

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MICHELLE A. GUDINAS,
Plaintiff,

v.

CIVIL ACTION NO. 14-40184-TSH

MR. MAO, ET AL.,
Defendants.

MEMORANDUM AND ORDER
ADOPTING REPORT AND RECOMMENDATION

HILLMAN, D.J.

On December 22, 2014, plaintiff Michelle A. Gudinas filed a *pro se* Complaint against Mr. Mao of the Gardner Social Security Office, and the Gardner Social Security Office itself. On March 31, 2015, Magistrate Judge Hennessy issued a Memorandum and Order (Docket No. 9), in which he granted plaintiff's Motion for Leave to Proceed *in forma pauperis*, denied plaintiff's Motion for Appointment of Counsel, and outlined the various legal impediments to plaintiff's claims.

First, the Court noted that plaintiff, as a *pro se* litigant, could not pursue claims for social security benefits on behalf of her daughter. Second, the Court noted the substantial Rule 8 pleading deficiencies in the Complaint, such as the failure to state any underlying facts to set forth a plausible claim against Mr. Mao. Third, the Court noted that sovereign immunity barred plaintiff's claims against the Social Security Office itself. Finally, the Court noted the failure to state cognizable claims based on social security decisions regarding benefits, because the statutory scheme of the Social Security Act provided an exclusive remedy to challenge benefits decisions, and thus precluded any § 1983 claims against Mr. Mao. In light of these problems, plaintiff was afforded an opportunity to demonstrate good cause why her action should not be

dismissed, and to file an Amended Complaint curing the pleading deficiencies.

On May 5, 2015, plaintiff filed a Response to the Court Order (Docket No. 10) which incorporated an Amended Complaint and included a Criminal Complaint against Mr. Mao. On May 18, 2015, Magistrate Judge Hennessy issued a Memorandum and Order and Report and Recommendation (Docket No. 12) recommending that this Court dismiss this action in its entirety, and dismiss the Criminal Complaint in its entirety. Magistrate Judge Hennessy found that plaintiff's Response failed to state whether she had exhausted her administrative remedies with the Social Security Administration, and failed to address the Court's finding that there is no recourse against Mr. Mao because of the exclusive remedy provided by the Social Security Act.

Next, Magistrate Judge Hennessy found that the Amended Complaint did not set forth plaintiff's claims in accordance with Rules 8 and 10 of the Federal Rules of Civil Procedure. Moreover, plaintiff failed to set forth any claims from which the Court could find any claim other than one for benefits. Thus, absent exhaustion of administrative remedies, the Court lacked jurisdiction to review her claim for social security benefits. With respect to plaintiff's proposed Criminal Complaint, Magistrate Judge Hennessy found that plaintiff lacked standing to bring a criminal action against a private citizen.

Finally, plaintiff's Motion for Reconsideration of the Denial of Appointment of Counsel was denied. Plaintiff was advised that, pursuant to Rule 72 of the Federal Rules of Civil Procedure, she had 14 days to file written objections to any portion of the Report and Recommendation.

On June 4, 2015, plaintiff filed her Objection to the Report and Recommendation (Docket No. 15). She contends that what has happened to her is a crime, and states that this matter should be passed to the United States Attorney's Office for investigation. She also

contends that Mr. Mao has the right to answer her Complaint.

Next, plaintiff points out that she is disabled and is not a lawyer. She understands that this Court does not have jurisdiction to hear her case, but requests that her action does not get passed on to someone else to handle. She claims this matter deserves immediate attention, where the alleged incident took place in 2011, and “has been dismissed or swept under the carpet ever since.” Objection (Docket No. 15 at 1).

Upon review of the record, this Court finds Magistrate Judge Hennessy’s Report and Recommendation to be well-founded in all respects. The Court is not unsympathetic to plaintiff’s plight; however, her Objections do not address the various legal impediments to her case. Accordingly, for the reasons set forth in both the Memorandum and Order (Docket No. 9) and the Report and Recommendation (Docket No. 12), it is hereby Ordered that the Report and Recommendation (Docket No. 12) is ADOPTED in its entirety.

Plaintiff’s Complaint is DISMISSED in its entirety, and plaintiff’s Criminal Complaint against Mr. Mao is DISMISSED in its entirety.

SO ORDERED.

/s/ Timothy S. Hillman
TIMOTHY S. HILLMAN
UNITED STATES DISTRICT JUDGE

DATED: 6/5/15