

FILED

OCT 26 2010

PATRICK E. DUFFY, CLERK

By _____
DEPUTY CLERK, MISSOULA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

RON GLICK,)	CV 09-128-M-DWM-JCL
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
ELEVENTH JUDICIAL DISTRICT)	
COURT OF MONTANA, et al.,)	
)	
Defendants.)	
_____)	

Plaintiff Glick filed this action pursuant to 42 U.S.C. § 1983 in August of 2009, alleging civil rights and RICO claims against the Defendants. On March 26, 2010, this Court issued an Order adopting United States Magistrate Judge Jeremiah C. Lynch’s recommendation to dismiss the claims against all Defendants except Glick’s probation officer, Dave Edwards. Judge Lynch directed Glick to file a second amended complaint as to his claims against Edwards.

The deadline for Glick's compliance with Judge Lynch's Order was March 18, 2010. Following an unsuccessful appeal by Glick, Judge Lynch again ordered Glick to file a second amended complaint on July 6, 2010, with a deadline for compliance of July 21, 2010. Doc. No. 23. Judge Lynch advised Glick that failure to comply with the July 21, 2010 deadline will result in dismissal. Id. Glick has not filed a second amended complaint, and Judge Lynch has issued Findings and Recommendations in which he recommends that Glick's claims against Edwards be dismissed for failure to prosecute under Fed. R. Civ. P. 41(b).

Judge Lynch weighed the five factors to be considered in deciding whether to dismiss for failure to prosecute, as set out in Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002). Judge Lynch found that the interest in expeditious resolution of cases, the Court's need to manage its docket, and the availability of less drastic options all favor dismissal, while only the preference for resolution of cases on the merits does not. He found the prejudice factor to be neutral. On this basis Judge Lynch recommends that the case be dismissed for failure to prosecute.

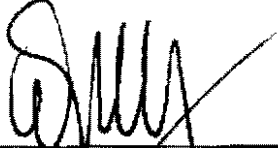
Glick filed timely objections, thereby preserving his right to de novo review. 28 U.S.C. 636(b)(1). In his objections Glick states that he refuses to comply with Judge Lynch's order because he believes his claims were properly framed in his first amended complaint. The viability of Glick's dismissed claims has been adjudicated through the issuance of findings and recommendations, an

Order of this Court adopting those recommendations, an Order of this Court denying Glick's motion for reconsideration, and an Order of the Ninth Circuit Court of Appeals dismissing Glick's interlocutory appeal. Glick's disagreement with the Court's Order is not a valid reason to refuse to comply with the Order and does not excuse Glick's failure to prosecute.

Having considered Glick's objections, and upon de novo review, I agree with Judge Lynch's Findings and Recommendations (Doc. No. 24) and adopt them in full.

Accordingly, IT IS HEREBY ORDERED that this action is DISMISSED without prejudice pursuant to Fed. R. Civ. P. 41(b).

DATED this 26th day of October, 2010.



Donald W. Molloy, District Judge
United States District Court

