

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**ANDRE BILLUPS and ZULEMA
GOMEZ,**

Plaintiffs,

v.

1:18-cv-1510-WSD

**J.D. HOMES, DeKalb County
Marshal; JOSEPH CLANTON,
DeKalb County Marshal;
KENNETH FULTON, DeKalb
County Marshal; DEKALB
COUNTY MAGISTRATE COURT;
DEKALB COUNTY MARSHALS,**

Defendants.

OPINION AND ORDER

This matter is before the Court on Magistrate Judge Catherine M. Salinas's Order and Final Report and Recommendation [2] ("Final R&R"), which recommends that this action be dismissed as duplicative or, alternatively, for lack of subject matter jurisdiction.

On April 9, 2018, Plaintiffs Andre Billups and Zulema Gomez (collectively, "Plaintiffs") sought leave to proceed in forma pauperis against Defendants J.D. Homes, Joseph Clanton, Kenneth Fulton, DeKalb County Magistrate Court, and DeKalb County Marshals (collectively, "Defendants") for an alleged willful

violation of a bankruptcy stay order. ([1.1] at 3; [1.2] at 1; [2] at 2). On April 16, 2018, the Magistrate Judge issued her Final R&R, granting Plaintiffs' request for leave to proceed in forma pauperis for the limited purposes of determining whether Plaintiff's Complaint was properly filed in the Northern District of Georgia. No parties have filed objections to the Final R&R.

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject, or modify a magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1); Williams v. Wainwright, 681 F.2d 732 (11th Cir. 1982), cert. denied, 459 U.S. 1112 (1983). A district judge "shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). With respect to those findings and recommendations to which objections have not been asserted, the Court must conduct a plain error review of the record. United States v. Slay, 714 F.2d 1093, 1095 (11th Cir. 1983), cert. denied, 464 U.S. 1050 (1984). The parties have not filed objections to the R&R, and the Court thus reviews it for plain error.

The Magistrate Judge found that this action is duplicative of Case No. 1:17-cv-03426-WSD (N.D. Ga.), which this Court referred to the United States Bankruptcy Court for the Northern District of Georgia. ([2] at 2-3). The

Magistrate Judge also concluded that this Court does not have subject matter jurisdiction over this matter. ([2] at 4). Plaintiff only alleged diversity jurisdiction, but the Civil Cover Sheet indicates that all plaintiffs and defendants are citizens of Georgia. ([1.2 at 1). Diversity jurisdiction does not exist and no federal question exists. See 28 U.S.C. §§ 1332, 1331.


The Magistrate Judge recommended that this action be dismissed as duplicative of Billups, et al. v. Homes, et al., 1:17-cv-03426-WSD (currently pending in Bankruptcy Court as Case Number 17-05289-pmb), or, alternatively, for lack of subject matter jurisdiction. The Court finds no plain error in the Magistrate Judge's findings and recommendations.

For the foregoing reasons,

IT IS HEREBY ORDERED that Magistrate Judge Catherine M. Salinas's Order and Final Report and Recommendation [2] is **ADOPTED**.

IT IS FURTHER ORDERED that this action is **DISMISSED**.

SO ORDERED this 1st day of June, 2018.



WILLIAM S. DUFFEY, JR.
UNITED STATES DISTRICT JUDGE