

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

TRAVIS JAMES TOLAN,

Plaintiff,

vs.

YELLOWSTONE COUNTY, et al.,

Defendants.

CV 20-02-BLG-SPW

ORDER ADOPTING
MAGISTRATE'S FINDINGS
AND RECOMMENDATIONS

The United States Magistrate Judge filed Findings and Recommendations on January 19, 2021. (Doc. 29). The Magistrate recommended that Defendants' Motion for Partial Judgment on the Pleadings be Granted. (Doc. 29 at 9).

Pursuant to 28 U.S.C. § 636(b)(1), parties are required to file written objections within 14 days of the filing of the Magistrate's Findings and Recommendation. No objections were filed. When neither party objects, this Court reviews the Magistrate's Findings and Recommendation for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000). After reviewing the Findings and Recommendation, this Court does not find that the Magistrate committed clear error.


Tolan conceded a lack of legal basis for the claims in Count I against Yellowstone County, the Yellowstone County Sheriff's Office ("YCSO"), and Sheriff Mike Linder. Those claims are dismissed. Likewise, Tolan conceded the claims in Count II against the YCSO and Linder should be dismissed, but Tolan requested leave to amend Count II's *Monell* claim against the County. Count II is dismissed with leave to amend.

As to Count III, Judge Cavan found that no evidence suggested Linder, Sennett, or Trujillo were acting outside their roles as law enforcement officers during the time relevant to Tolan's claims. Therefore, Linder, Sennett, and Trujillo are immune from individual liability on Tolan's claim in Count III under Montana Code Annotated § 2-9-205(5). Judge Cavan found that the claims in Count III could proceed against Yellowstone County and the Court agrees. Therefore, the claim in Count III is dismissed against Linder, Sennett, and Trujillo. The claim in Count III against Yellowstone County shall proceed.

IT IS ORDERED that the proposed Findings and Recommendations entered by the United States Magistrate Judge (Doc. 29) are **ADOPTED IN FULL**.

IT IS FURTHER ORDERED that Defendants' Motion for Partial Judgment on the Pleadings (Doc. 22) is **GRANTED** as set forth above.

DATED this 9th day of February, 2021.



SUSAN P. WATTERS
United States District Judge