UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

AZUJHON SIMS,

Plaintiff,

v.

THE NEW YORK STATE, ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES, *et al.*,

Defendants.

Case No. 3:17-cv-00573-MMD-WGC

ORDER ACCEPTING AND ADOPTING REPORT AND RECOMMENDATION OF MAGISTRATE JUDGE WILLIAM G. COBB

Before the Court is the Report and Recommendation of United States Magistrate Judge William G. Cobb (ECF No. 3) ("R&R" or "Recommendation") relating to plaintiff's application to proceed *in forma pauperis* ("IFP application") (ECF No. 1) and *pro se* complaint (ECF No. 1-1). Judge Cobb recommends denying Plaintiff's IFP application without prejudice and that this case be dismissed without prejudice. Plaintiff does not object but requests that his action be transferred to the district court in which it could have been brought. (ECF No. 4.)

This Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge's report and recommendation, then the court is required to "make a *de novo* determination of those portions of the [report and recommendation] to which objection is made." 28 U.S.C. § 636(b)(1). Where a party fails to object, however, the court is not required to conduct "any review at all . . . of any issue that is not the subject of an objection." *Thomas v. Arn*, 474 U.S. 140, 149 (1985).

Indeed, the Ninth Circuit has recognized that a district court is not required to review a magistrate judge's report and recommendation where no objections have been filed. *See United States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard of review employed by the district court when reviewing a report and recommendation to which no objections were made); *see also Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1226 (D. Ariz. 2003) (reading the Ninth Circuit's decision in *Reyna-Tapia* as adopting the view that district courts are not required to review "any issue that is not the subject of an objection."). Thus, if there is no objection to a magistrate judge's recommendation, then the court may accept the recommendation without review. *See, e.g.*, *Johnstone*, 263 F. Supp. 2d at 1226 (accepting, without review, a magistrate judge's recommendation to which no objection was filed).

The Court agrees with the Magistrate Judge's finding that venue is not proper in this court. In light of Plaintiff's pro se status and claim of a burden imposed with dismissal instead of a transfer, the Court finds that the interest of justice warrants a transfer of this case to the court where the action could have been brought—the United States District Court for the Western District of New York. *See* 28 U.S.C. § 1406(a).

It is therefore ordered, adjudged and decreed that the Report and Recommendation of Magistrate Judge William G. Cobb (ECF No. 3) is accepted and adopted in part.

It is further ordered that this action is transferred to the United States District Court for the Western District of New York.

DATED THIS 12th day of February 2018.

MIRANDA M. DU
UNITED STATES DISTRICT JUDGE