
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

DAVID J. D'ADDABBO, et. al

Plaintiffs

v.

EVELYN SMITH, et al.,

Defendants.

**MEMORANDUM DECISION AND
ORDER OVERRULING PLAINTIFFS'
OBJECTION TO MAGISTRATE
JUDGE'S REPORT AND
RECOMMENDATION & ADOPTING
REPORT AND RECOMMENDATION**

Case No. 2:16-cv-854

Judge Clark Waddoups

Plaintiffs David J. D'Addabbo and Linda L. D'Addabbo, proceeding pro se, brought a suit against Evelyn Smith, the IRS, and the United States. (Am. Compl., ECF No. 48.) In response, the Defendants filed a Motion to Dismiss the Amended Complaint. (ECF No. 54.)

The United States District Court Judge Clark Waddoups is the presiding judge in this matter and has referred it to United States Magistrate Judge Evelyn J. Furse under 28 U.S.C. § 636(b)(1)(B). (ECF No. 4.) The matter is now before the court on a Report and Recommendation from Magistrate Judge Furse, dated September 13, 2018. (ECF No. 62.) In the Report and Recommendation, Magistrate Judge Furse recommended that the court grant the Defendants' Motion to Dismiss the Amended Complaint "because [1] the Amended Complaint realleges matters already dismissed, [2] the court lacks jurisdiction over the tax-related claims, and [3] the Amended Complaint fails to state a claim upon which this Court can grant relief." (ECF No. 62 at 2.) The Report and Recommendation is incorporated by reference. 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b).

Plaintiffs filed their Objection to the Recommendation on October 1, 2018. (ECF No. 63.) The Defendants filed a response on October 15, 2018. (ECF No. 65.) Plaintiffs also filed a

“Motion for Remedy” on November 1, 2018. Because of Plaintiffs’ Objection, (ECF No. 63) the court reviews Magistrate Judge Furse’s report de novo. *Northington v. Marin*, 102 F.3d 1564, 1570 (10th Cir. 1996). Because Plaintiffs are proceeding pro se, the court must liberally construe their pleadings, *Haines v. Kerner*, 404 U.S. 519, 520–21 (1972), but it cannot advocate for them, *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

After careful review of the Amended Complaint, the Motion to Dismiss and all briefing, the Report and Recommendation, Plaintiffs’ Objection, and the Defendants’ Response, the court determines oral argument would not aid its disposition, AFFIRMS and ADOPTS Magistrate Judge Furse’s recommendation in full, and dismisses Plaintiffs’ action. As a result, Plaintiffs’ “Motion for Remedy,” (ECF No. 66) is MOOT.

SO ORDERED this 2nd day of November, 2018.

BY THE COURT:



CLARK WADDOUPS
United States District Judge