T.C. Memo. 2018-47

UNITED STATES TAX COURT

PA

RANDALL JENNETTE, Petitioner v.
COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 12713-16L. Filed April 5, 2018.

Randall Jennette, pro se.

Lisa DiCerbo, for respondent.

MEMORANDUM OPINION

RUWE, Judge: This case was brought by petitioner under section 6330(d)(1)[1] regarding a determination by the Internal Revenue Service (IRS)

[1]Unless otherwise indicated, all section references are to the Internal Revenue Code in effect at all relevant times, and all Rule references are to the Tax Court Rules of Practice and Procedure.

Appendix A

SERVED Apr 05 2018

[*2] Office of Appeals to sustain the collection by levy of petitioner's unpaid liability for assessed section 6702 penalties for 2011 and unpaid income tax liability for 2012. The issue before the Court is whether to grant respondent's motion for summary judgment (motion) pursuant to Rule 121. Respondent contends that no genuine dispute exists as to any material fact and that his determination to collect petitioner's unpaid liabilities by levy should be sustained. Petitioner responded to respondent's motion, but he did not contest respondent's material factual allegations and only raised frivolous arguments. After reviewing these allegations along with the attached declaration and exhibits, we conclude that no material facts that respondent relies on are in dispute and that this case is appropriate for summary adjudication.

Background

Petitioner was incarcerated in Pennsylvania when he filed his petition.

On January 30, 2012, the IRS received from petitioner an amended Federal income tax return for 2011, on which he reported wages of $9,003,079,659.98, withholdings of $9,003,079,659.98, and a refund due of $9,003,079,659.98. In March 2012, the IRS received from petitioner a Federal income tax return for

[*3] 2011,[2] on which he reported wages of $9,006,000,000, withholdings of $9,006,000,000, and a refund due of $9,006,000,000. Petitioner attached to each return a Notice Concerning Fiduciary Relationship, on which he stated that the then U.S. Secretary of the Treasury, Timothy Geithner, was acting in a fiduciary capacity for him and that the authority for the fiduciary relationship was "secured party creditor appointing fiduciary". Petitioner signed the notices as the fiduciary and stated that his title was a "secured party creditor". On January 13, 2014, the IRS received from petitioner another Federal income tax return for 2011, on which he reported wages of $36 billion, withholdings of $36 billion, and a refund due of $36 billion. Petitioner attached a nearly identical notice to this return, except he stated that the then U.S. Secretary of the Treasury, Jack Lew, was acting in a fiduciary capacity for him.

The IRS determined that the three returns petitioner submitted for 2011 were frivolous. On June 25, 2012, the IRS assessed two separate $5,000 penalties for the returns received on January 30, 2012, and in March 2012 under section 6702. On June 16, 2014, the IRS assessed a $5,000 penalty for the return received on January 13, 2014, under section 6702. Respondent's motion contends that he

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[2]For an unknown reason, petitioner submitted an amended Federal income tax return for 2011 before he filed his Federal income tax return for 2011.

[*4] obtained appropriate managerial approval for all three penalties, which petitioner does not dispute. Respondent's motion attached copies of the approval forms.

Petitioner did not file a Federal income tax return for 2012. The IRS prepared a substitute for return and assessed petitioner's unpaid liabilities. Petitioner seems to have agreed with respondent's assessment. On November 12, 2015, the IRS issued petitioner a Letter LT11, Notice of Intent to Levy and Notice of Your Right to a Hearing, for petitioner's unpaid section 6702 penalties for 2011 and unpaid income tax liability for 2012. On or about November 24, 2015, petitioner timely filed a request for a collection due process (CDP) hearing. In his request, petitioner raised frivolous arguments, but also claimed that he did not receive credit toward his liabilities for payments that he had previously made.

On May 9, 2016, a settlement officer (SO) from the IRS Office of Appeals sent petitioner a letter acknowledging receipt of his request for a CDP hearing. In the letter, the SO warned petitioner that he would disregard the request for a CDP hearing unless petitioner amended or withdrew the request within 30 days because the "only issues" that petitioner raised were frivolous. Petitioner did not amend or withdraw the request. On June 30, 2016, the SO sent petitioner a letter disregarding his request for a CDP hearing. The letter did not address petitioner's

[*5] claim that he had not received credit for payments that he previously made toward his outstanding liabilities. Petitioner filed a petition with this Court in which he challenged the determination to disregard the request for a CDP hearing and made an incomprehensible argument about a State court judgment.[3]

On October 28, 2016, respondent filed a motion to remand because the SO's May 9 and June 30, 2016, letters did not address whether petitioner received credit for previously made payments, which "may be a legitimate issue". On November 9, 2016, the Court granted respondent's motion to remand and we ordered that petitioner be provided a supplemental CDP hearing.

On December 5, 2016, the SO sent petitioner a letter scheduling a telephone supplemental CDP hearing for January 9, 2017. In the letter, the SO explained that he researched petitioner's account payment history between January 1990 and November 2016 and did not discover any payments that petitioner made toward the 2011 and 2012 liabilities. The SO informed petitioner that if he sought a collection alternative, he needed to submit by January 2, 2017: (1) signed tax

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[3]Our jurisdiction under sec. 6330(d)(1) depends upon the issuance of a valid notice of determination and a timely petition for review. Sarrell v. Commissioner, 117 T.C. 122, 125 (2001); Offiler v. Commissioner, 114 T.C. 492, 498 (2000); Goza v. Commissioner, 114 T.C. 176, 182 (2000). A letter disregarding a taxpayer's request for a CDP hearing is a determination for the purposes of sec. 6330(d)(1). Buczek v. Commissioner, 143 T.C. 301, 307 (2014); Thornberry v. Commissioner, 136 T.C. 356, 363-364 (2011).

[*6] returns for 2006, 2007, 2009, 2011, 2013, 2014, and 2015, and either proof that the IRS received the returns or proof of mailing;[4] (2) a Form 433-A, Collection Information Statement for Individuals, if petitioner wished for his accounts to be placed in currently not collectible status or if he sought an installment agreement; and (3) a Form 656, Offer in Compromise, and a Form 433-A if petitioner sought an offer-in-compromise.

Petitioner did not file the delinquent tax returns or provide the requested information. Petitioner did not call the SO for the scheduled supplemental CDP hearing.[5] On February 6, 2017, the SO sent petitioner a Supplemental Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 sustaining the proposed levy action.

Discussion

A. Summary Judgment

Summary judgment is designed to expedite litigation and to avoid unnecessary and expensive trials. Shiosaki v. Commissioner, 61 T.C. 861, 862

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[4]Petitioner's delinquent 2006, 2007, 2009, 2011, 2013, 2014, and 2015 returns are not at issue in this case.

[5]On December 21, 2016, petitioner informed the SO that he could not guarantee that he would be able to use the phone for the supplemental CDP hearing. However, in his response to respondent's motion, petitioner does not contend that he was prevented from participating in the hearing.

[*7] (1974). Under Rule 121(b), the Court may grant summary judgment when there is no genuine dispute as to any material fact and a decision may be rendered as a matter of law. Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff'd, 17 F.3d 965 (7th Cir. 1994). The burden is on the moving party to demonstrate that no genuine issue as to any material fact remains and that he is entitled to judgment as a matter of law. FPL Grp., Inc. v. Commissioner, 116 T.C. 73, 74-75 (2001). In deciding whether to grant summary judgment, we view the evidence in the light most favorable to the nonmoving party. Bond v. Commissioner, 100 T.C. 32, 36 (1993). However, the nonmoving party is required "to go beyond the pleadings and by * * * [his] own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986); see also Rauenhorst v. Commissioner, 119 T.C. 157, 175 (2002); FPL Grp., Inc. & Subs. v. Commissioner, 115 T.C. 554, 559 (2000). On the basis of the record, we conclude that there is no genuine dispute of material fact and that a decision may be rendered as a matter of law.

B. Standard of Review

Where the validity of a taxpayer's underlying liability is properly at issue, the Court reviews any determination regarding the underlying liability de novo.

[*8] Goza v. Commissioner, 114 T.C. 176, 181-182 (2000). Where the taxpayer's underlying liability is not properly at issue, we review the Office of Appeals' determination for abuse of discretion only. Hoyle v. Commissioner, 131 T.C. 197, 200 (2008); Goza v. Commissioner, 114 T.C. at 182. A determination is an abuse of discretion if it is arbitrary, capricious, or without sound basis in fact or law. Murphy v. Commissioner, 125 T.C. 301, 308, 320 (2005), aff'd, 469 F.3d 27 (1st Cir. 2006).

A taxpayer may raise a CDP challenge to the existence or amount of his underlying tax liability only if he "did not receive any statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability." Sec. 6330(c)(2)(B). This Court may consider such a challenge, however, only if the taxpayer properly raised it before the settlement officer, Giamelli v. Commissioner, 129 T.C. 107, 115 (2007), and again in his petition to this Court, see Rule 331(b)(4). An issue is not properly raised at the Office of Appeals if the taxpayer fails to request consideration of the issue or fails to present any evidence after being given a reasonable opportunity to do so. Sec. 301.6320-1(f)(2), Q&A-F3, Proced. & Admin. Regs.; see Thompson v. Commissioner, 140 T.C. 173, 178 (2013) (citing Giamelli v. Commissioner, 129 T.C. at 114).

[*9] Petitioner was entitled to contest the frivolous return penalties at his CDP hearing because he "did not otherwise have an opportunity to dispute such tax liability." Sec. 6330(c)(2)(B). However, in order to raise in this Court his liability for the frivolous return penalties, petitioner was required to contest those penalties at the supplemental CDP hearing and challenge those penalties in his petition. Petitioner failed to participate in the supplemental CDP hearing and did not explicitly challenge those penalties in his petition. He is therefore not entitled to contest those penalties in this Court.

It is unclear whether petitioner was entitled to contest his underlying liability for 2012 at the CDP hearing.[6] However, petitioner indicated to the SO that he agreed with the assessment, and he neither participated in his supplemental CDP hearing nor raised the issue of his 2012 liability in his petition. Because petitioner failed to participate in the supplemental CDP hearing and did not explicitly challenge his 2012 liability in his petition, he is not entitled to contest his 2012 liability in this Court. Accordingly, we will review the SO's determination for abuse of discretion only.

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[6]Generally, a taxpayer must actually receive a notice of deficiency for the preclusion under sec. 6330(c)(2)(B) to apply, see Sego v. Commissioner, 114 T.C. 604, 610-611 (2000), and the record is silent as to whether petitioner received a notice of deficiency for 2012.

[*10] C. Analysis

The determination of the IRS Office of Appeals must take into consideration: (1) the verification that the requirements of applicable law and administrative procedure have been met; (2) issues raised by the taxpayer; and (3) whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the person that any collection action be no more intrusive than necessary. Sec. 6330(c)(3); see also Lunsford v. Commissioner, 117 T.C. 183, 184 (2001). Our review of the record establishes that the SO properly considered all of these factors when making his determination.

Petitioner does not directly address respondent's determination to sustain the levy. Petitioner raises an incomprehensible argument about an alleged Pennsylvania State court judgment and its preclusive effect. He also raises tax-protester type arguments about his status under "Negotiable Instruments Law" as a "Secured Party Creditor". We will not painstakingly address petitioner's tax-protester arguments "with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit." Crain v. Commissioner, 737 F.2d 1417 (5th Cir. 1984).

[*11] Finding no abuse of discretion in any respect, we will grant summary judgment for respondent and sustain the proposed collection action. In reaching our decision, we have considered all arguments made by the parties, and to the extent not mentioned or addressed, they are irrelevant or without merit.

To reflect the foregoing,

An appropriate order and decision will be entered.

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 18-1861

RANDALL JENNETTE,
Appellant

v.

COMMISSIONER OF INTERNAL REVENUE

On Appeal from the United States Tax Court
(Tax Court No. 16-12713)
Tax Court Judge: Robert P. Ruwe

Submitted Pursuant to Third Circuit LAR 34.1(a)
October 15, 2018

Before: CHAGARES, BIBAS and GREENBERG, Circuit Judges

(Opinion filed: November 6, 2018)

OPINION*

PER CURIAM

Randall Jennette appeals pro se from the final order of the United States Tax Court. For the reasons detailed below, we will affirm.

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* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Appendix B

In 2012 and 2014, the Internal Revenue Service (IRS) imposed penalties against Jennette for filing frivolous tax returns, and in 2012, the IRS also assessed an unpaid tax liability. In an effort to collect, the IRS issued a notice of intent to levy. After proceedings not relevant here, the IRS Office of Appeals issued a supplemental notice of determination sustaining the levy notice.

Jennette challenged the supplemental notice in the Tax Court. He argued that: 1) the IRS is a corporate entity unlawfully seeking to compel performance under its corporate rules; 2) federal tax law can only be applied under admiralty or maritime jurisdictions; 3) the Uniform Commercial Code (UCC) provides a defense against the IRS under negotiable instruments law; and 4) Jennette is a secured creditor of the Secretary of the Treasury. The Tax Court granted the Commissioner's motion for summary judgment. The Tax Court concluded that Jennette did "not directly address respondent's determination to sustain the levy," and instead raised only "tax protester type arguments," which the Court declined to "painstakingly address." Tax Court Op. at 10. Jennette appealed.

We have jurisdiction pursuant to 26 U.S.C. § 7482(a)(1). We review the Tax Court's factual findings for clear error, and exercise plenary review of its conclusions of law. PNC Bancorp v. Comm'r, 212 F.3d 822, 827 (3d Cir. 2000). Where, as here, the underlying tax liability is not in issue, the determination of the IRS Office of Appeals in a collection due process (CDP) hearing is reviewed by both the Tax Court and the Court of Appeals for abuse of discretion. See Kindred v. Comm'r, 454 F.3d 688, 694 (7th Cir. 2006); Living Care Alts. of Utica v. United States, 411 F.3d 621, 625-27 (6th Cir. 2005).

At the outset, we note that Jennette has not challenged the tax or penalty assessments or the CDP procedures in either of the briefs he has filed in this case. Therefore, as the Commissioner argues, Jennette has waived any claims concerning these decisions. See, e.g., In re Surrick, 338 F.3d 224, 237 (3d Cir. 2003).

In Jennette's two briefs, which both cover largely the same ground, he seems to argue that federal courts' jurisdiction is limited to admiralty or maritime law, that the UCC provides him with defenses against the IRS, that the Tax Court should have accorded res judicata effect to a judgment he obtained in state court, that he must have entered into a contract with the federal government for the IRS to have the authority to tax him, and that he has been falsely imprisoned. These arguments lack merit.

First, contrary to Jennette's assertions, the jurisdiction of federal courts is not limited to admiralty and maritime law. See United States v. Saunders, 951 F.2d 1065, 1068 (9th Cir. 1991). Further, the UCC provides no defense against federal tax collection. United States v. Union Cent. Life Ins. Co., 368 U.S. 291, 293–94 (1961); see also In re Spearing Tool & Mfg. Co., 412 F.3d 653, 657 (6th Cir. 2005). His res judicata argument fails both because his state case involved different parties and because judgment was ultimately entered against him in that case. See In re Iulo, 766 A.2d 335, 337 (Pa. 2001) (listing elements of res judicata); Jennette v. Commonwealth, No. 1394 MDA 2017 (Pa. Super. Ct. January 31, 2018). Finally, Jennette's assertion that he did not enter into a contract with the United States and thus is not subject to its taxing authority is a frivolous tax-protester argument. See, e.g., Trowbridge v. Comm'r, 378 F.3d 432, 432–33 (5th Cir. 2004) (per curiam); see generally Sauers v. Comm'r, 771 F.2d

64, 66 (3d Cir. 1985) (concluding that appellant's arguments, "typical of those asserted by 'tax protesters,'" were "patently frivolous."); IRS Notice 2010-33, 2010-17 I.R.B. 609 (2010) (identifying common "frivolous positions").[1]

Accordingly, we will affirm the judgment of the Tax Court.

[1] To the extent that Jennette raises issues relating to his incarceration, a Tax Court action is not the proper vehicle for his concerns. Cf. Preiser v. Rodriguez, 411 U.S. 475, 490 (1973) (explaining that "Congress has determined that habeas corpus is the appropriate remedy for state prisoners attacking the validity of the fact or length of their confinement").

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 18-1861

RANDALL JENNETTE,
Appellant

v.

COMMISSIONER OF INTERNAL REVENUE

On Appeal from the United States Tax Court
(Tax Court No. 16-12713)
Tax Court Judge: Robert P. Ruwe

Submitted Pursuant to Third Circuit LAR 34.1(a)
October 15, 2018

Before: CHAGARES, BIBAS and GREENBERG, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the Tax Court and was submitted pursuant to Third Circuit LAR 34.1(a) on October 15, 2018. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the Tax Court entered April 5, 2018, be and the same is hereby affirmed. Costs will not be taxed. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: November 6, 2018

Appendix C

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 18-1861

RANDALL JENNETTE,
Appellant

v.

COMMISSIONER OF INTERNAL REVENUE

(Tax Court Case No. 16-12713)

SUR PETITION FOR REHEARING

Present: SMITH, Chief Judge, McKEE, AMBRO, CHAGARES, JORDAN, HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, and *GREENBERG, Circuit Judges

The petition for rehearing filed by Appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

*Hon. Morton I. Greenberg vote is limited to panel rehearing.

Appendix D

Randall Jennette	:	**IN THE COURT OF COMMON PLEAS**
	:	**DAUPHIN COUNTY, PENNSYLVANIA**
vs.	:	
	:	**CIVIL ACTION – LAW**
Pennsylvania Commonwealth of, Lynn Kelly, Attorney General, Office of Attorney General 16th Floor, Strawberry Square, Harrisburg, PA 17120 and PA Department of Corrections, John Wetzel, Secretary, 1920 Technology Parkway Mechanicsburg, PA 17050	:	**NO. 2013-CV-01631-CV**

To Office of Attorney General, Lynn Kelly, Attorney General,

You are hereby notified that on July 2, 2013, a Judgment was entered in the above captioned case.

DATE: Tuesday, July 02, 2013

Stephen C Adams

Prothonotary

I hereby certify that the name and address of the proper person(s) to receive this notice is:

Office of Attorney General, Lynn Kelly, Attorney General
16th Floor, Strawberry Square
Harrisburg, PA 17120

A Office of Attorney General, Lynn Kelly, Attorney General,

Por este medio se le esta notificando que el July 2, 2013, el/la siguiente Fallo ha sido anotado en contra suya en el caso mencionado en el epigrafe.

FECHA: Tuesday, July 02, 2013

Stephen C Adams

Prothonotario

Certifico que la siguiente direccion es la del defendido/a sequn indicada en el certificado de residencia:

Office of Attorney General, Lynn Kelly, Attorney General
16th Floor, Strawberry Square
Harrisburg, PA 17120

Appendix E

DAUPHIN COUNTY COURT OF COMMON PLEAS

Randall Jennette, Plaintiff, 801 Butler Pike, Mercer, PA 16137,	)	Docket:2013-CV-01631-CV
v.	)	ACTION AT LAW
	)	CIVIL
Commonwealth of Pennsylvania, Lynn Kelly, Attorney General, Office of Attorney General, 16th Floor, Strawberry Square, Harrisburg, PA 17120, Defendant,	)	CERTIFIED MAIL#7011 1150 0000 8360 5112
PA Department of Corrections, John Wetzel, Secretary, 1920 Technology Parkway, Mechanicsburg, PA 17050, Defendant.	)	

RECEIVED
OFFICE OF
PROTHONOTARY
2013 JUL -2 PM 3:34
DAUPHIN COUNTY
PENNA

PRAECIPE FOR ENTRY OF DEFAULT JUDGMENT

To the Prothnotary:

Please enter a judgment of default in favor of plaintiff, Randall Jennette, and against defendants, Office of Attorney General, Lynn Kelly, Attorney General, for failure to plead to plaintiff's complaint, which contains a 'Notice to Defend,' and within the time specified within written Amended Order dated 6/12/13.

A copy of the Order, in which defendants were given an extension of time to plead within 30 days of disposition of matters to be discussed at Status Conference scheduled for May 22, 2013, is attached hereto as Exhibit 'A' and plaintiff's 'INTERROGATORIES TO DEFENDANTS' where defendants failed to answer is attached as Exhibit 'B.'

Please assess damages in the amount of $77,022,000,000.00, being the amount demanded in the complaint.

Randall Jennette

Randall Jennette, pro se

RANDALL JENNETTE,

Plaintiff

vs.

COMMONWEALTH OF PENNSYLVANIA, et al.,

Defendants

: IN THE COURT OF COMMON PLEAS
: DAUPHIN COUNTY, PENNSYLVANIA
:
: NO. 2013-CV-1631-CV
:
: CIVIL ACTION - LAW
:
: Exhibit "A"

AMENDED ORDER

AND NOW, this 12th day of June, 2013, upon consideration **of Defendants' *Emergency* Motion for Enlargement of Time to Respond to Complaint, filed March 28, 2013** IT IS HEREBY ORDERED that the motion is GRANTED. The Defendants shall file their response to the Complaint within thirty (30) days of the disposition of matters to be discussed at the status conference scheduled for May 22, 2013.

BY THE COURT:

Bernard L. Coates, Jr. Judge

Distribution:
Randall Jennette, HR-7003, SCI-Mercer, 801 Butler Pike, Mercer, PA 16137
Debra Sue Rand, Esq., Assistant Counsel, PA Dept. of Corrections, 1920 Technology Parkway, Mechanicsburg, PA 17050
Attorney General Linda Kelly, Office of Attorney General, 16th Floor Strawberry Square, Harrisburg, PA 17120
Chambers of the Honorable Bernard L. Coates, Jr.