

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
BLUEFIELD DIVISION**

HARRY E. DEAKINS, SR., et al.,

Plaintiffs,

v.

CIVIL ACTION NO. 1:10-cv-01396

T. S. PACK, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

By Standing Order (Document 4), entered on December 21, 2010, this action was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). On May 11, 2012, Defendants Robin Mavin and D.W. Miller filed their Motion to Dismiss or, in the Alternative, Motion to Quash Service (Document 142). On June 15, 2012, Plaintiffs filed their response. (Document 163). On June 28, 2012, the Magistrate Judge submitted Proposed Findings and Recommendation (“PF&R”) (Document 170), wherein it is recommended that this Court deny Defendants’ Motion to Dismiss as premature and grant Defendants’ Motion to Quash Plaintiffs’ attempted service occurring on April 20, 2012. The Magistrate Judge also found good cause to extend the time for service of Defendants Mavin and Miller until September 1, 2012. (*Id.*)

The Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of de novo review and the Petitioner's right to appeal this Court's

Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). In addition, this Court need not conduct a de novo review when a party “makes general and conclusory objections that do not direct the Court to a specific error in the magistrate's proposed findings and recommendations.” *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). Objections to the PF&R were due by July 16, 2012. To date, no party has filed objections. However, based on subsequent filings, it appears both parties agree with the substance of the PF&R. (*See Documents 173 and 174*).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the Proposed Findings and Recommendation (Document 170), and **ORDERS** that the *Motion to Dismiss or, in the Alternative, Motion to Quash Service, By Robin Mavin and D.W. Miller* (Document 142) be **GRANTED in part and DENIED in part**. Specifically, the Defendants’ Motion is denied to the extent they move to dismiss and granted to the extent they seek to quash service. The Court further **ORDERS** that the time for service of Defendants Maven and Miller be **EXTENDED** until **September 1, 2012**.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and to any unrepresented party.

ENTER: July 19, 2012



IRENE C. BERGER

UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA