

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA**

Patrick McIntosh,
a/k/a Patrick R. McIntosh,

Plaintiff,

v.

Elizabeth McIntosh, Eugene R. McIntosh,

Defendants.

Case No.: 2:17-cv-375-RMG

ORDER AND OPINION

This matter is before the Court on the Report and Recommendation (“R. & R.”) of the Magistrate Judge (Dkt. No. 28) recommending that this Court dismiss Plaintiff’s Complaint because Plaintiff has failed to state a cause of action under 42 U.S.C. § 1983 and there is no diversity jurisdiction for the Court to consider Plaintiff’s claims for unjust enrichment under 28 U.S.C. § 1332. For the reasons set forth below, this Court adopts the R. & R. (Dkt. No. 28) as the order of the Court. Plaintiff’s complaint is dismissed without prejudice and without service of process.

I. Legal Standards

a. *Pro Se* Pleadings

This Court liberally construes complaints filed by *pro se* litigants to allow the development of a potentially meritorious case. *See Cruz v. Beto*, 405 U.S. 319 (1972); *Haines v. Kerner*, 404 U.S. 519 (1972). The requirement of liberal construction does not mean that the Court can ignore a clear failure in the pleadings to allege facts which set forth a viable federal claim, nor can the Court assume the existence of a genuine issue of material fact where none exists. *See Weller v. Dep’t of Social Services*, 901 F.2d 387 (4th Cir. 1990).

b. Magistrate's Report and Recommendation

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court. *See Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). This Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made. Additionally, the 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 the plaintiff fails to file any specific objections, “a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (internal quotation omitted).

II. Discussion

In a superseding indictment filed January 20, 2015, Plaintiff was charged with receiving firearms and ammunition while under indictment for felony (Count One), making a threat on the life of the President of the United States (Count Two), Threats to Law Enforcement (Count Three), and Threats by Interstate Communication (Count Four). After a bench trial, Plaintiff was found not guilty by reason of insanity. He was then committed to the custody of the Attorney General after he failed to meet his burden to show that his release would not create a substantial risk of bodily injury to another person. He is currently in custody at the Medical Center for Federal Prisoners in Springfield, Missouri.

Plaintiff filed this action in January 2017, alleging that Eugene McIntosh violated his 14th and 5th Amendment rights by making false statement to police and raising a question about the title of property on Provincial Circle in Mount Pleasant, South Carolina. Plaintiff alleged that

that Elizabeth McIntosh was unjustly enriched by living rent-free in the property on Provincial Circle. (Dkt. No. 1.) The Magistrate determined that Plaintiff failed to state a claim for relief under 42 U.S.C. § 1983 because he did not allege that either Defendant acted under color of state law. Plaintiff also failed to plead facts showing that this Court has diversity jurisdiction to consider his claims for unjust enrichment under 28 U.S.C. § 1332. Plaintiff has not filed any objections to the R. & R., and this Court finds that the Magistrate correctly applied the controlling law to the facts of this case.

III. Conclusion

For the reasons set forth above, this Court adopts the R. & R. (Dkt. No. 28) as the order of the Court. Plaintiff's Complaint is dismissed without prejudice and without service of process.

AND IT IS SO ORDERED.



Richard Mark Gergel
United States District Court Judge

August 22, 2017
Charleston, South Carolina