

FILED

AUG 04 2014

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

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

TYRONE EVERETT PAYNE,

Plaintiff,

vs.

JASON MARKS, JAMIE
MERIFIELD, and MONTANA
MUNICIPAL INSURANCE
AUTHORITY,

Defendants.

CV 13-219-M-DWM-JCL

ORDER

This matter comes before the Court on the proposed Findings and Recommendations entered by United States Magistrate Judge Jeremiah C. Lynch, (Doc. 10), regarding the civil rights Complaint brought pursuant to 42 U.S.C. § 1983 by Plaintiff Tyrone Everett Payne, (Doc. 2). Because Payne was incarcerated, upon filing, this matter was referred to Judge Lynch. *See* L.R. 72.2(a). Judge Lynch conducted the prescreening required by 28 U.S.C. § 1915, and found that Payne's Complaint failed to state a claim upon which relief can be granted. (Doc. 8.) Payne was ordered to file an amended complaint by May 23, 2014. (*Id.*) Payne did not respond to the Court's Order. Following Payne's

failure to respond, Judge Lynch filed proposed Findings and Recommendations regarding the Complaint on July 8, 2014. (Doc. 10.) “Within fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court.” 28 U.S.C. § 636(b)(1). Because the statutory objections period states that a party may file objections within a specified time after service of the findings and recommendations, and service of the Findings and Recommendations at issue was made by mail and electronic means, three days are added after the period would otherwise expire. *See* Fed. R. Civ. P. 6(d). Accordingly, written objections to Judge Lynch’s proposed Findings and Recommendations were due July 25, 2014. Payne did not timely file written objections to the proposed Findings and Recommendations.

Judge Lynch’s proposed Findings and Recommendations are reviewed for clear error. When no party objects, the Court reviews the proposed findings and recommendations of a United States Magistrate Judge for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error is present only 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).

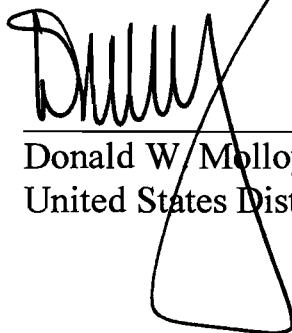
Judge Lynch's report contains no mistake of fact or law and will be adopted in-full. The proposed Findings and Recommendations incorporate by reference the Court's rationale for finding that Payne's Complaint fails to state a claim upon which relief can be granted. (Doc. 9 at 1.) The Court found dismissal under Federal Rule of Civil Procedure 12(b)(6) may be warranted without the filing of an Amended Complaint by the Plaintiff. (Doc. 8 at 7-8.) The Court granted Payne leave to file an Amended Complaint to attempt to cure these deficiencies. (*Id.* at 8.) Payne did not respond to the Court's Order. Furthermore, Payne has failed to comply with the Court's directive that he immediately advise the Court of any change of address and its effective date. (*See* Doc. 8 at 8, Doc. 10 at 2.) The Court warned Payne that his failure to timely file an Amended Complaint and failure to advise the Court of an address change would result in dismissal of this action. (Doc. 8 at 8.) Dismissal on these grounds is now appropriate.

IT IS ORDERED:

- (1) The proposed Findings and Recommendations entered by United States Magistrate Judge Jeremiah C. Lynch, (Doc. 10), are
ADOPTED IN-FULL.
- (2) The Complaint filed by Plaintiff Tyrone Everett Payne, (Doc. 2), is
DISMISSED WITHOUT PREJUDICE.

(3) The Clerk of Court shall enter judgment by a separate document,
pursuant to Federal Rule of Civil Procedure 58, and close this case.

DATED this 4th day of August, 2014.

A handwritten signature in black ink, appearing to read "DMolloy", is written over a horizontal line. A large, loopy flourish extends from the end of the signature, crossing the line and extending upwards and to the right.

Donald W. Molloy, District Judge
United States District Court