

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-1563

BRIAN JAMES HUFFSTICKLE,

Plaintiff - Appellant,

and

MICHELLE DAWN HUFFSTICKLE,

Plaintiff,

v.

21ST MORTGAGE,

Defendant - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Rock Hill. Mary G. Lewis, District Judge. (0:19-cv-02523-MGL)

Submitted: December 17, 2020

Decided: March 3, 2021

Before KING, DIAZ, and RICHARDSON, Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

Brian James Huffstickle, Appellant Pro Se. Theodore Von Keller, CRAWFORD & VON KELLER, LLC, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Brian and Michelle Huffstickle appeal the district court's order adopting the magistrate judge's recommendation to grant Defendant's motion for summary judgment and dismiss their civil action. In its order, the court stated that the Huffstickles failed to object to the report and recommendation. On appeal, the Huffstickles claim that they never received the report and recommendation.

A party who fails to timely object in writing to a magistrate judge's proposed findings of fact and conclusions of law is not entitled to de novo review of the magistrate judge's determinations by the district court and is barred from contesting those determinations on appeal. *Wright v. Collins*, 766 F.2d 841, 845-46 (4th Cir. 1985); *see* 28 U.S.C. § 636(b)(1). However, the waiver of appellate rights for failing to object is a prudential rule, not a jurisdictional requirement. *Thomas v. Arn*, 474 U.S. 140, 154 (1985). And, when a litigant is proceeding pro se, he or she must be accorded fair notice of the consequences of failing to object before being barred from appellate review. *Wright*, 766 F.2d at 846-47.

From the present record, we cannot conclusively determine whether the Huffstickles received a copy of the magistrate judge's report and recommendation. Accordingly, we vacate the district court's order and remand for the court to make this determination in the first instance. If the court finds the Huffstickles' claim to be credible, it should provide them with a copy of the report and recommendation and accord them an opportunity to object. If, however, the court finds that they received the report and recommendation, it may reenter its original order, with any necessary modifications.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

VACATED AND REMANDED