

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JAMES WIDTFELDT,

Plaintiff,

vs.

JAMES DAUGHERTY, Revenue Officer;
INTERNAL REVENUE SERVICE,
U.S. TREASURY,

Defendants.

8:13CV120

MEMORANDUM AND ORDER

This matter is before the court on the plaintiff's objections, [Filing Nos. 8](#) and [9](#), to the findings and recommendation (F&R) of the magistrate judge, [Filing No. 7](#). Plaintiff filed his complaint on April 15, 2013, alleging he did not owe certain taxes. [Filing No. 1](#). Plaintiff did not show that he effectuated service on the defendants as of November 13, 2013. Consequently, on November 13, 2013, the magistrate judge issued an order giving the plaintiff until December 16, 2013, to file evidence of service or show cause why the case should not be dismissed for failure to prosecute. [Filing No. 6](#). The plaintiff did not respond. On December 19, 2013, the magistrate judge issued his F&R that this case be dismissed for failure to prosecute and failure to comply with a court order. [Filing No. 7](#). Thereafter, on January 3, 2014, plaintiff filed his objections to the F&R. [Filing Nos. 8](#) and [9](#).

Plaintiff objects arguing that he served the summonses on Daugherty, the IRS and the United States Treasury on or about May 13, 2013. Thus, plaintiff contends the court should enter default against all defendants and order judgment in his favor for \$100 million in lost opportunity costs and to nullify an Internal Revenue tax judgment. With regard to the United States Department of Justice, United States Treasury, James Daugherty, and the United States Postal Service, plaintiff attaches a proof of service saying he mailed it by postal certified letter

on May 8, 2013, and it was delivered on May 13, 2013. [Filing No. 8 at ECF 6-7](#), 9-10 and 12-13.

The court is going to give plaintiff 14 days from the date of this Memorandum and Order to file his proofs of service with the Clerk of Court. Failure to do so will result in immediate dismissal. The court will instruct the magistrate judge to monitor this case and determine if plaintiff has complied with this order. If in fact plaintiff files the proofs of service, the magistrate judge can then determine whether the summons have been effectuated on the correct parties and in the correct manner and determine how to further progress the case.

The court admonishes the plaintiff that failure to comply with any future orders will subject this case to immediate dismissal.

THEREFORE, IT IS ORDERED:

1. Plaintiff shall file his proof of service in this case within 14 days of the date of this Memorandum and Order with the Clerk of the Court for the District of Nebraska.
2. Plaintiff's objections to the F&R are overruled in part and granted in part.
3. The F&R of the magistrate judge, [Filing No. 7](#), is adopted to the extent set forth in this Memorandum and Order; however, the court will not dismiss the case at this time.
4. The magistrate judge is ordered to determine if the plaintiff complies with this Memorandum and Order and to take the appropriate steps thereafter.

Dated this 30th day of January, 2014.

BY THE COURT:

s/ Joseph F. Bataillon

United States District Judge