

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

DANIEL I. THODY and WALTER-ELIYAH
THODY,

Defendants.

Case No. 1:19-cv-339

HON. JANET T. NEFF

OPINION AND ORDER

Now pending before the Court in this civil action are Defendants' objections (ECF Nos. 46, 61 & 75) to the Magistrate Judge's Reports and Recommendations (R&R) (ECF Nos. 39, 58, 72); and Defendant's appeal (ECF No. 75) from a pretrial Order of the Magistrate Judge (ECF No. 73). For the following reasons, the Court denies the objections, denies the appeal, and issues this Opinion and Order.

The United States initiated this action on May 1, 2019 against Daniel I. Thody and his father, Walter-Eliyah Thody, to reduce certain federal tax liabilities to a judgment against Daniel (Count I) and to enforce federal tax liens against property titled in the name of Daniel I. Thody located in Newaygo County, Michigan, against which Walter-Eliyah had recorded a purported security interest for \$950,000 (Count II) (Compl. [ECF No. 1] ¶¶ 7, 12 & 17-18). Defendant Daniel Thody answered the Complaint and included a Counterclaim (ECF No. 24 at PageID.86-87), which the United States moved to dismiss (ECF No. 25). Defendant Walter-Eliyah Thode has since filed four motions to dismiss the United States' Complaint (ECF Nos. 35, 47, 52 & 56).

December 16, 2019 R&R (ECF No. 39). In the first Report and Recommendation issued on December 16, 2019, the Magistrate Judge recommends that this Court grant the United States' motion to dismiss for the reason that Defendant Daniel Thody's Counterclaim did not set forth a basis for jurisdiction and failed to invoke a waiver of sovereign immunity (R&R, ECF No. 39 at PageID.146-147). The Magistrate Judge also recommends that this Court deny Defendant Walter-Elijah Thode's "motion to dismiss with extreme prejudice" because Walter-Elijah Thody "cites no court rule or case supporting dismissal of the complaint in this case," and having reviewed the complaint, the Magistrate Judge found "no reason to conclude that it does not allege a viable claim" (*id.* at PageID.148).

Only Defendant Walter-Elijah Thody filed an objection to the December 16, 2019 Report and Recommendation (ECF No. 46). An objection to a magistrate judge's report and recommendation must "specifically identify the portions of the proposed findings, recommendations, or report to which objections are made and the basis for such objections." W.D. Mich. LCivR 72.3(b). The Court reviews *de novo* "those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.* District courts need not provide *de novo* review of frivolous, general, or conclusive objections. *Weiler v. U.S. Dep't of Treasury-Internal Revenue Serv.*, No. 19-3729, 2020 WL 2528916, at *1 (6th Cir. Apr. 24, 2020); *Bell v. Huling*, 52 F.3d 324, at *1 (6th Cir. 1995); *Mira v. Marshall*, 806 F.2d 636, 637 (6th Cir. 1986).

As the United States pointed out in response to the objection (ECF No. 48 at PageID.195), Defendant Walter-Elijah Thody merely reiterates the propositions presented in his previous filings, without identifying any factual or legal error by the Magistrate Judge. His "objection" to

the Report and Recommendation is therefore properly denied. Accordingly, this Court adopts the Magistrate Judge's December 16, 2019 Report and Recommendation as the Opinion of this Court.

February 25, 2020 R&R (ECF No. 58). Next, on February 25, 2020, the Magistrate Judge issued a second Report and Recommendation, recommending that this Court also deny the two additional motions to dismiss filed by Defendant Walter-Elijah Thody, determining that the jurisdiction challenges presented in the motions were "equally meritless" (R&R, ECF No. 58 at PageID.242). Defendant Walter-Elijah Thody's objection to the Report and Recommendation (ECF No. 61) is frivolous and properly denied. As the United States sets forth in its response to the objection, "the Court has jurisdiction over this case and has jurisdiction to decide issues under Michigan law to the extent necessary to adjudicate the claims of the parties in this case regarding property against which the United States seeks to enforce federal tax liens" (ECF No. 62 at PageID.253). This Court will also adopt the Magistrate Judge's February 25, 2020 Report and Recommendation as the Opinion of this Court.

April 23, 2020 R&R (ECF No. 72). Last, on April 23, 2020, the Magistrate Judge issued a third Report and Recommendation, recommending that this Court deny Defendant Walter-Elijah Thody's fourth motion to dismiss for the reasons stated in the prior Reports and Recommendations (R&R, ECF No. 72 at PageID.297). Defendant Walter-Elijah Thody moves this Court to accept his untimely May 12, 2020 objection to the Report and Recommendation (ECF No. 76), a motion that this Court will grant. However, because the objection (ECF No. 75) is frivolous, it is properly denied, and this Court adopts the Magistrate Judge's April 23, 2020 Report and Recommendation as the Opinion of this Court.

To the extent Defendant Walter-Elijah Thody's May 12, 2020 filing also includes an appeal from the Magistrate Judge's April 23, 2020 Order granting the United States' motion to

compel discovery (ECF No. 73), such appeal is denied. Specifically, on April 23, 2020, the Magistrate Judge ordered Defendant Walter-Elijah Thody to “fully answer” the interrogatories posed by the United States (*id.* at PageID.299). This Court will reverse an order of the Magistrate Judge only where it is shown that the decision is “clearly erroneous or contrary to law.” 28 U.S.C. § 636(b)(1)(A); *see also* FED. R. CIV. P. 72(a); W.D. Mich. LCivR 72.3(a). Defendant Walter-Elijah Thody challenges the Magistrate Judge’s decision on the basis that the “interrogatories, if complied with, would imply W. Thody’s concession of this Court’s SMJ [subject matter jurisdiction]” (ECF No. 75 at PageID.306). As his jurisdictional challenge is wholly without merit, the argument concomitantly fails to demonstrate that the Magistrate Judge’s Order is either clearly erroneous or contrary to law. The appeal is therefore properly denied.

Therefore:

IT IS HEREBY ORDERED that the Objections (ECF No. 46) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 39) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Plaintiff’s Motion to Dismiss Defendant Daniel I. Thody’s Counterclaim (ECF No. 25) is GRANTED for the reasons stated in the Report and Recommendation (ECF No. 39).

IT IS FURTHER ORDERED that Defendant Walter-Elijah Thody’s “Motion to Dismiss with Extreme Prejudice” (ECF No. 35) is DENIED for the reasons stated in the Report and Recommendation (ECF No. 39).

IT IS FURTHER ORDERED that the Objections (ECF No. 61) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 58) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Defendant Walter-Elijah Thody's Motion named as "Denial of Jurisdiction and Motion to Dismiss with Extreme Prejudice" (ECF No. 47) is DENIED for the reasons stated in the Report and Recommendation (ECF No. 58).

IT IS FURTHER ORDERED that Defendant Walter-Elijah Thody's motion to dismiss (ECF No. 52) is DENIED for the reasons stated in the Report and Recommendation (ECF No. 58).

IT IS FURTHER ORDERED that Defendant Walter-Elijah Thody's Motion for leave for extension of time to file untimely objection/appeal (ECF No. 76) is GRANTED.

IT IS FURTHER ORDERED that the Objections (ECF No. 75) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 72) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Defendant Walter-Elijah Thody's Motion to Dismiss (ECF No. 56) is DENIED for the reasons stated in the Report and Recommendation (ECF No. 72).

IT IS FURTHER ORDERED that Defendant Walter-Elijah Thody's Appeal (ECF No. 75) from the Magistrate Judge's Order (ECF No. 73) is DENIED.

Dated: August 31, 2020

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge