

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA

FILED

APR 11 2013

BILLINGS DIVISION

Clerk, U S District Court
District Of Montana
Billings

RICHARD J.HILL, SR.,

Plaintiff,

vs.

**YELLOWSTONE COUNTY
DETENTION CENTER, SHEILA
R. KOLAR, MARY JANE
KNISELY, and PAULA SAYE-
DOOPER,**

Defendants.

Case No. CV-13-37-BLG-RFC-CSO

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

Richard Hill is a prisoner proceeding pro se in this action against parties who allegedly wrongfully caused him to lose custody of his daughter. United States Magistrate Judge Carolyn Ostby has entered Findings and Recommendation (doc. 4) with respect to the 28 U.S.C. §§ 1915 & 1915A prescreening of Hill's Complaint (doc. 2). Judge Ostby recommends the petition be dismissed for failure to state legally cognizable claims.

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). Although Judge Ostby advised Hill of this right (doc. 3, pp. 13-14), Hill did not file objections. Rather, Hill filed another motion to proceed in forma pauperis (doc. 6), even though he had already been granted leave to proceed in forma pauperis (doc. 4, pp. 1-2), and a letter which this Court has construed as a motion to appoint counsel (doc. 7). Despite the lack of objection, the Court must review de novo Judge Ostby's conclusions of law. *Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989).

Judge Ostby correctly construed Hill's Complaint as alleging claims for the deprivation of civil rights under 42 U.S.C. § 1983. As such, she correctly determined that Hill's Complaint should be dismissed because private parties are not liable under 42 U.S.C. § 1983, the named judges are absolutely immune for acts taken in their judicial capacity, and the Yellowstone County Detention Center is a building, not a person that can be sued under § 1983. Further, to the extent Hill's Complaint could be construed to allege state law claims, Judge Ostby correctly recommends this Court decline to exercise supplemental jurisdiction under 28 U.S.C. § 1367(c)(3).

Accordingly, after a de novo review, the Court adopts the Findings and Recommendation of Magistrate Judge Ostby in their entirety.

IT IS ORDERED as follows:

- (1) Hill's motion to appoint counsel (doc. 7) is **DENIED AS MOOT**;
- (2) Hill's second motion to proceed in forma pauperis (doc. 6) is **DENIED AS MOOT**;
- (3) Hill's Complaint (doc. 2) is **DISMISSED WITHOUT PREJUDICE**; and
- (4) Since the action is frivolous, the Clerk of Court shall ensure that the docket reflects that this Court certifies pursuant Rule 24(a)(3)(A) Fed.R.App.P. that any appeal of this appeal of this decision would not be taken in good faith.

The Clerk of Court is shall close this case and enter judgment pursuant to Rule 58 Fed.R.Civ.P.

DATED this 11th day of April, 2013.



RICHARD F. CEBULL

UNITED STATES DISTRICT JUDGE

