

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

BERNARD HARDRICK,

Plaintiff,

v.

UNKNOWN NOLANI, et al.,

Defendants.

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Case No. 2:20-cv-239

HON. JANE M. BECKERING

**OPINION AND ORDER**

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff, a Michigan Department of Corrections (MDOC) inmate, alleges that Defendants Unknown Nolani (an MDOC mail room employee) and A. Hetrick (an MDOC prison counselor) violated his First Amendment right to access certain reading material. Defendants moved for summary judgment. The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R), recommending that this Court grant Defendants' motion and dismiss this case. The matter is presently before the Court on Plaintiff's three objections to the Report and Recommendation. Defendants filed a response to Plaintiff's objections. 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 Opinion and Order.

The Magistrate Judge determined that Defendants lacked discretion under MDOC policy to allow a prisoner to possess the book at issue once the book was placed on the MDOC Restricted

Publication List in August 2020 (R&R, ECF No. 41 at PageID.293, 297). The Magistrate Judge further determined that Defendants set forth a legitimate penological reason for prohibiting the book inside the prison, that there were no genuine issues of material fact precluding summary judgment in Defendants' favor, and that Defendants are alternatively entitled to qualified immunity (*id.* at PageID.299 & 302).

In his first objection to the Magistrate Judge's Report and Recommendation, Plaintiff asserts that the Magistrate Judge made a factual error in overlooking that Plaintiff was initially "denied his right to access reading material in July 2020 ...before it was ever placed on any Restriction List" (Pl. Obj., ECF No. 42 at PageID.304). However, as Defendants point out (Resp., ECF No. 44 at PageID.310), the Magistrate Judge did not overlook this fact but concluded that Defendants were ultimately entitled to summary judgment. Indeed, Plaintiff concedes that after August 2020, Defendants were required to "automatically reject/deny" access to the book in accordance with MDOC policy (Pl. Obj., ECF No. 42 at PageID.304).

Second, Plaintiff claims that there is "still a genuine issue of material fact to be resolved by a trier of fact as to rather [sic] or not the subject book actually presents a threat to the order of the facility" because, according to Plaintiff, "no passage in the book ... states anything about 'deceiving' people" (Pl. Obj., ECF No. 42 at PageID.305). The Magistrate Judge's Report and Recommendation thoroughly sets forth the bases for concluding that prison officials have a legitimate interest in "preventing inmates from using manipulative and intimidating techniques." Plaintiff's mere disagreement with the Magistrate Judge's analysis does not serve to demonstrate factual or legal error.

Last, Plaintiff argues that because there are genuine issues of material fact, the Magistrate Judge erred in determining that Defendants are entitled to qualified immunity analysis (Pl. Obj.,

ECF No. 42 at PageID.305). As indicated in this Court's rejection of Plaintiff's first two objections, Plaintiff has failed to identify any genuine issues of material fact that would preclude summary judgment in this case.

Accordingly, Plaintiff's objections are properly denied, and this Court therefore adopts the Magistrate Judge's Report and Recommendation as the Opinion of this Court. Because this Opinion and Order resolves all pending claims, the Court will also enter a Judgment. *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. 42) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 41) is APPROVED and ADOPTED as the Opinion of the Court.

**IT IS FURTHER ORDERED** that Defendants' Motion for Summary Judgment (ECF No. 31) is GRANTED.

**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 25, 2023

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