

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

ETHEL CHEATAM,

Plaintiff,

v.

JCPENNEY CO., INC., et al.,

Defendants.

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CIVIL ACTION NO. 1:16-cv-72

ORDER ADOPTING MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

This case was referred to the Honorable Zack Hawthorn, United States Magistrate Judge, for all pretrial matters pursuant to General Order 05-07. Pending before the court is the “Amended Motion to Dismiss” (Doc. No. 25) filed by JCPenney Co., Inc. and the individual defendants (collectively referred to as “JCPenney”). The court has received and considered the report and recommendation of the magistrate judge, which recommends that the court grant JCPenney’s amended motion to dismiss on the basis of fraud on the court. Doc. No. 40. The Plaintiff, Ethel Cheatam, proceeding *pro se* and *in forma pauperis*, filed timely objections to the report and recommendation. Doc. No. 42.

A party who files timely written objections to a magistrate judge’s report and recommendation is entitled to a *de novo* determination of those findings or recommendations to which the party specifically objects. 28 U.S.C. § 636(b)(1)(c); FED. R. CIV. P. 72(b)(2)-(3). “Parties filing objections must specifically identify those findings [to which they object]. Frivolous, conclusive or general objections need not be considered by the district court.” *Nettles*

v. Wainwright, 677 F.2d 404, 410 n.8 (5th Cir. 1982) (en banc), *overruled on other grounds by Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415 (5th Cir. 1996) (en banc).

The court has undertaken a *de novo* determination of the report and recommendation, and the court concludes that Cheatam's objections are without merit. In his report and recommendation, Judge Hawthorn found by clear and convincing evidence that Cheatam perpetrated fraud on the court and concluded that dismissal with prejudice was the appropriate sanction for such conduct. Cheatam's objections do not call into question Judge Hawthorn's credibility determinations, findings or recommendations. The court does not need to hold an additional evidentiary hearing when relying on the findings of fact by the magistrate judge. *U.S. v. Raddatz*, 447 U.S. 667, 673-677 (1980).

It is, therefore, **ORDERED** that the magistrate judge's report and recommendation is **ADOPTED**. JCPenney's amended motion to dismiss (Doc. No. 25) is granted in accordance with the magistrate judge's report and recommendation.

SIGNED at Plano, Texas, this 12th day of January, 2017.



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE