

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

JUSTIN KING,

Plaintiff,

vs.

GRUBER #204,

Defendant.

CV 17-15-M-DLC-JCL

ORDER

FILED  
MAY 16 2017  
Clerk, U.S. Courts  
District Of Montana  
Missoula Division

United States Magistrate Judge Jeremiah C. Lynch entered his Order, Findings and Recommendations on April 13, 2017, recommending denial of Plaintiff Justin King's ("King") motion to proceed in forma pauperis and dismissal of this matter. King failed to timely object to the Findings and Recommendations, and so 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). Because the parties are familiar with the facts of this case, they will not be repeated here.

Having reviewed the Findings and Recommendations, the Court finds no clear error in Judge Lynch's conclusion that this matter should be dismissed and the motion to proceed in forma pauperis be denied. King failed to respond or otherwise comply with Judge Lynch's February 15, 2017 order (Doc. 3) which required King to notify the Court if he desired to pursue this matter in federal court. Because King failed to file a response, the Court agrees with Judge Lynch that the factors discussed in *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992), weigh in favor of dismissal.

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

- (1) Judge Lynch's Findings and Recommendations (Doc. 4) are ADOPTED IN FULL.
- (2) King's Motion to Proceed in Forma Pauperis (Doc. 1) is DENIED and this matter is DISMISSED pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. The Clerk of Court is directed to close the case 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.

Dated this 16<sup>th</sup> day of May, 2017.



Dana L. Christensen  
Dana L. Christensen, Chief Judge  
United States District Court