

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

KYRA MOSS,

Plaintiff,

v.

1:17-CV-0660
(GTS/CFH)

ALBANY COUNTY OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES,

Defendant.

APPEARANCES:

KYRA MOSS

Plaintiff, *Pro Se*

18 Providence Place, Apt. 7

Albany, New York 12202

GLENN T. SUDDABY, Chief United States District Judge

DECISION and ORDER

Currently before the Court, in this *pro se* civil rights action filed by Kyra Moss (“Plaintiff”) against the Albany County of New York Department of Social Services (“Defendant”), are the following: (1) United States Magistrate Judge Christian F. Hummel’s Report-Recommendation recommending that Plaintiff’s Complaint be *sua sponte* dismissed without prejudice for failure to state a claim pursuant to 28 U.S.C. § 1915(e); and (2) Plaintiff’s Objections to the Report-Recommendation. (Dkt. Nos. 4, 5.) Even when construed with the utmost of special liberality, Plaintiff’s Objections fail to assert a specific challenge to the Report-Recommendation, lessening the level of scrutiny to which the Report-Recommendation must be

subjected to one of only clear error.¹ Based upon a careful review of this matter, the Court can find no clear error in the Report-Recommendation: Magistrate Judge Hummel employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. As a result, the Court accepts and adopts the Report-Recommendation for the reasons stated therein. (Dkt. No. 4.) The Court would add only that, even if it were to subject the Report-Recommendation to the more-rigorous scrutiny appropriate for a specifically challenged Report-Recommendation (i.e., de novo review), the Report-Recommendation would survive that de novo review.

ACCORDINGLY, it is

ORDERED that Magistrate Judge Hummel’s Report-Recommendation (Dkt. No. 4) is **ACCEPTED** and **ADOPTED** in its entirety; and it is further

ORDERED that Plaintiff’s Complaint (Dkt. No. 1) shall be *sua sponte* **DISMISSED** **with prejudice** pursuant to 28 U.S.C. 1915(e), and without further notice of the Court, **unless, within THIRTY (30) DAYS** of the date of this Decision and Order, Plaintiff files an **Amended Complaint** that corrects the pleading defects identified in the Report-Recommendation; and it is further

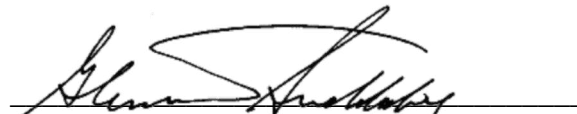
ORDERED that any Amended Complaint filed by Plaintiff (1) must be a complete pleading and may not incorporate any portion of the original Complaint by reference, (2) shall

¹ Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition. When performing such a “clear error” review, “the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Id.*; see also *Batista v. Walker*, 94-CV-2826, 1995 WL 453299, at *1 (S.D.N.Y. July 31, 1995) (Sotomayor, J.) (“I am permitted to adopt those sections of [a magistrate judge’s] report to which no specific objection is made, so long as those sections are not facially erroneous.”) (internal quotation marks omitted).

supersede his original Complaint in its entirety and become the operative pleading in this case, and (3) must comply with the pleading requirements of Fed. R. Civ. P. 10(b) and state its claims in numbered paragraphs, each limited as far as practicable to a single set of circumstances; and it is further

ORDERED that, should Plaintiff file an Amended Complaint within the referenced thirty (30) day period, it shall be referred to Magistrate Judge Hummel for review; if however, Plaintiff fails to file an amended complaint within the thirty (30) day period, this action will be dismissed without further Order of the Court.

Dated: November 8, 2017
Syracuse, New York


HON. GLENN T. SUDDABY
Chief United States District Judge