

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

Civil Action No. 1:24-cv-02604-CNS-KAS

DANIEL S. KESSLER,

Plaintiff,

v.

BRETT SCHROETLIN, Sheriff,
GRAND COUNTY SHERIFF OFFICE,
TYLER MATHIS, Deputy #52712, and
Homeland security agents, officers, employees, and servants,

Defendants.

ORDER

Before the Court is United States Magistrate Judge Kathryn A. Starnella's Recommendation that Plaintiff's claims be dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(b), and that Defendants' motion to dismiss be denied as moot. ECF No. 16 (motion to dismiss), ECF No. 25 (Recommendation). No party objected to the Recommendation. For the following reasons, the Court affirms and adopts the Recommendation.

I. SUMMARY FOR *PRO SE* PLAINTIFF

Magistrate Judge Starnella recommends dismissing your lawsuit without prejudice because you did not respond to her order to explain why the case should not be dismissed

for failure to prosecute.¹ At the end of her Recommendation, she advised that you had 14 days after service of the Recommendation to file a written objection. 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 is affirming Magistrate Judge Starnella's Recommendation and dismissing your lawsuit 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. LEGAL STANDARDS

A. Federal Rule of Civil Procedure 72(b)(3)

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. 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). An objection is sufficiently specific if it "enables the district judge to focus attention on those issues—factual and legal—that are at the heart of the parties' dispute." *Id.* at 1059. In conducting its review, "[t]he district judge may accept, reject, or modify the recommended disposition;

¹ Magistrate Judge Starnella also ordered you to show cause as to why the Court should not dismiss your case for lack of subject matter jurisdiction. You failed to respond to both orders to show cause, and you failed to respond to Defendants' motion to dismiss.

receive further evidence; or return the matter to the magistrate judge with instructions.” Fed. R. Civ. P. 72(b)(3).

B. *Pro Se* Litigants

“A pro se litigant’s pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers.” *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991) (citing *Haines v. Kerner*, 404 U.S. 519, 520–21 (1972)). “The *Haines* rule applies to all proceedings involving a pro se litigant.” *Id.* at 1110 n.3. A court, however, cannot be a pro se litigant’s advocate. See *Yang v. Archuleta*, 525 F.3d 925, 927 n.1 (10th Cir. 2008).

III. ANALYSIS & ORDER

When—as is the case here—a party does not object to the 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.*

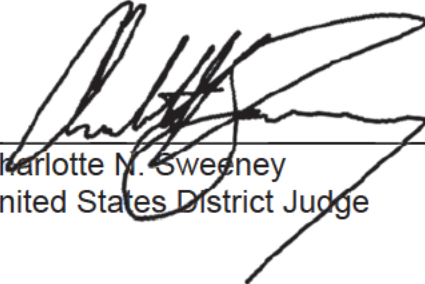
After reviewing the relevant pleadings and the Recommendation, the Court concludes that Magistrate Judge Starnella’s analysis was thorough and comprehensive, the Recommendation is well-reasoned, and the Court finds no clear error on the face of the record.

Accordingly, the Court AFFIRMS and ADOPTS Magistrate Judge Starnella’s Recommendation, ECF No. 25, as an order of this Court. Plaintiff’s claims are DISMISSED without prejudice pursuant to Federal Rule of Civil Procedure 41(b), and

Defendants' motion to Dismiss, ECF No. 16, is DENIED as moot.

Dated this 13th day of August 2025.

BY THE COURT:



Charlotte M. Sweeney
United States District Judge