In sum, Plaintiff has failed to demonstrate any error in the Magistrate Judge’s ultimate conclusion that Plaintiff’s case is properly dismissed.

Accordingly, this Court adopts the Magistrate Judge’s Report and Recommendation as the Opinion of this Court. A Judgment will be entered consistent with this 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. 20, as supplemented by ECF No. 22) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 19) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that the Motion for Summary Judgment (ECF No. 13) is GRANTED for the reasons stated in the Report and Recommendation.

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: September 20, 2021

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