

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

**FILED**

**JAN 27 2016**

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

JOSEPH E. LAWRENCE,

Plaintiff,

vs.

STATE OF MONTANA, et al.,

Defendants.

CV 15-85-M-DLC-JCL

ORDER

United States Magistrate Judge Jeremiah C. Lynch entered his Findings and Recommendations on December 3, 2015, recommending dismissal of Plaintiff Joseph E. Lawrence's ("Lawrence") Complaint. Lawrence failed to timely object to the Findings and Recommendations, and so waived the 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).

As a preliminary matter, this Court must first address an appeal filed by Lawrence. On December 28, 2015, Lawrence filed a notice of appeal seeking Ninth Circuit review of Judge Lynch's Findings and Recommendations. This notice of appeal was filed before the Court reviewed Judge Lynch's Findings and Recommendations. Generally, "the filing of a notice of appeal divests a district court of jurisdiction over those aspects of the case involved in the appeal." *Stein v. Wood*, 127 F.3d 1187, 1189 (9th Cir. 1997). However, there is an exception to the general rule when the appeal is frivolous. *Marks v. Clarke*, 102 F.3d 1012, 1017 n. 8 (9th Cir. 1996) (citations omitted). Here, Lawrence did not appeal from an appealable final order. As such, his appeal is frivolous. *See* 28 U.S.C. § 1291. This Order shall serve as certification that Lawrence's appeal is frivolous.

Next, having reviewed the Findings and Recommendations, the Court finds no clear error in Judge Lynch's conclusion that Lawrence, as a pro se litigant, lacks the authority to represent the interests of someone other than himself. Because his mother's estate has at least one other beneficiary, Lawrence must obtain counsel and cannot proceed in this case without attorney representation.

There being no clear error in Judge Lynch's Findings and Recommendations, IT IS ORDERED that:


(1) Judge Lynch's Findings and Recommendations (Doc. 21) are

ADOPTED IN FULL.

(2) Lawrence's Complaint (Doc. 2) is DISMISSED without prejudice. The Clerk of Court is directed to close this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

(3) 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. The record makes plain the instant Complaint is frivolous as it lacks arguable substance in law or fact.

Dated this 27<sup>th</sup> day of January, 2016.

  
Dana L. Christensen, Chief Judge  
United States District Court