

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HARRISON DIVISION

DAVID A. STEBBINS

PLAINTIFF

v.

Case No. 3:11-CV-03078

HARP & ASSOCIATES LLC a/k/a
HARP & ASSOCIATES REAL ESTATE SERVICES

DEFENDANT

ORDER

Currently before the Court is Plaintiff David Stebbins's Motion to Set Aside Judgment and to Disqualify Judge. (Doc. 52).

Mr. Stebbins has appealed the judgment entered in this case to the Court of Appeals for the Eighth Circuit. While that appeal is still pending, Mr. Stebbins now asks that this Court set aside the judgment being considered by the Eighth Circuit. The Court finds that it lacks jurisdiction to consider Mr. Stebbins's motion. "The filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *Liddell by Liddell v. Board of Educ.*, 73 F.3d 819, 822 (8th Cir. 2011) (quoting *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982)).

To the extent that the issue of disqualification is unrelated to the issues raised by Mr. Stebbins on appeal and may be considered by the Court, the Court finds that there are no grounds for disqualification. Mr. Stebbins argues that Magistrate Judge James Marschewski has demonstrated an animus against him by entering a report and recommendation in various of Mr. Stebbins's other cases filed in this District, recommending that Mr. Stebbins not be granted leave

to proceed *in forma pauperis*. The Court cannot find that those reports and recommendations are evidence of an animus held by Judge Marschewski against Mr. Stebbins. Rather, they are Judge Marschewski's recommendations to this Court based on his review of the applicable law. The fact that Mr. Stebbins disagrees with or does not like Judge Marschewski's recommendations does not create grounds for disqualification. Mr. Stebbins has filed objections to those reports and recommendations, which have been considered by the Court.

IT IS THEREFORE ORDERED that Mr. Stebbins's Motion to Set Aside Judgment and to Disqualify Judge (Doc. 97) is DENIED due to lack of jurisdiction of this Court to consider the motion. To the extent the Court may have jurisdiction to consider the issue of disqualification, the Motion to Disqualify is denied in substance.

IT IS SO ORDERED this 8th day of July, 2013.

P. K. Holmes, III
P.K. HOLMES, III
CHIEF U.S. DISTRICT JUDGE