

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

FILED

APR 02 2014

Clerk, U.S. District Court
District Of Montana
Missoula

ALBERTO GUILLEN,

CV 13-48-M-DWM-JCL

Plaintiff,

vs.

ORDER

COURTNEY CALLAGHAN, and
PATRICK SHANON,

Defendants.

Objections filed by Plaintiff Alberto Guillen, (Doc. 38), are now before the Court. This case was referred to United States Magistrate Judge Jeremiah C. Lynch pursuant to Local Rule 72.2(a)(1). Judge Lynch conducted the prescreening required by 28 U.S.C. §§ 1915 and 1915A, and entered his Findings and Recommendations regarding the Complaint, (Doc. 16), which were later adopted by the Court, (Doc. 19).

Plaintiff objects to Judge Lynch's Order denying his Motion to Compel. Judge Lynch properly exercised his jurisdiction in entering a determination regarding Guillen's Motion to Compel, as the Motion is a pretrial matter. *See* 28 U.S.C. § 636(b)(1)(A). Plaintiff's Objection challenges Judge Lynch's

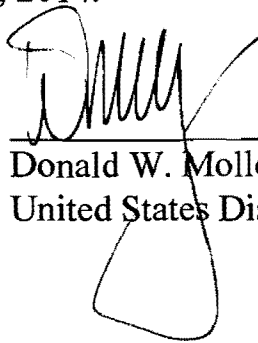
determination on this pretrial matter. It is therefore construed as an Objection brought pursuant to Federal Rule of Civil Procedure 72(a). When considering such an objection, “[t]he district judge in the case must modify or set aside any part of the order that is clearly erroneous or contrary to law.” Fed. R. Civ. P. 72(a); *see also* 28 U.S.C. § 636(b)(1)(A). Clear error is present 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).

Plaintiff’s Objection is without merit and will be denied. There is no mistake or error in Judge Lynch’s determination that the videos Guillen seeks are not relevant to the claims that remain pending in this case. (Doc. 35 at 3-4.) Plaintiff’s Motion to Compel seeks an Order of the Court to require production of videos filed under seal in a related matter in state court. (Doc. 34.) Neither the Motion to Compel nor the Objection state any purported relationship of the videos sought to Guillen’s remaining claim that the Defendants initially removed the child without authority. Judge Lynch determined that the videos are probative of the state court dependency petition, and not Guillen’s claim before this Court. This Court does not have jurisdiction to hear a direct appeal from the state court’s judgment in the dependency proceeding. This determination is sound and not directly refuted in Guillen’s Objection. The Objection and attached transcript

makes no attempt to assert the relevance of the materials sought for production and does not present a cognizable retort to Judge Lynch's Order on the Motion to Compel.

IT IS ORDERED that Plaintiff Alberto Guillen's Objection, (Doc. 38), is DENIED.

DATED this 2nd day of April, 2014.

A handwritten signature in black ink, appearing to read "DMolloy", is written over a horizontal line. Below the line, the name and title of the signatory are printed.

Donald W. Molloy, District Judge
United States District Court