

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Charlotte N. Sweeney

Civil Action No. 24-cv-01736-CNS-KAS

RAYMOND TODD SURFACE,

Plaintiff,

v.

KELLY ANN BURKE,

Defendant.

ORDER

Before the Court is the Recommendation of United States Magistrate Judge Kathryn A. Starnella. ECF No. 15. Magistrate Judge Starnella recommends dismissing Plaintiff's claims for lack of subject-matter jurisdiction under the domestic-relations exception. Plaintiff did not object to the Recommendation. For the following reasons, the Court affirms and adopts the Recommendation and dismisses the case without prejudice.

I. SUMMARY FOR *PRO SE* PLAINTIFF

Your allegations arise from a child custody dispute concerning your young daughter and the related ongoing state court case. Magistrate Judge Starnella determined that your claims attacking those state proceedings were improperly filed in federal court and should remain in state court. She therefore recommends that this Court dismiss your claims without prejudice for lack of subject-matter jurisdiction.

At the end of her Recommendation, Magistrate Judge Starnella advised that you had 14 days after service of the Recommendation to file a written objection. ECF No. 15 at 9. You did not file an objection or otherwise respond within that window. As explained in more detail below, the Court has reviewed the Recommendation and has determined that it is correct. The Court will explain why it is adopting the Recommendation in more detail below, including a discussion of the legal authority that supports this conclusion.

Because the Court is affirming Magistrate Judge Starnella's Recommendation and granting Defendant's motion to dismiss, your claims against Defendant are dismissed without prejudice, which means that you may refile your claims in the appropriate tribunal, if you can satisfy the procedural and jurisdictional requirements. *See Crowe v. Servin*, 723 F. App'x 595, 598 (10th Cir. 2018) ("A dismissal without prejudice just means that the plaintiff isn't barred from refiling the lawsuit within the applicable limitations period." (citations and quotations omitted)).

II. RELEVANT FACTUAL & PROCEDURAL BACKGROUND

Plaintiff, who proceeds pro se, initiated this action on June 21, 2024. ECF No. 1. He lodges several complaints against his ongoing state domestic-relations case, 21DR30902, concerning a child custody dispute regarding his young child. *Id.* at 5-8 ("Cause of Action" section); *id.* at 7 (alleging that a state court judge is "presiding over the parenting case . . . and has not ruled on the case 12 months d[e]spite hearing closing arguments one year ago"). Defendant, the biological mother of the young child, moved to dismiss the action under Federal Rule of Civil Procedure 12(b)(1) or, alternatively, under Federal Rule of Civil Procedure 12(b)(6). ECF No. 7.

III. ANALYSIS & ORDER

Under 28 U.S.C. § 636(b)(1)(B), this Court may designate a magistrate judge to consider dispositive motions and submit recommendations to the Court. When a magistrate judge issues a recommendation on a dispositive matter, the presiding district judge must “determine de novo any part of the magistrate judge’s [recommended] disposition that has been properly objected to.” Fed. R. Civ. P. 72(b)(3). An objection to a recommendation is properly made if it is both timely and specific. *United States v. 2121 East 30th St.*, 73 F.3d 1057, 1059–60 (10th Cir. 1996).

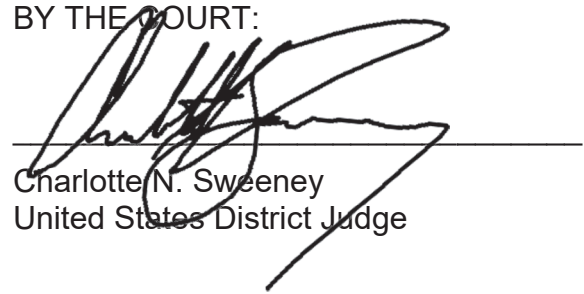
When—as is the case here—neither party objects to a Magistrate Judge’s Recommendation, the Court “may review a magistrate [judge]’s report under any standard it deems appropriate.” *Summers v. State of Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991) (citing *Thomas v. Arn*, 474 U.S. 140, 150 (1985)). The Court is “accorded considerable discretion” when reviewing “unchallenged” recommendations. *Id.*

The Court has reviewed Magistrate Judge Starnella’s Recommendation and is satisfied that it is sound, the analysis is thorough and comprehensive, and there is no clear error on the face of the record.

The Court AFFIRMS and ADOPTS Magistrate Judge Starnella’s Recommendation, ECF No. 15, in its entirety as an order of this Court. Accordingly, the Court GRANTS Defendant’s Motion to Dismiss. ECF No. 7. The Clerk of Court is directed to close this case.

DATED this 6th day of January 2025.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Charlotte N. Sweeney", is written over a horizontal line. The signature is stylized with large, sweeping loops and a long, trailing flourish that extends to the right.

Charlotte N. Sweeney
United States District Judge