

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior Judge Wiley Y. Daniel

Civil Action No. 11-cv-03184-WYD-KLM

LINDA SUE FICK,

Plaintiff,

v.

WELLS FARGO, and,
AMERICA'S SERVICING COMPANY,

Defendants.

**ORDER AFFIRMING AND ADOPTING RECOMMENDATION OF UNITED STATES
MAGISTRATE JUDGE**

THIS MATTER is before the Court on Magistrate Judge Mix's Recommendation [ECF No. 58]. Because the plaintiff, Linda Sue Fick, proceeds *pro se*, I referred all motions to Magistrate Judge Mix [ECF No. 7]. On January 15, 2013, Magistrate Judge Mix issued a Recommendation [ECF No. 58] stating that pursuant to Rule 41(b) of the FEDERAL RULES of CIVIL PROCEDURE, Fick's claims should be dismissed with prejudice for failure to prosecute and failure to comply with court orders. Magistrate Judge Mix's Recommendation [ECF No. 58] is incorporated herein by reference. See 28 U.S.C. § 636(b)(1), FED. R. CIV. P. 72(b), D.C.COLO.LCivR. 72.1. For the reasons stated below, the Recommendation [ECF No. 58] is AFFIRMED and ADOPTED, and Fick's claims are DISMISSED WITH PREJUDICE.

BACKGROUND

On December 7, 2011, *pro se* plaintiff, Linda Sue Fick, filed suit against defendants, Wells Fargo and America's Servicing Company (collectively "the Defendants"), seeking a declaratory judgment that the Defendants have "no legal standing to institute or maintain foreclosure" proceedings against her. ECF No. 1, p. 9, ¶ 19. On November 21, 2012, the Defendants filed a Motion To Dismiss RESPA and FDCPA Claims [ECF No. 55].¹ Because Fick failed to respond to the Defendants' motion [ECF No. 55], Magistrate Judge Mix issued an Order To Show Cause [ECF No. 57] on December 19, 2012, ordering that on or before January 7, 2013, Fick shall either: (1) show good cause in writing as to why she failed to respond to the Defendants' motion [ECF No. 55]; or, (2) file a response to the Defendants' motion [ECF No. 55]. Fick did not respond to the Order To Show Cause [ECF No. 57].² As a result of Fick's failure to respond, Magistrate Judge Mix issued a Recommendation [ECF No. 58] on January 15, 2013, recommending that pursuant to FED. R. CIV. P. 41(b), Fick's claims against the Defendants should be dismissed with prejudice for failure to prosecute and failure to comply with court orders.³ Magistrate Judge Mix advised the parties that they had 14 days after service of a copy of the Recommendation [ECF No. 58] to file

¹ RESPA is an acronym for the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601, *et seq.* FDCPA is an acronym for the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.*

² As of Tuesday, September 17, 2013, Fick has not responded to Magistrate Judge Mix's Order To Show Cause [ECF No. 57]. To note, this is the second time Fick has not responded to an Order To Show Cause issued by Magistrate Judge Mix; the first of which was issued by Magistrate Judge Mix on August 13, 2012 [ECF No. 50].

³ FED. R. CIV. P. 41(b) states, in pertinent part, "[i]f the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it." "Rule [41(b)] has long been interpreted to permit courts to dismiss actions sua sponte for a plaintiff's failure to prosecute . . ." *Rogers v. Andrus Transp. Servs.*, 502 F.3d 1147, 1151 (10th Cir. 2007) (quoting *Olsen v. Mapes*, 333 F.3d 1199, 1204 n.3 (10th Cir. 2003)).

objections. As of Tuesday, September 17, 2013, no party has filed objections to the Recommendation [ECF No. 58].

ANALYSIS

Because the parties did not file objections to Magistrate Judge Mix's Recommendation [ECF No. 58], I am vested with discretion to review it "under any standard [I] deem[] appropriate." *Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991); see also *Thomas v. Arn*, 474 U.S. 140, 150 (1985) (stating that "[i]t does not appear that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings"). Nonetheless, though not required to do so, I review the Recommendation to "satisfy [my]self that there is no clear error on the face of the record."⁴ Advisory Committee Notes to FED. R. CIV. P. 72(b).

Having reviewed Magistrate Judge Mix's Recommendation [ECF No. 58], I am satisfied that there is no clear error on the face of the record. I find that Magistrate Judge Mix's Recommendation [ECF No. 58] is thorough, well-reasoned, and sound. Further, I agree that pursuant to FED. R. CIV. P. 41(b), Fick's claims should be dismissed with prejudice for failure to prosecute and failure to comply with court orders.

CONCLUSION

After careful consideration of the matter before this Court, it is

ORDERED that Magistrate Judge Mix's Recommendation [ECF No. 58] is

AFFIRMED and **ADOPTED**. It is

⁴ Note, this standard of review is something less than a "clearly erroneous or contrary to law" standard of review, FED. R. CIV. P. 72(a), which in turn is less than a *de novo* review, FED. R. CIV. P. 72(b).

FURTHER ORDERED that pursuant to FED. R. CIV. P. 41(b), plaintiff, Linda Sue Fick's, claims are **DISMISSED WITH PREJUDICE** for failure to prosecute and failure to comply with court orders.

Dated: September 17, 2013.

BY THE COURT:

/s/ Wiley Y. Daniel

Wiley Y. Daniel

Senior U. S. District Judge