

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

FILED
MAY 30 2017
Clerk, U.S. District Court
District Of Montana
Missoula

CHRIS STEVEN FINK,

Petitioner,

vs.

LEROY KIRKEGARD, ATTORNEY
GENERAL OF THE STATE OF
MONTANA,

Respondents.

CV 16-109-H-DLC-JTJ

ORDER

United States Magistrate Judge John Johnston entered his Findings and Recommendations on March 20, 2017, recommending dismissal of this matter pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. On April 3, 2017, Petitioner Chris Steven Fink ("Fink") timely moved for an extension to file his objections to the Findings and Recommendations. (Doc. 7.) The Court granted the request and ordered Fink to mail his objections by May 5, 2017. The Court, however, has yet to receive the objections. Accordingly, the Court finds that Fink has failed to timely object to the Findings and Recommendations, and, as a result, has 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 this matter should be dismissed. Fink failed to respond or otherwise comply with Judge Johnston’s Order dated February 2, 2017. (Doc. 5.) Because Fink failed to prosecute this action, the Court agrees with Judge Johnston that the factors discussed in *Henderson v. Duncan*, 779 F.2d 1421 (9th Cir. 1986) and *Carey v. King*, 856 F.2d 1439 (9th Cir. 1988), weigh in favor of dismissal.

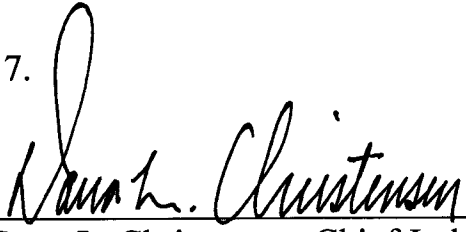
Accordingly, there being no clear error in Judge Johnston’s Findings and Recommendations, IT IS ORDERED that:

- (1) Judge Johnston’s Findings and Recommendations (Doc. 6) are ADOPTED IN FULL.
- (2) This matter is DISMISSED pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.
- (3) The Clerk of Court is directed to enter by separate document a

judgment in favor of Respondents and against Petitioner.

(4) A certificate of appealability is DENIED..

Dated this 30th day of May, 2017.



Dana L. Christensen, Chief Judge
United States District Court