

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DUSTIN LEE MACLEOD,

Plaintiff,

No. 5:18-cv-11653-JEL-MKM

v

HON. JUDITH E. LEVY

WILLIAM MORITZ, *et al.*,

MAG. MONA K. MAJZOUB

Defendants.

Dustin Lee Macleod, Prisoner #956261
Plaintiff in Pro Per
Parnell Correctional Facility
1780 East Parnell Street
Jackson, MI 49201

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**DEFENDANTS' RESPONSE TO PLAINTIFF'S OBJECTIONS TO
THE REPORT AND RECOMMENDATION OF THE
MAGISTRATE**

Defendants respond to the objections raised by Plaintiff (Dkt. 46) as authorized by LR 72.1(d)(3). These responses are “concise” and “proportionate to the objections in length and complexity” as required by the recommendation. (Dkt. 43, Pg.ID #733.)

Response to Objection #1

It may be that of the hundreds of treaties Congress has ratified, some of them, by their terms, confer individual rights that can be enforced under 42 U.S.C. § 1983. But it is “the specific language of a treaty [that] determines whether that treaty gives rise to a § 1983 remedy.” *Jones v. Norton*, 809 F.3d 564, 578 (10th Cir. 2015). The treaty must use “unmistakable” language that “unambiguously” gives rise to that remedy. *See Gonzaga Univ. v. Doe*, 536 U.S. 273, 283–286 (2002). As Defendants explained, Article 13 of the 1836 treaty at issue here does not meet that standard. (Dkt. 39, Pg.ID ##681–685.) Indeed, the definitive opinion on the meaning of Article 13 and the 1836 treaty already concluded after the presentation of extensive evidence that the Article 13 right “at issue in [that] case is the communal property of the tribes which signed the treaty and their modern political successors; it does not belong to individual tribal members.” *United States v. State of*

Mich., 471 F. Supp. 192, 271 (W.D. Mich. 1979). Plaintiff's objection lacks merit.

Response to Objection #2

The recommendation analyzes binding precedent from the Sixth Circuit to support the conclusion that Plaintiff lacks standing to enforce the consent decree. (Dkt. 43, Pg.ID #772.) Plaintiff does not respond to that analysis. Instead, he cites a 1925 district court case from the Western District of Washington, without any explanation as to why that case supports his argument that he has standing to enforce the consent decree. Plaintiff's objection lacks merit.

Response to Objection #3(a)

Defendants cannot ascertain the meaning of this objection. The recommendation's conclusion that Plaintiff lacks a property interest in state forest land is straightforward.

Response to Objection #3(b)

Plaintiff cites 18 U.S.C. § 247. He argues that because it is a federal crime to "intentionally" destroy "religious real property, because of the religious character of that property" under a circumstance that "is

in or affects interstate or foreign commerce,” then his allegations meet the stringent “shocks the conscience” standard required to pursue a damages claim under the substantive due process clause of the Fourteenth Amendment. But Plaintiff cites no authority for that conclusion, nor does he provide any analysis explaining how his allegations meet the “shocks the conscience” standard. Plaintiff’s objection lacks merit.

Response to Objection #4

Plaintiff alleged that he built structures including a “sundance arbor, altar, and sweatlodges” on state forest land. (Dkt. 4, Pg.ID #63, ¶ 71.) He also alleged that those structures were indistinguishable from a ground blind for hunting. (*Id.*) The recommendation notes that a plaintiff’s allegations must be plausible, and correctly concluded that Plaintiff’s allegation that his structures were indistinguishable from a ground blind was not plausible. Plaintiff’s objection lacks merit.

Response to Objection #5

The title of this objection purports to address the recommendation's finding that for the purposes of the Free Exercise Clause, the state regulation that forbids constructing unauthorized structures on state land is neutral and of general applicability. But the body of the objection is a quotation from *United States v. Winans*, 198 U.S. 371 (1905) that gives the incorrect impression that the Supreme Court in that case interpreted the 1836 treaty at issue in this case. It did not. Plaintiff's objection lacks merit.

Response to Objection #6

Defendants' motion to dismiss discusses each of the laws the recommendation addresses in the section titled "Laws Not Privately Enforceable." (Dkt. 19, Pg.ID ##255–257; Dkt. 43, Pg.ID #731.) Plaintiff cannot enforce criminal laws in a private lawsuit, the American Indian Religious Freedom Act is not judicially enforceable, and the Michigan Constitution superseded the Northwest Ordinance. (Dkt. 19, Pg.ID #255.) Plaintiff's objection does not address any of those conclusions. It is merely a complaint about the recommendation's wording and lacks merit.

Response to Objection #7

Plaintiff objects to the recommendation's finding that he does not have the type of a legally cognizable ownership interest in state forest land that would be required for the Religious Land Use and Institutionalized Persons Act to apply in this case. But he does not explain how he *does* have a legally cognizable ownership interest in state forest land. Instead, he again cites the *Winans* case as if it analyzed the 1836 treaty at issue here—it did not. Plaintiff's objection lacks merit.

Response to Objection #8

Defendants cannot ascertain the meaning of this objection. The recommendation's conclusion that the Court should not exercise ancillary jurisdiction over state law claims if there are no federal claims in the case is straightforward.

CONCLUSION AND RELIEF REQUESTED

Defendants respectfully request that the Court adopt the recommendation to dismiss Plaintiff's complaint in its entirety.

Respectfully submitted,

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Dated: April 26, 2019

CERTIFICATE OF SERVICE (E-FILE)

I hereby certify that on April 26, 2019, I electronically filed the above document(s) with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record. A copy of the above document(s) was also served via First Class Mail upon Plaintiff Dustin Lee Macleod at Parnell Correctional Facility, 1780 East Parnell Street, Jackson, MI 49201, and upon Phil Bellfy at 5759 S. Ridge Road, Sault Ste. Marie, MI 49783.

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