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

LAVONNA PLAINBULL BIRD,

Plaintiff,

vs.

NORTHERN CHEYENNE RESERVATION LAME DEER JAIL STAFF,

Defendants.

CV 20-136-BLG-SPW

ORDER ADOPTING MAGISTRATE'S FINDINGS AND RECOMMENDATIONS

The United States Magistrate Judge filed Findings and Recommendations on October 14, 2021. (Doc. 9). The Magistrate recommended that Plaintiff Lavonna Plainbull Bird's case be dismissed for failure to prosecute. (Doc. 9 at 4-5).

Plaintiff filed a timely objection to the Findings and Recommendations on October 25, 2021. (Doc. 10). Plaintiffs are entitled to de novo review of those portions of Judge Cavan's Findings and Recommendation to which they properly object. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). The Court may accept, reject, or modify, in whole or in part, those findings and recommendations properly objected to. 28 U.S.C. § 636(b)(1). "A party makes a proper objection by identifying the parts of the magistrate's disposition that the party finds objectionable and presenting legal argument and supporting authority, such that the

district court is able to identify the issues and the reasons supporting a contrary result." *Lance v. Salmonson*, 2018 WL 4335526, at *1 (D. Mont. Sept. 11, 2018) (quoting *Montana Shooting Sports Ass'n v. Holder*, 2010 WL 4102940, at *2 (D. Mont. Oct. 18, 2010)). Simply restating the party's argument previously made before the magistrate judge is not a sufficient objection. *Id.*

Absent an objection, a court reviews a magistrate's findings and recommendations for clear error. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). 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).

On May 10, 2021, Judge Cavan granted Plaintiff's motion to proceed in forma pauperis but explained that Plaintiff's Complaint lacked the necessary detail for the Court to determine the specific federal statute, treaty, or constitutional provisions at issue. (Doc. 4 at 3). The Complaint similarly lacked any information to support Plaintiff's claim that she was entitled to the requested monetary relief for the death of her son in the Lame Deer jail on June 13, 2017. (*Id.*). Judge Cavan ordered Plaintiff to provide the necessary information in an amended complaint and warned her that failure to comply could result in the dismissal of her case. (*Id.* at 8-9).

On June 14, 2021, Plaintiff filed a supplement to her case that explained she is now seeking $20 million and that the cause of her son's death was inhumane. (Doc. 6). However, she failed to provide any information on why it was inhumane, what federal statute or constitutional provision was at issue, or why she felt she was entitled to the monetary compensation. (*Id.*). Despite this, Judge Cavan provided Plaintiff with one more opportunity to supplement her Complaint with the necessary information. (Doc. 7). On August 18, 2021, Plaintiff filed a notice that she had contacted a funeral home to request her son's death certificate and cause of death. (Doc. 8). However, she failed once again to respond to Judge Cavan's request with the required information. Judge Cavan now recommends dismissal of Plaintiff's case for failure to prosecute. (Doc. 9 at 4-5).

On October 25, 2021, Plaintiff filed a timely objection to Judge Cavan's recommendation. (Doc. 10). The objection stated only that Plaintiff would send the Court her son's death certificate as soon as she could. (*Id.*). Plaintiff later filed a copy of the death certificate but has still not provided information regarding which federal statute or constitutional provision is at issue nor why Plaintiff believes she is entitled to the requested relief. (Doc. 11). The Court finds that this response does not constitute a proper objection even under the more lenient standard employed to review *pro se* submissions. Without a proper objection, the Court reviews Judge Cavan's Findings and Recommendations for clear error. *Reyna-Tapia*, 328 F.3d at

1121. The Court finds no clear error in the Findings and Recommendations. Therefore,

IT IS ORDERED that the proposed Findings and Recommendations entered by the United States Magistrate Judge (Doc. 9) are ADOPTED IN FULL.

IT IS FURTHER ORDERED that Plaintiff Lavonna Plainbull Bird's case is dismissed. The Clerk of Court is directed to close this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

The Clerk of Court is further directed to have the docket reflect that the Court certifies pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith. The record makes plain that Plaintiff has failed to prosecute this matter and/or comply with the Court's orders.

DATED this 15th day of November, 2021.

Susan P. Watters

SUSAN P. WATTERS
United States District Judge