

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

---

LAMONT HEARD, et al.,

Plaintiffs,

v.

Case No. 1:13-CV-373

TOM FINCO, et al.,

HON. GORDON J. QUIST

Defendants.

---

**ORDER GRANTING PLAINTIFF HEARD'S MOTION TO  
RECONSIDER JUNE 26, 2015 ORDER ADOPTING IN PART AND  
REJECTING IN PART MARCH 27, 2015 REPORT AND RECOMMENDATION**

Plaintiff Lamont Heard has filed a motion for reconsideration of the portion of the Court's June 26, 2015 Order Adopting in Part and Rejecting in Part 3/27/15 Report and Recommendation pertaining to Heard's Ramadan 2011 claim. Regarding that claim, the Court stated that it disagreed with the magistrate judge's conclusion that Heard's 2010 grievance could not have exhausted Heard's 2011 claim, but it concluded that the magistrate judge did not err in recommending dismissal of Heard's 2011 claim because Heard failed to attach copies of his 2010 grievance to his response to Defendants' motion for summary judgment. (Dkt. # 204 at Page ID##1774-75.)

Pursuant to Federal Rule of Civil Procedure 54(b), an order that disposes of fewer than all claims or parties to an action "may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities." To prevail on a motion for reconsideration, the movant must "not only demonstrate a palpable defect by which the Court and the parties have been misled, but [must] also show that a different disposition of the case must result from a correction thereof." *See* W.D. Mich. LCivR 7.4(a).

Plaintiff Heard suggests that, in requiring him to support his response to Defendants' motion with evidence, the Court improperly shifted the burden of proof to Heard on the issue of exhaustion. The Court disagrees. Defendants bore the burden of proving that Heard failed to exhaust his Ramadan 2011 and 2012 claims. Heard conceded that he did not exhaust a grievance for his Ramadan 2011 claim, but he argued that his grievance concerning Ramadan 2010 served to exhaust his Ramadan 2011 claim. As the Court noted in its June 26, 2015 Order, as the party responding to a motion for summary judgment, Heard was obligated to come forward with evidence showing that a genuine issue of fact remained with regard to exhaustion. This was Heard's burden. Nonetheless, the Court concludes that Heard is entitled to reconsideration of the dismissal of his Ramadan 2011 claim because, as Heard correctly points out, while Defendants disputed the effect of Heard's grievance for Ramadan 2010, they did not dispute the fact that Heard exhausted a grievance for Ramadan 2010. In addition, Heard has supported his instant motion with evidence demonstrating that he exhausted a grievance for Ramadan 2010. Accordingly, the Court concludes that Heard has shown that his exhausted grievance for Ramadan 2010 properly exhausted his Ramadan 2011 claim.

Therefore,

**IT IS HEREBY ORDERED** that the Plaintiff Heard's Motion to Alter or Amend and Reconsider Part of June 26, 2015 Order Dismissing His 2011 Ramadan Claim (dkt. # 208) is **GRANTED**. Plaintiff Heard's Ramadan 2011 claim is **reinstated**.

Dated: August 4, 2015

/s/ Gordon J. Quist  
GORDON J. QUIST  
UNITED STATES DISTRICT JUDGE