

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge R. Brooke Jackson

Civil Action No 17-cv-02938-RBJ-NYW

LEONARD A. MARES,

Plaintiff,

v.

RICK RAEMISCH, in his official capacity as Executive Director of CDOC,

Defendant.

ORDER

Leonard A. Mares is incarcerated in the Colorado Department of Corrections. The procedural history of this case is somewhat extensive. Notably, however, the pending motions include defendant's motion to dismiss; the recommendation of United States Magistrate Judge Nina Y Wang that the motion to dismiss be converted to a motion for summary judgment, and (3) Judge Wang's further recommendation that the motion for summary judgment be granted.

The primary focus of the case has involved Mr. Mares's efforts to have contact with his daughter while incarcerated. For a number of years contact was denied due to a civil protection order issued in 1992 subsequent to Mr. Mares' conviction for a sex offense against a minor (not his daughter). However, as detailed in Judge Wang's recommendation, (1) in July 2016 the CDOC's Sex Offender Treatment and Management Program issued a memorandum finding no cause to restrict Mr. Mares's contact with his daughter (or other minors); (2) the same Program issued another similar memorandum in January 2019; (3) also in January 2019 a state court

reported that there was no protection order preventing Mr. Mares from having contact with any of his children; (4) as of March 4, 2019 (the date of Judge Wang's recommendation) Mr. Mares's daughter was currently on the CDOC's approved visitor's list; and (5) plaintiff's only remaining claim seeks prospective injunctive relief requiring defendant to permit him to have access to his daughter while incarcerated. ECF No. 105 at 4-5, 8. Accordingly, Judge Wang recommends that the motion to dismiss be converted to a motion for summary judgment, and based on the information now in the record, she recommends that the motion for summary judgment be granted, and that all other pending motions be denied as moot. *Id.* at 14.

The recommendation advised the parties that specific written objections were due within fourteen (14) days after being served with a copy of the Recommendation. *Id.* at 14, n.6. Perhaps unsurprisingly in the circumstances, no objection was filed by either party. "In the absence of timely objection, the district court may review a magistrate's report under any standard it deems appropriate." *Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991) (citing *Thomas v. Arn*, 474 U.S. 140, 150 (1985) ("It does not appear that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings.")).

The Court has reviewed the relevant pleadings concerning the recommendation. Based on this review, the Court concludes that the magistrate judge's analyses and recommendations are correct, and that "there is no clear error on the face of the record." Fed. R. Civ. P. 72 advisory committee's note. Therefore, the Court ADOPTS the magistrate judge's findings and conclusions as the findings and conclusions of this Court and accepts her recommendation.

ORDER

1. Magistrate Judge Wang's recommendation, ECF No. 105, is ACCEPTED AND ADOPTED.
2. Defendant's motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and (6), ECF No. 78, is converted to a motion for summary judgment, and as such is GRANTED. This civil action is dismissed with prejudice, each party to bear his or its costs.
3. All other pending motions, i.e., ECF Nos. 39, 49, 54, 58, 61, 67, 74, 83, and 84 are DENIED AS MOOT.
4. Two previous recommendations, ECF Nos. 42 and 87, are also MOOT.

DATED this 6th day of May, 2019.

BY THE COURT:

A handwritten signature in black ink, appearing to read "R. Brooke Jackson", with a long, sweeping horizontal stroke extending to the right.

R. Brooke Jackson
United States District Judge