

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

In Re: D'WAYNE BAILEY,

Cause no. CV 22-37-H-BMM-JTJ

**ORDER ADOPTING
MAGISTRATE JUDGE'S
FINDINGS AND
RECOMMENDATIONS**

United States Magistrate Judge John T. Johnston entered his Findings and Recommendations in this case on July 8, 2022. (Doc. 6.) Judge Johnston recommended that Plaintiff's Complaint (Doc. 1) should be DISMISSED; that the Clerk of Court should be directed to enter a judgement of dismissal; and that the Clerk of Court should be directed to close this matter and enter judgement pursuant to Rule 58 of the Federal Rules of Civil Procedure (Doc. 6 at 6.)

The Court directed Plaintiff to file an amended complaint on May 25, 2022, curing the deficiencies noted in his pleading, and an IFP application or payment by June 25, 2022. (Doc. 2.) The order notified Plaintiff that failure to timely comply would result in dismissal of the action. *Id.* at 7-8. Plaintiff was also provided with the Court's standard amended complaint form and IFP application. (Docs. 2-1 & 2-2.) Plaintiff has not filed an objection to the Findings and Recommendations. The Court has reviewed Judge Johnston's Findings and Recommendations for clear

error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). This Court finds no error in Magistrate Judge Johnston's Findings and Recommendations and adopts them in full.

IT IS ORDERED that Judge Johnston's Findings and Recommendations (Doc. 6) are **ADOPTED IN FULL**.

1. Bailey's Complaint (Doc. 1) is **DISMISSED** with prejudice as frivolous.
2. The Clerk of Court is 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.
3. The Clerk of Court is directed to have the docket reflect that this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g).
4. The Clerk of Court is directed to close this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

DATED this 8th day of August 2022.



Brian Morris, Chief District Judge
United States District Court