

APPENDIX A.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

SEP 29 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

PETER GRIGG,

Plaintiff-Appellant,

v.

BARBARA BENSON,

Defendant-Appellee.

No. 23-35482

D.C. No. 9:23-cv-00067-DLC
District of Montana,
Missoula

ORDER

Before: BADE, LEE, and VANDYKE, Circuit Judges.

The district court certified that this appeal is not taken in good faith and revoked leave to proceed in forma pauperis. *See* 28 U.S.C. § 1915(a). On July 24, 2023, the court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. *See* 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

Upon a review of the record and the response to the July 24, 2023 order, we conclude this appeal is frivolous. We therefore dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2).

No further filings will be entertained in this closed case.

DISMISSED.

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FOR THE NINTH CIRCUIT

JUL 24 2023

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ORDER

A review of the district court's docket reflects that the district court has certified that this appeal is not taken in good faith and has revoked appellant's in forma pauperis status. *See* 28 U.S.C. § 1915(a). This court may dismiss a case at any time, if the court determines the case is frivolous. *See* 28 U.S.C. § 1915(e)(2).

Within 35 days after the date of this order, appellant must:

(1) file a motion to dismiss this appeal, *see* Fed. R. App. P. 42(b), or
(2) file a statement explaining why the appeal is not frivolous and should go forward.

If appellant files a statement that the appeal should go forward, appellant also must:

(1) file in this court a motion to proceed in forma pauperis, OR
(2) pay to the district court \$505.00 for the filing and docketing fees for this appeal AND file in this court proof that the \$505.00 was paid.

If appellant does not respond to this order, the Clerk will dismiss this appeal for failure to prosecute, without further notice. *See* 9th Cir. R. 42-1. If appellant files a motion to dismiss the appeal, the Clerk will dismiss this appeal, pursuant to Federal Rule of Appellate Procedure 42(b). If appellant submits any response to this order other than a motion to dismiss the appeal, the court may dismiss this appeal as frivolous, without further notice.

The briefing schedule for this appeal is stayed.

The Clerk will serve on appellant: (1) a form motion to voluntarily dismiss the appeal, (2) a form statement that the appeal should go forward, and (3) a Form 4 financial affidavit. Appellant may use the enclosed forms for any motion to dismiss the appeal, statement that the appeal should go forward, and/or motion to proceed in forma pauperis.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

PETER GRIGG,

Plaintiff,

vs.

BARBARA BENSON,

Defendant.

CV 23-67-M-DLC-KLD

ORDER

Before the Court is United States Magistrate Judge Kathleen L. DeSoto's Order and Findings and Recommendation. (Doc. 4.) Judge DeSoto recommends dismissing Plaintiff Peter Grigg's complaint with prejudice for failure to state a claim on which relief should be granted and certifying that any appeal from this disposition would not be taken in good faith. The Court agrees and will adopt Judge DeSoto's Findings and Recommendation in full.

A party is only entitled to de novo review of those findings to which he or she specifically objects. 28 U.S.C. § 636(b)(1)(C). In the absence of an objection, this Court reviews findings for clear error. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error review is "significantly deferential" and exists when the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

Judge DeSoto's Findings and Recommendation notified Mr. Grigg of his right to object to her conclusions (Doc. 4 at 6), but he did not object.

The Court agrees with Judge DeSoto's conclusion that Defendant Special Master Barbara Benson is entitled to absolute quasi-judicial immunity concerning the allegations in Mr. Grigg's complaint, which all stem from her unquestionably judicial acts performed within her jurisdiction while presiding as Special Master over Mr. Grigg's marriage dissolution proceedings. (Doc. 4 at 5.) The Court further agrees with Judge DeSoto's conclusion that the deficiencies identified cannot be cured by amendment of the complaint, and because amendment would be futile, the complaint should be dismissed with prejudice. (*Id.*)

Accordingly, IT IS ORDERED that Judge DeSoto's Findings and Recommendation (Doc. 4) is ADOPTED IN FULL.

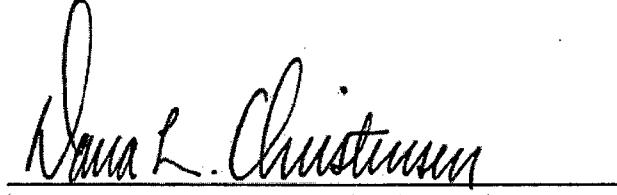
IT IS FURTHER ORDERED that Grigg's complaint (Doc. 2) is DISMISSED WITH PREJUDICE.

IT IS FURTHER ORDERED that the Clerk of Court is directed to close the case and enter judgment in favor of the defendant pursuant to Rule 58 of the Federal Rules of Civil Procedure.

IT IS FURTHER ORDERED that the Clerk of Court is directed to have the docket reflect that the Court certifies pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in

good faith. No reasonable person could suppose an appeal would have merit. The record makes plain the instant Complaint lacks arguable substance in law or fact.

DATED this 6th day of July, 2023.


Dana L. Christensen
Dana L. Christensen, District Judge
United States District Court