

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
MICHIGAN, SOUTHERN DIVISION

Earnest Gathing, Jr. v. Kalamazoo Charter Township, et al.

Gathing · No. 1:25-cv-994 · Decided January 6, 2026

SUMMARY

The United States District Court for the Western District of Michigan adopts a magistrate judge’s report and recommendation granting Defendants’ motion to dismiss and denying Plaintiff’s motion for summary judgment. The court vacates the magistrate judge’s order rejecting Plaintiff’s proposed amended complaint and refers the motion for leave to amend for a determination of whether amendment would be futile. The court also denies the proposed addition of Plaintiff’s son, drops deceased Defendant Christian Smith, and orders that dismissal does not terminate the action.

CASE DETAILS

COURT	United States District Court for the Western District of Michigan, Southern Division
WRITING FOR THE COURT	Hala Y. Jarbou
JURISDICTION	United States District Court for the Western District of Michigan, Southern Division
DECIDED	January 6, 2026
DOCKET	1:25-cv-994
DISPOSITION	other
PROCEDURAL POSTURE	District-judge review under Federal Rule of Civil Procedure 72 of a magistrate judge's report and recommendation recommending dismissal of Plaintiff's civil-rights action and denial of Plaintiff's motion for summary judgment. Plaintiff objected and sought leave to amend.
STANDARD OF REVIEW	De novo review of properly objected-to portions of a magistrate judge's disposition under Federal Rule of Civil Procedure 72(b)(3). A proposed amendment should be allowed unless it would be futile, meaning the amended complaint could not survive a renewed Rule 12(b)(6) motion.
PRECEDENTIAL VALUE	unpublished district court order; precedential status not stated

TOPICS

motion to amend

motions to dismiss

summary judgment

pleadings

civil procedure

PRACTICE AREAS

civil procedure

civil rights

constitutional law

QUESTIONS PRESENTED

1. Whether the district court should adopt the magistrate judge's recommendation to grant Defendants' motion to dismiss and deny Gathing's motion for summary judgment.
2. Whether Gathing's embedded motion for leave to amend and attached proposed amended complaint constituted a valid request for leave to amend.
3. Whether the district court should decide in the first instance that amendment would be futile or instead refer the motion for leave to amend to the magistrate judge.
4. Whether Gathing could act as next friend for his son I.G. while proceeding pro se.
5. Whether deceased Defendant Christian Smith remained a proper party.

HOLDINGS

1. Under Federal Rule of Civil Procedure 72(b)(3), the district judge must determine de novo any part of a magistrate judge's disposition to which a proper objection is made and may accept, reject, modify, receive further evidence, or return the matter with instructions.
2. A motion for leave to amend embedded in objections to a report and recommendation, together with an attached proposed amended complaint, may constitute a valid request for leave to amend.
3. The complaint could not be dismissed in its entirety without assessing whether the proposed amended complaint would survive a renewed Rule 12(b)(6) motion; the motion for leave to amend was therefore referred to the magistrate judge to determine whether amendment would be futile.
4. Gathing was not entitled to summary judgment because Defendants timely moved to dismiss under Rule 12.
5. Gathing could not act as next friend for I.G. as a pro se plaintiff.
6. Christian Smith was no longer a proper party following his death and was dropped from the action.

KEY QUOTATIONS

"Accordingly, Gathing's suit should not be dismissed unless it is clear that the amended complaint would not survive a renewed Rule 12(b)(6) motion." (Section I.A.)

"The dismissal of Gathing's complaint DOES NOT terminate this action." (Order)

FACTUAL BACKGROUND

Gathing brought a civil-rights action alleging unconstitutional conduct by Defendants but did not adequately connect the alleged conduct to particular defendants in his original complaint. He sought summary judgment and, in objections to the magistrate judge's report and recommendation, sought leave to amend and attached a proposed amended complaint that identified defendants in connection with most alleged incidents. Gathing also attempted to add his son I.G. as a plaintiff, and Defendant Christian Smith had died.

PROCEDURAL HISTORY

The magistrate judge recommended granting Defendants' motion to dismiss and denying Gathing's motion for summary judgment. Gathing timely objected and embedded a motion for leave to amend in his objections, attaching a proposed amended complaint. The district court adopted the report and recommendation, denied summary judgment, denied the proposed amendment adding I.G. as a plaintiff, dropped deceased Defendant Christian Smith, granted the motion to dismiss, vacated the magistrate judge's order rejecting the proposed amended complaint, and referred the motion for leave to amend to the magistrate judge to determine whether amendment would be futile.

DISPOSITION

other

REMAND INSTRUCTIONS

The magistrate judge must assess in the first instance whether granting Gathing leave to amend would be futile. The district court vacated the magistrate judge's order rejecting the proposed amended complaint and referred Gathing's motion for leave to amend for further proceedings.

CASES CITED

- Parchman v. SLM Corp., 896 F.3d 728, 736 (6th Cir. 2018)
- Newberry v. Silverman, 789 F.3d 636, 645 (6th Cir. 2015)
- Islamic Ctr. of Nashville v. Tennessee, 872 F.3d 377, 387 (6th Cir. 2017)
- Greer v. Strange Honey Farm, LLC, 114 F.4th 605, 617 (6th Cir. 2024)

OPINION

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION EARNEST GATHING, Jr., Plaintiff, Case No. 1:25-cv-994 v. Hon. Hala Y. Jarbou KALAMAZOO CHARTER TOWNSHIP, et al., Defendants.
_____/ ORDER REGARDING REPORT AND RECOMMENDATION Before the Court is the report and recommendation of the magistrate judge that Defendants’ motion to dismiss Earnest Gathing’s civil-rights action against them be granted and that Gathing’s motion for summary judgment be denied.

(R&R, ECF No. 18.) Gathing timely objected to the R&R (Objs., ECF No. 19) and simultaneously moved for leave to file an amended complaint (id. at PageID.541). The proposed amendment was

attached to the objections. (See ECF No. 20-1.) Yet the magistrate judge rejected the pleading because it was not appended to a motion. (ECF No. 20.)

Under Federal Rule of Civil Procedure 72, the 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).

The Court will adopt the R&R in full, but it will vacate the order rejecting Gathing's proposed amended complaint and direct the magistrate judge to assess whether granting Gathing leave to amend would be futile. I. ANALYSIS A. Motion to Dismiss Federal Rule of Civil Procedure 15(a)(2) calls for leave to amend a pleading to be freely granted when the court's leave is required.

Although the Sixth Circuit has characterized circuit practice as manifesting "liberality in allowing amendments to a complaint," *Parchman v. SLM Corp.*, 896 F.3d 728, 736 (6th Cir. 2018) (quoting *Newberry v. Silverman*, 789 F.3d 636, 645 (6th Cir. 2015)), the court of appeals has blessed denial of leave to amend when not accompanied by a formal motion or proposed amendment.

See *Islamic Ctr. of Nashville v. Tennessee*, 872 F.3d 377, 387 (6th Cir. 2017). Here, however, Gathing did move to amend his complaint, albeit in a motion embedded in his objections to the R&R. That motion, in conjunction with the proposed amended complaint, sets out a valid request for the Court's leave.

Accordingly, Gathing's suit should not be dismissed unless it is clear that the amended complaint would not survive a renewed Rule 12(b)(6) motion. *Greer v. Strange Honey Farm, LLC*, 114 F.4th 605, 617 (6th Cir. 2024).

The primary reason given by the magistrate judge for dismissing Gathing's case is his failure to tie the unconstitutional conduct alleged in the complaint to particular Defendants. The proposed amendment appears to remedy this deficiency, with most "incidents" Gathing mentions also mentioning the Defendant or Defendants whom Gathing accuses of being involved.

(See Proposed Am. Compl., ECF No. 20- 1, PageID.546–547.) And while the Court is skeptical that most—if any—of Gathing's alleged violations state a valid claim for relief, the Court is hesitant to dismiss Gathing's lawsuit in its entirety without an assessment of his proposed amended complaint.

Accordingly, the Court will adopt the recommendation that Defendants' motion to dismiss be granted, but the Court will refer the motion for leave to amend to the magistrate judge to assess in the first instance whether granting Gathing leave would be futile. B. Other Recommendations The Court agrees with the R&R in all other respects. Gathing's objections do not meaningfully respond to the magistrate judge's findings that Gathing is not entitled to summary judgment because

Defendants timely moved to dismiss under Rule 12, and that Gathing cannot act as next friend for his son I.G. as a pro se plaintiff.

(Objs., PageID.539–541.) And Gathing concedes that Defendant Christian Smith is no longer a proper party to this suit following his death. (Proposed Am. Compl., PageID.547.) The Court will therefore adopt the magistrate judge’s recommendations on those issues. IT IS ORDERED that the R&R (ECF No. 18) is APPROVED and ADOPTED as the opinion of this Court. IT IS FURTHER ORDERED that Gathing’s motion for summary judgment (ECF No. 11) is DENIED.

IT IS FURTHER ORDERED that Gathing’s proposed amendment adding I.G. as a plaintiff (see ECF No. 16 at 1) is DENIED. IT IS FURTHER ORDERED that deceased Defendant Christian Smith (see ECF No. 6) is DROPPED from this action. IT IS FURTHER ORDERED that Defendants’ motion to dismiss (ECF No. 5) is GRANTED.

The dismissal of Gathing’s complaint DOES NOT terminate this action. IT IS FURTHER ORDERED that the magistrate judge’s order rejecting Gathing’s proposed amended complaint (ECF No. 20) is VACATED. His motion for leave to amend (Objs., PageID.541) is REFERRED to the magistrate judge for further proceedings. Dated: January 6, 2026 /s/ Hala Y. Jarbou HALA Y. JARBOU CHIEF UNITED STATES DISTRICT JUDGE