

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

GREGORY SCOTT SAVOY,

Plaintiff,

v.

**CIVIL ACTION NO.: 3:18-CV-86
(GROH)**

**CRAIG M. BURNS, Tax Commissioner,
Virginia Department of Taxation, PETER
FRANCHOT, Maryland Comptroller, Office
of the Comptroller, and DALE W. STEAGER,
Tax Commissioner, West Virginia State
Department of Taxation,**

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION

Currently pending before the Court is a Report and Recommendation (“R&R”) issued by United States Magistrate Judge Robert W. Trumble. ECF No. 4. Pursuant to this Court’s Local Rules and 28 U.S.C. § 636(b)(1)(b), this action was referred to Magistrate Judge Trumble for submission of an R&R. On June 1, 2018, Magistrate Judge Trumble issued his R&R, recommending that this Court dismiss the action without prejudice and deny the concurrent application to proceed in forma pauperis.

I. Background

On May 29, 2018, the Plaintiff filed an Ex Parte Emergency Application Instanter for Stay of Proceedings to Enforce a Judgment Pending the Filing of a Motion to Grant Relief to be Concurrent with an Application to Proceed Informa Pauperis. ECF No. 1. In

his motion, the Plaintiff requests that the Court stay the collection of tax judgments against him in Virginia and Maryland. ECF No. 1 at 13-14. Magistrate Judge Trumble recommended that the motion be denied and the action be dismissed without prejudice.

I. Standard of Review

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, this Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge to which no objections are made. Thomas v. Arn, 474 U.S. 140, 150 (1985). Failure to file objections in a timely manner constitutes a waiver of *de novo* review and a plaintiff's right to appeal this Court's order. 28 U.S.C. § 636(b)(1)(C); Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); United States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984).

Pursuant to 28 U.S.C. § 636(b)(1)(C) and Rule 72(b) of the Federal Rules of Civil Procedure, objections to Magistrate Judge Trumble's R&R were due within fourteen days after being served with a copy of the same. The R&R was sent to the Plaintiff by certified mail, return receipt requested, on June 1, 2018. ECF No. 4. The Plaintiff filed objections on June 11, 2018. ECF No. 5. Accordingly, this Court will review the portions of the R&R to which the Plaintiff objects *de novo*.

III. Discussion

While the R&R analyzes the motion as one for injunctive relief, the Plaintiff's primary objection to the R&R is that his motion is one for relief under Federal Rule of Civil Procedure Rule 62(b)(4). Accordingly, this Court will accept Magistrate Judge Trumble's

R&R in so far as it reviews the motion as a motion for injunctive relief and will undertake *de novo* review of the Plaintiff's motion as a Rule 62(b)(4) Motion.

Rule 62(b)(4) of the Federal Rules of Civil Procedure permits the court to stay the execution of any judgment pending the disposition of a motion under Rule 60. FED. R. CIV. P. 62(b)(4). Rule 60 states that a court may relieve a party from a final judgment for a variety of reasons including, "any other reason that justifies relief." FED. R. CIV. P. 60(b). Thus, in sum, a motion under Rule 62(b)(4) allows the court to stay a judgment pending the disposition of a motion for relief from the final judgment, order, or proceeding.

In the instant case, the Plaintiff has not filed a motion for relief from a judgment or an order under Rule 60. Accordingly, the motion to stay proceedings under Rule 62(b)(4) is premature. Moreover, because this Court did not render the initial judgment from which the Plaintiff appeals, this action is an independent action not governed by Rule 60. Therefore, whether the motion is analyzed as a motion for injunctive relief—as done in the R&R without objection—or as a motion under Rule 62(b)(4)—as done in this Order—the motion does not provide a ground for relief.

V. Conclusion

Therefore, upon review and finding no error, the Court **ORDERS** Magistrate Judge Trumble's Report and Recommendation [ECF No. 4] be **ADOPTED** for the reasons more fully stated therein. The Plaintiff's objections [ECF No. 5] are **OVERRULED**. Accordingly, the Court hereby **ORDERS** that the Plaintiff's Application [ECF No. 1] be **DENIED** and that this action be **DISMISSED WITHOUT PREJUDICE**.

The Court **DIRECTS** the Clerk to strike this case from the active docket and transmit a copy of this Order to the *pro se* Plaintiff by certified mail, return receipt requested.

DATED: June 18, 2018



GINA M. GROH
CHIEF UNITED STATES DISTRICT JUDGE