

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
LEWIS T. BABCOCK, JUDGE**

Civil Case No. 09-cv-02021-LTB-MJW

CAREY A. MURRAY,

Plaintiff,

v.

TASHA DOBBS,

Defendant.

ORDER

This case is before me on “Plaintiff’s Response and Objection to, Grant the Defendant’s Motion to Dismiss” (Doc 49) filed September 7, 2010. On September 2, 2010, I entered my Order reflecting that Plaintiff requested and was granted an extension of time up to and including September 1, 2010 to respond to the Magistrate Judge’s Recommendation (Doc 42) that Defendant’s Motion to Dismiss be granted and dismissed this action.

28 U.S.C. § 636(b)(1)(C) provides that “Within 14 days after being served with a copy, [of the recommendation] any party may serve and file written objections to the proposed findings and recommendations as provided by rules of court.” (Emphasis added) Plaintiff’s objections are dated September 1, 2010 and include his certificate of service in the U.S. Mail, postage paid on the 1st day of September, 2010, to the Colorado Attorney General.

D.C.Colo.LCivR 5.1(a) provides that if a paper is filed but service is not made by electronic means, service shall be made under Fed. R. Civ. P. 5(b) on the same date as the date of filing. This is the reverse of what occurred here. D.C.ColoLCivR 5.6(A) provides for electronic case filing and subparagraph (B) provides for paper filings as would be appropriate in this case. But the paper filing was on September 7, 2010, ten days late. D.C.ColoLCivR 8.2 addresses prisoner pleadings but does not address extension of a filing date via a certificate of service date. Finally, F. R. Civ. P. 6 and 72(b)(2) together with 28 U.S.C. § 636(b)(1)(C) clearly provide the time for both service and filing of written objections to a Magistrate Judge's recommendation.

I conclude here, that although service may be timely, the filing was not. Accordingly, Plaintiff remains barred from *de novo* review of the Magistrate Judge's recommendation and his objections (Doc 49) are subject to being stricken.

Even if this conclusion is in error, out of an abundance of caution, I have reviewed his objections to the recommendation *de novo* in light of the file and record in this case and would nevertheless conclude that the recommendation is correct.

Accordingly

IT IS ORDERED that "Plaintiff's Response and Objection to, Grant the Defendant's Motion to Dismiss" (Doc 49) is STRICKEN.

In the alternative, I would conclude that the Magistrate Judge's Recommendation is correct.

Under either conclusion, it is therefore ORDERED that Defendant's Motion to Dismiss (Doc 31) is GRANTED and this action is DISMISSED.

BY THE COURT:

s/Lewis T. Babcock
Lewis T. Babcock, Judge

DATED: September 10, 2010