

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MICHAEL A. DEMUTH,

Plaintiff,

9:18-CV-0795
(GTS/CFH)

v.

ERNEST CUTTING, Sheriff, County of Chenango;
LT. CHRIS MILES, SR., Jail Administrator,
Chenango County Jail; and CHENANGO COUNTY,

Defendants.

APPEARANCES:

OF COUNSEL:

MICHAEL A. DEMUTH, 19-B-1439
Plaintiff, *Pro Se*
Collins Correctional Facility
P.O. Box 340
Collins, New York 14034

OFFICE OF FRANK W. MILLER
Counsel for Defendants
6575 Kirkville Road
East Syracuse, New York 13057

FRANK W. MILLER, ESQ.

GLENN T. SUDDABY, Chief United States District Judge

DECISION and ORDER

Currently before the Court, in this *pro se* prisoner civil rights action filed by Michael A. Demuth (“Plaintiff”) against Chenango County and two of its employees (“Defendants”), are (1) Defendants' motion for summary judgment, and (2) United States Magistrate Judge Christian F. Hummel’s Report-Recommendation recommending that Defendants' motion be granted and that

Plaintiff's Complaint be dismissed. (Dkt. Nos. 32, 43.)¹ None of the parties have filed objections to the Report-Recommendation, and the deadline by which to do so has expired. (*See generally* Docket Sheet.) After carefully reviewing the relevant papers herein, including Magistrate Judge Hummel's thorough Report-Recommendation, the Court can find no clear error in the Report-Recommendation.² Magistrate Judge Hummel employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. As a result, the Report-Recommendation is accepted and adopted in its entirety for the reasons set forth therein, Defendants' motion for summary judgment is granted, and Plaintiff's Complaint is dismissed in its entirety with prejudice.

ACCORDINGLY, it is

ORDERED that Magistrate Judge Hummel's Report-Recommendation (Dkt. No. 43) is **ACCEPTED** and **ADOPTED** in its entirety; and it is further

ORDERED that Defendants' motion for summary judgment (Dkt. No. 32) is

¹ The Court notes that it has retained jurisdiction over this action despite the fact that Plaintiff filed a Notice of Appeal with the Second Circuit on February 5, 2020 (Dkt. No. 44), because that notice was clearly premature in that the Report-Recommendation appealed from was not a final order or judgment. *See U.S. v. Rodgers*, 101 F.3d 247, 252 (2d Cir. 1996) (deeming notice of appeal taken from non-final order as "premature" and a "nullity," and holding that the notice of appeal did not divest the district court of jurisdiction); *Burger King Crop. v. Horn & Hardart Co.*, 893 F.2d 525, 527 (2d Cir. 1990) (holding that notice of appeal taken from non-final judgment was "premature, and did not divest the district court of jurisdiction to amend the judgment").


² When no objection is made to a report-recommendation, the Court subjects that report-recommendation to only a clear-error review. Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition. When performing such a clear-error review, "the court need only satisfy itself that there is no clear error on the face of the record." *Id.*; *see also Batista v. Walker*, 94-CV-2826, 1995 WL 453299, at *1 (S.D.N.Y. July 31, 1995) (Sotomayor, J.) ("I am permitted to adopt those sections of [a magistrate judge's] report to which no specific objection is made, so long as those sections are not facially erroneous.") (internal quotation marks omitted).

GRANTED; and it is further

ORDERED that Plaintiff's Complaint (Dkt. No. 1) is **DISMISSED** with prejudice.

The Court certifies that an appeal from this Decision and Order would not be taken in good faith.

Dated: February 26, 2020
Syracuse, New York


Hon. Glenn T. Suddaby
Chief U.S. District Judge