

FILED
BILLINGS DIV.

2009 JUL 14 AM 11 25

PATRICK E. DUFFY, CLERK

IN THE UNITED STATES DISTRICT COURT

BY _____
DEPUTY CLERK

FOR THE DISTRICT OF MONTANA

BILLINGS DIVISION

SHAWN HOWARD WELLER,)

Plaintiff,)

vs.)

**MONTANA STATE DEPARTMENT OF)
CORRECTIONS,**)

Defendant.)

CV-09-37-BLG-RFC-CSO

**ORDER ADOPTING FINDINGS
AND RECOMMENDATIONS
OF U.S. MAGISTRATE JUDGE**

On June 25, 2009, United States Magistrate Judge Carolyn Ostby entered Findings and Recommendation (*Doc. 10*) with respect to the 28 U.S.C. §§ 1915 & 1915A screening of Weller's *pro se* civil rights complaint. Previously, Magistrate Judge Ostby granted Weller's motion to proceed *in forma pauperis* and permitted him to file an amended complaint. Magistrate Judge Ostby has since reviewed Weller's amended complaint (*Doc. 7*). She concludes that it fails to state a claim upon which relief may be granted and therefore recommends that the amended complaint be dismissed with prejudice, that the docket reflect this dismissal count

as a strike against Weller, and that this Court certify that an appeal of this dismissal would not be taken in good faith.

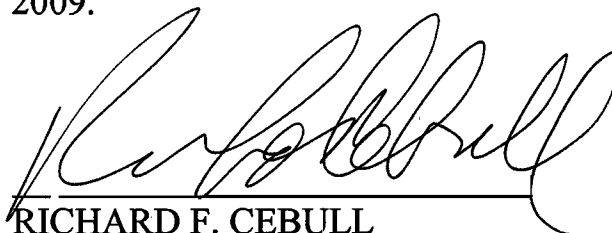
Upon service of a magistrate judge's findings and recommendation, a party has 10 days to file written objections. 28 U.S.C. § 636(b)(1). Weller filed a document purportedly containing objections on July 6, 2009. *Doc. 12*. Ordinarily, the filing of objections require this Court to make a *de novo* determination of the portions of the Findings and Recommendations to which objection is made. 28 U.S.C. § 636(b)(1). Here, however, the "objections" do not address Magistrate Judge Ostby's Findings and Recommendation, but merely express Weller's displeasure with the Montana criminal justice system. Accordingly, Weller's objections need not be addressed.

After a *de novo* review, the Court determines the Findings and Recommendation of Magistrate Judge Ostby are well grounded in law and fact and adopts them in their entirety. For that reason, **IT IS HEREBY ORDERED** as follows:

- (1) that this matter be **DISMISSED WITH PREJUDICE**;
- (2) pursuant to 28 U.S.C. § 1915(g), that the docket reflect the dismissal of this action count as a strike against Weller; and
- (3) pursuant to Rule 24(a)(3)(A), that any appeal of this dismissal would not be taken in good faith.

The Clerk of Court is directed to entered judgment, by separate document, that this action is dismissed for failure to state a claim upon which relief may be granted.

DATED this 14 day of July 2009.


RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE