

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

ROBERT D. RIGGS,

Plaintiff,

vs.

WARDEN MACDONALD, et al.,

Defendants.

CV 10-00023-GF-BMM-JTJ

ORDER

Pending is Plaintiff Robert Riggs's Motion for Relief from Judgment pursuant to Rule 60 of the Federal Rules of Civil Procedure. (Doc. 48.) Rule 60(b) provides for reconsideration where one or more of the following is shown: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence that, with reasonable diligence could not have been discovered before the time to move for a new trial under Rule 59; (3) fraud, misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released or discharged; or (6) any other reason justifying relief. Fed.R.Civ.P. 60(b).

Mr. Riggs argues that United States Magistrate Judge Keith Strong did not have jurisdiction to sit as a judge on Defendants' Motion to Dismiss and therefore the judgment is void. (Doc. 48.) Riggs cites to 28 U.S.C. § 636 (b)(1)(A) for the

proposition that a magistrate judge cannot rule on a motion to dismiss. But 28 U.S.C. § 636(b)(1)(B) provides that, “a judge may also designate a magistrate judge to . . . to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, of any motion excepted in subparagraph (A) . . .” That is precisely what occurred in this case. United States Magistrate Judge Strong issued Findings and Recommendations to grant Defendants’ Motion to Dismiss (Doc. 33) and those Findings and Recommendations were adopted in full by United States Judge Sam Haddon (Doc. 35). It was only after Judge Haddon issued his Order that judgment was entered and this matter closed.

Judgment is not void and there is no basis upon which to provide relief from judgment.

Accordingly, IT IS HEREBY ORDERED that Mr. Riggs’ Motion for Relief from Judgment (Doc. 48) is DENIED.

DATED 27th day of September, 2016.



Brian Morris
United States District Court Judge