

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION AT COVINGTON

CIVIL ACTION NO. 08-116-WOB

BRENTON WOMBLES,

PLAINTIFF,

V.

**MAGISTRATE JUDGE'S REPORT
AND RECOMMENDATION**

BOONE COUNTY
DETENTION CENTER, ET AL,

DEFENDANTS.

I. INTRODUCTION

This matter is before the undersigned on the *pro se* Plaintiff's Motion for Default Judgment [R. 27]. The Defendants having filed responses [R. 28, 30], the matter stands fully briefed. Having considered the arguments of the parties, and for the reasons stated herein, the Court recommends that the Plaintiff's Motion for Default Judgment [R. 27] be DENIED.

II. ANALYSIS

The Plaintiff filed a Motion for Default Judgment on October 31, 2008, claiming that the Defendants had failed to answer or deny the allegations contained within the complaint. [R. 27].

As to Defendants Bruce and Schwalders, the Plaintiff's Motion for Default Judgment was filed before the time for the Defendants' answers had expired. Under the Federal Rules of Civil Procedure, the Defendants were required to file answers "within 20 days after being served with the summons and complaint." Fed. R. Civ. P. 12(a)(i). The Defendants were served with summons on October 21, 2008 [R. 22, 23, 24, 25], and the Plaintiff filed his Motion for Default Judgment on October 31, 2008. [R. 27]. The Defendants filed an Answer on November 4, 2008, which is within

the 20-day period allowed under Fed. R. Civ. P. 12(a)(i). Therefore, the Plaintiff's Motion for Default Judgment should be denied as to Defendants Bruce and Schwalders.

Defendant Keith Kessler file a Response [R. 30], noting that he filed answers to both the original and amended complaints. [R. 13, 21]. As Defendant Kessler filed timely answers to both complaints, the Motion for Default Judgment should also be denied as to Defendant Kessler.

III. CONCLUSION

Accordingly, and for the reasons stated above, it is hereby recommended that the Plaintiff's Motion for Default Judgment [R. 27] be DENIED.

Specific objections to this Report and Recommendation must be filed within ten (10) days from the date of service thereof or further appeal is waived. United States v. Campbell, 261 F.3d 628, 632 (6th Cir. 2001); Bituminous Cas. Corp. v. Combs Contracting Inc., 236 F. Supp. 2d 737, 749-750 (E.D. Ky. 2002). General objections or objections that require a judge's interpretation are insufficient to preserve the right to appeal. Cowherd v. Million, 380 F.3d 909, 912 (6th Cir. 2004); Miller v. Currie, 50 F.3d 373, 380 (6th Cir. 1995). A party may file a response to another party's objections within ten (10) days after being served with a copy thereof. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b).

Signed March 16, 2009.



Signed By:

Edward B. Atkins

EBA

United States Magistrate Judge