

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

FILED

MAY 10 2016

Clerk, U S District Court
District Of Montana
Missoula

PATRICK T. ASSELIN,

Plaintiff,

vs.

BRITTANY DEVINE, BRENT
LESHENSKI, PAMELA PONICH,
MICHAEL MENEHAN, and GEORGE
PEARCE,

Defendants.

CV 15-95-H-DLC-JTJ

ORDER

United States Magistrate Judge John Johnston entered his Findings and Recommendations in this matter on March 30, 2016, recommending dismissal of Plaintiff Patrick Asselin's ("Asselin") Complaint. Asselin failed to timely object to the Findings and Recommendations, and so waived his right to de novo review of the record. 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings and recommendations to which no party objects. *See McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). 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) (citations omitted).

Having reviewed the Findings and Recommendations, the Court finds no clear error in Judge Johnston's conclusion that Asselin's Complaint should be dismissed because: (1) this Court should abstain from interfering in the ongoing state court proceeding pursuant to *Younger v. Harris*, 401 U.S. 37 (1971); (2) this Court lacks jurisdiction under 28 U.S.C. § 1332; (3) Judge Menahan is judicially immune from liability; and (4) Asselin failed to establish that Defendants Ponich or Pearce acted under the color of state law.

Accordingly, IT IS ORDERED that:

(1) Judge Johnston's Findings and Recommendations (Doc. 25) are ADOPTED IN FULL.

(2) Defendant Michael Menahan's Motion to Dismiss for Failure to State a Claim and Lack of Subject Matter Jurisdiction (Doc. 5) is GRANTED.

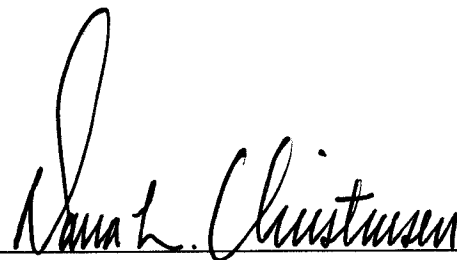
(3) Defendant George Pearce's Motion to Dismiss for Failure to State a Claim (Doc. 7) is GRANTED.

(4) Defendant Brittany Devine and Defendant Brent Leshenski's Motion to Dismiss for Lack of Jurisdiction (Doc. 10) is GRANTED.

(5) Defendant Pamela Ponich's Motion to Dismiss for Failure to State a Claim (Doc. 12) is GRANTED.

(6) This case is CLOSED.

Dated this 10th day of May, 2016.

A handwritten signature in black ink, reading "Dana L. Christensen". The signature is written in a cursive style with a large, looped initial "D".

Dana L. Christensen, Chief Judge
United States District Court