

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

FILED
JUN 07 2012
PATRICK E. DUFFY CLERK
BY Deputy Clerk
U.S. DISTRICT COURT
BILLINGS DIVISION

KRISTEE RAE LANG,)
)
Plaintiff,)
)
vs.)
)
ST. VINCENT HEALTHCARE,)
et al.,)
)
Defendant.)
_____)

CV-11-98-BLG-RFC

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

On May 14, 2012, United States Magistrate Judge Carolyn Ostby entered Findings and Recommendation. Magistrate Judge Ostby recommends this Court dismiss the Complaint.

Upon service of a magistrate judge’s findings and recommendation, a party has 14 days to file written objections. 28 U.S.C. § 636(b)(1). In this matter, no party filed objections to the May 14, 2012 Findings and Recommendation.¹

¹Plaintiff did file a piece of paper that states “You Have the Right to:” and appears to list the rights of someone seeking relief from an abusive situation. A telephone number for the Abused Persons Outreach Center, Inc. is handwritten on the bottom of the filing. The Court is unsure as to the relevance of this document and does not construe it as an objection to the Findings and Recommendation. See Doc. 17.

Failure to object to a magistrate judge's findings and recommendation waives all objections to the findings of fact. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1999). However, failure to object does not relieve this Court of its burden to review de novo the magistrate judge's conclusions of law. *Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989).

Based upon the letters from Lang, it is not clear whether Lang is seeking to have her case dismissed. Regardless, she has been given an opportunity to establish that she effected timely service of process in compliance with the Federal Rules of Civil Procedure and she has not done so. See Fed.R.Civ.P. 4(c)(1) ("The plaintiff is responsible for having the summons and complaint served within the time allowed by Rule 4(m) and must furnish the necessary copies to the person who makes service."). Rule 4(m) of the Federal Rules of Civil Procedure provides:

If a defendant is not served within 120 days after the complaint is filed, the court--on motion or on its own after notice to the plaintiff--must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

The Court has complied with Rule 4(m) by providing Lang notice of its intent to recommend dismissal if she failed to provide proof of service. There is no proof of any attempt by Lang to provide Defendants a copy of the Complaint in

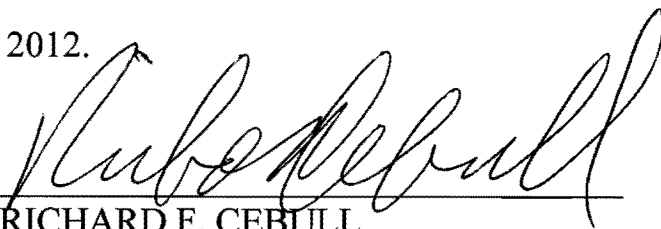
compliance with Rule 4. Lang apparently has some difficulties understanding her obligations in prosecuting a federal lawsuit such as this. But she has made no indication that she suffers from a condition that materially affects her ability to represent herself. *See U.S. v. 30.64 Acres of Land, More or Less, Situated in Klickitat County, State of Wash.*, 795 F.2d 796, 805 (9th Cir. 1986), Fed.R.Civ.P. 17(c), *Allen v. Calderon*, 408 F.3d 1150 (9th Cir. 2005).

After an extensive review of the record and applicable law, this Court finds Magistrate Judge Ostby's Findings and Recommendation are well grounded in law and fact and adopts them in their entirety.

Accordingly, **IT IS HEREBY ORDERED** that the Complaint is **DISMISSED WITHOUT PREJUDICE**. The Clerk of Court is directed to enter a Judgment of dismissal and close this matter accordingly.

The Clerk of Court shall notify the parties of the entry of this Order.

DATED the 2nd day of June, 2012.


RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE