

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ELIZABETH M. CATANIA,

Plaintiff,

v.

DECISION AND ORDER
14-CV-553-A

UNITED STATES OF AMERICA,

Defendant.

This personal-injury action under the Federal Tort Claims Act, 28 U.S.C. § 2671, *et seq.*, was referred to Magistrate Judge Leslie G. Foschio pursuant to 28 U.S.C. § 636(b)(1) for the conduct of pretrial proceedings. On December 11, 2017, Magistrate Judge Foschio filed a combined Report and Recommendation and Decision and Order (Dkt. No. 60) that recommended that defendant United States' motion for summary judgment (Dkt. No. 40) be granted, and that denied plaintiff's cross-motion for an extension of time (Dkt. No. 47) to provide expert disclosure due to excusable neglect.

On December 22, 2017, plaintiff Elizabeth M. Catania filed objections to the Report and Recommendation and appealed the Decision and Order. Dkt. No. 61. The United States filed a response on January 12, 2018. Dkt. No. 63. Plaintiff filed a reply on February 1, 2018. Dkt. No. 64. The Court finds oral argument is unnecessary.

As an initial matter, the Court finds that plaintiff Catania fails to show how the

Magistrate Judge's painstaking analysis supporting denial of plaintiff's motion to extend *nunc pro tunc* the time for the parties to complete expert disclosure and fact discovery by amending the Court's third and fourth scheduling orders based upon the excusable neglect of her counsel was either clearly erroneous or contrary to law. See 28 U.S.C. § 636(b)(1)(A); Dkt. Nos. 34, ¶¶ 2-3 and 38. It was neither, and the appeal is therefore denied.

Pursuant to 28 U.S.C. § 636(b)(1)(B), the Court must make a *de novo* determination of those portions of the Report and Recommendation to which legally-proper objections have been made. However, the Court finds that the purported objections of plaintiff Catania (Dkt. Nos. 61, 64) merely reiterate her arguments before the Magistrate Judge without the specificity or support by legal authority tailored to the specific objections that are required by Fed. R. Civ. P. 72(b)(2) and Local Rule 72(b). Accordingly, the Court has reviewed the Report and Recommendation only for clear error. See *Moss v. Colvin*, 845 F.3d 516, 519 n.2 (2d Cir. 2017); Advisory Comm. Notes to Fed. R. Civ. P. 72(b). The Court finds no clear error, and therefore adopts the Magistrate Judge's findings and conclusions.

However, even upon *de novo* review of the Report and Recommendation, and after consideration of the submissions from the parties, the Court would find summary judgment pursuant to Fed. R. Civ. P. 56 should be granted upon plaintiff Catania's failure to make the threshold showings of economic loss and of severity of injury that are required for this case to proceed to trial. If the Court were to exercise its discretion to excuse that plaintiff's objections to the Report and Recommendation

are procedurally inadequate, the Court would still find that the United States' summary judgment motion should be granted. Accordingly, for all the reasons set forth in Magistrate Judge Foschio's Report and Recommendation (Dkt. No. 60), and this Decision and Order, it is hereby

ORDERED that defendant United States' motion for summary judgment (Dkt. No. 40) is granted, and plaintiff's appeal of the Magistrate Judge's denial of her cross-motion for an extension of time to complete expert disclosure (Dkt. No. 47) is denied.

The Clerk of Court shall enter Judgment in favor of the United States and take all steps necessary to close the case.

IT IS SO ORDERED.

Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT COURT

Dated: March 26, 2018