

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

FREDERIC C. PRADO,

Plaintiff,

v.

STATE OF NEVADA DEPARTMENT OF
HEALTH AND HUMAN SERVICES
DIVISION OF WELFARE AND
SUPPORTIVE SERVICES,
Defendant.

Case No. 2:16-cv-01182-RFB-VCF

**ORDER ADOPTING REPORT &
RECOMMENDATION OF MAGISTRATE
JUDGE CAM FERENBACH**

Before the Court for consideration is the Report and Recommendation of the Honorable Cam Ferenbach, United States Magistrate Judge, entered June 2, 2016. ECF No. 2. For the reasons discussed below, the Report and Recommendation is adopted in full.

A district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). A party may file specific written objections to the findings and recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Local Rule IB 3-2(a). When written objections have been filed, the district court is required to “make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1); see also Local Rule IB 3-2(b). Where a party fails to object, however, a district court is not required to conduct “any review,” de novo or otherwise, of the report and recommendations of a magistrate judge. Thomas v. Arn, 474 U.S. 140, 149 (1985).

Plaintiff filed his Application for Leave to Proceed in Forma Pauperis on May 26, 2016. ECF No. 1. Judge Ferenbach entered a Report and Recommendation on June 2, 2016, in which he ordered that the Application for Leave to Proceed in Forma Pauperis be granted and recommended

1 that the ADA and negligence claims be dismissed without prejudice and the copyright claims be
2 dismissed with prejudice. ECF No. 2. Plaintiff filed what is construed as an objection to the Report
3 and Recommendation on June 16, 2016. ECF No. 4. Upon reviewing the pleadings and the Report
4 and Recommendation, the Court agrees with Judge Ferenbach's recommendations.

5 Plaintiff's disability discrimination claim fails because his factual allegations do not
6 indicate that he was qualified to receive the public benefits he sought from the State. To prove a
7 public program violated the ADA, a plaintiff must show (1) he is a qualified individual with a
8 disability; (2) he was either excluded from participation in or denied the benefits of a public entity's
9 services, programs, or activities, or was otherwise discriminated against by the public entity; and
10 (3) such exclusion, denial of benefits, or discrimination was by reason of his disability. Cohen v.
11 City of Culver City, 754 F.3d 690, 95 (9th Cir. 2014). Plaintiff alleges the State did not issue bus
12 passes to get to the doctor's appointments, EBT food stamps, energy assistance, or Medicaid
13 benefits. ECF No. 1. Plaintiff also states he was denied benefits because his household income was
14 too high. Id. Documents attached to the Complaint evince Plaintiff's income is, in fact, too high to
15 receive the public benefits he seeks. ECF No. 1-3 at 9. Because Plaintiff does not qualify for the
16 public benefits he seeks, Plaintiff has not alleged that he was denied benefits by reason of his
17 disability. Plaintiff has leave to amend his Complaint to add factual allegations that would state a
18 disability discrimination claim.

19 Plaintiff's negligence claim fails because he failed to allege the Department of Health and
20 Human Services owed him a duty of care. A claim for negligence under Nevada law requires the
21 Plaintiff allege: "(1) the existence of a duty of care; (2) breach of that duty, (3) legal causation,
22 and (4) damages." Sanchez ex rel. Sanchez v. Wal-Mart Stores, Inc., 221 P.3D 1276, 1281 (Nev.
23 2009). Because he has not demonstrated the first element, Plaintiff has not stated a claim upon
24 which relief can be granted. Plaintiff has leave to amend his Complaint to add factual allegations
25 that would state a claim for negligence.

26 Plaintiff's claim of copyright infringement fails because its fanciful allegations render this
27 claim frivolous. Plaintiff supports his claim for copyright infringement by stating satellites are
28 "invading [his] privacy." ECF No. 1. Plaintiff does not allege reproduction of his copyrighted

1 work. The satellite interference theory is exactly the “delusional scenario” the Ninth Circuit has
2 held to be frivolous. McKeever v. Block, 932 F.2d 795, 797 (9th Cir. 1991). Therefore, this claim
3 is dismissed with prejudice.

4
5 **IT IS HEREBY ORDERED** that the Report and Recommendation (ECF No. 2) is
6 ADOPTED in full.

7 **IT IS FURTHER ORDERED** that the Plaintiff has 60 days from the date of this Order to
8 file an Amended Complaint, or the Court will dismiss the ADA and negligence claims with
9 prejudice.

10
11 DATED this 2nd day of October, 2018.



RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE