

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

WYLMINA E HETTINGA,
Plaintiff,
v.
STUART J. SCOTT, et al.,
Defendants.

Case No. [17-cv-04387-BLF](#)

**ORDER ADOPTING REPORT AND
RECOMMENDATION OF
MAGISTRATE JUDGE LLOYD AND
DISMISSING CASE WITHOUT LEAVE
TO AMEND**

The Court has reviewed the Report and Recommendation (“R&R”) of Magistrate Judge Howard R. Lloyd dismissing this action for lack of subject matter jurisdiction. *See* ECF 7. The Court has also reviewed a letter from Bruce D. MacLeod bringing issues with Plaintiff Wylmina Hettinga’s (“Plaintiff”) Complaint to the Court’s attention. ECF 9. For the reasons below, this case is **DISMISSED WITHOUT LEAVE TO AMEND**.

When reviewing a Report and Recommendation for a nondispositive matter, a court must “set aside any part of the order that is clearly erroneous or is contrary to law.” Fed. R. Civ. P. 72(a). For a dispositive matter, like the one at issue here, a court “must determine de novo any part of the magistrate judge’s disposition that has been properly objected to.” Fed. R. Civ. P. 72(b)(1)(3). *See also* 28 U.S.C. § 636(b)(1). No objections to the R&R have been filed and the deadline to object has elapsed. *See* Fed. R. Civ. P. 72(b)(2); Fed. R. Civ. P. 6(d); *see* Docket No. 17-4387 (Plaintiff served with R&R on August 4, 2017).

After reviewing the entire record in this case, the Court finds the R&R correct, well reasoned, and thorough, and adopts it in every respect. Accordingly, the above-titled action is **DISMISSED** without leave to amend.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Separately, the Court notes that Judge Ronald M. Whyte declared Plaintiff Wylmina Hettinga to be a vexatious litigant on September 30, 2014. ECF 9-1. Judge Whyte’s order instructed as follows:

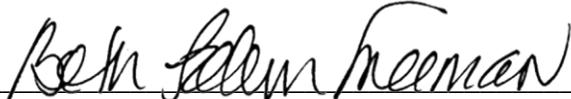
The Clerk of this court may not file or accept any further complaints filed by or on behalf of Wylmina Hettinga as a named plaintiff that arise out of facts related to plaintiff’s divorce case. If Ms. Hettinga wishes to file a complaint arising out of facts related to her divorce case, she shall provide a copy of any such complaint, a letter requesting that the complaint be filed, and a copy of this order to the Clerk of this court. The Clerk shall then forward the complaint, letter, and copy of this order to the Duty Judge for a determination whether the complaint should be accepted for filing. Any violation of this order will expose plaintiff to a contempt hearing and appropriate sanctions, and any action filed in violation of this order will be subject to dismissal.

Id. The Court finds that the instant complaint arises out of facts related to Plaintiff Hettinga’s divorce case. As Judge Lloyd pointed out in his Report and Recommendation, “Hettinga’s action amounts to a de facto appeal of a state court child custody order.” ECF 7. Although Plaintiff filed a “motion for permission filing,” with the Court directly when she filed her complaint, ECF 1-3, Plaintiff did not follow the procedures set forth in Judge Whyte’s order. However, after a separate review of the complaint, this Court finds the complaint to be without merit and thus the complaint is rejected for filing pursuant to Judge Whyte’s prior order.

For the foregoing reasons, Plaintiff’s complaint is DISMISSED WITHOUT LEAVE TO AMEND for lack of subject matter jurisdiction and, separately, on the grounds that Plaintiff fails to satisfy the pre-filing requirements insofar as her claims lack merit.

IT IS SO ORDERED.

Dated: August 21, 2017


BETH LABSON FREEMAN
United States District Judge