

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

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**No. 18-2015**

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VERONICA MOODY JOHNSON,

Plaintiff - Appellant,

v.

SOCIAL SECURITY ADMINISTRATION,

Defendant - Appellee.

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Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Arenda L. Wright Allen, District Judge. (2:17-cv-00575-AWA-RJK)

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Submitted: November 15, 2018

Decided: November 19, 2018

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Before MOTZ and HARRIS, Circuit Judges, and HAMILTON, Senior Circuit Judge.

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Affirmed by unpublished per curiam opinion.

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Veronica Moody Johnson, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

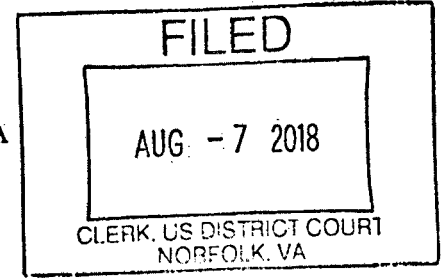
**APPENDIX A**

PER CURIAM:

Veronica Moody Johnson appeals the district court's order accepting the recommendation of the magistrate judge and dismissing without prejudice Johnson's complaint for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1). We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *See Johnson v. Soc. Sec. Admin.*, No. 2:17-cv-00575-AWA-RJK (E.D. Va. Aug. 7, 2018). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*AFFIRMED*

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division



VERONICA M. JOHNSON,

Plaintiff,

v.

SOCIAL SECURITY ADMINISTRATION,

Defendant.

Civil No. 2:17-cv-575

FINAL ORDER

Plaintiff Veronica M. Johnson ("Plaintiff") brings this action pursuant to 42 U.S.C. § 659(a) seeking to enforce a state court garnishment order against the Social Security Administration ("SSA") and requesting that this Court compel the SSA to pay her sixty-five percent of her former husband's alleged right to a monthly social security retirement benefit. ECF No. 3. Pursuant to 28 U.S.C. §§ 636(b)(1)(B) and (C), Federal Rule of Civil Procedure 72(b), and the Local Rules, this matter was referred to a United States Magistrate Judge for a Report and Recommendation ("R&R"). ECF No. 17.

In the R&R filed on April 2, 2018, the Magistrate Judge concluded that this Court lacks subject matter jurisdiction. ECF No. 23. Accordingly, the Magistrate Judge recommended granting the SSA's Motion to Dismiss the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) (ECF No. 7) and dismissing the case without prejudice. ECF No. 23 at 7.

By copy of the Report, each party was advised of the right to file written objections to the finds and recommendations made by the Magistrate Judge. *Id.* The Court has received Plaintiff's timely Objections to the Magistrate Judge's R&R (ECF No. 25), as well as the SSA's Response (ECF No. 26).

APPENDIX-B

## I. LEGAL STANDARD

Pursuant to Federal Rule of Civil Procedure 72(b)(3), the Court reviews *de novo* any part of the Magistrate Judge's recommendation to which a party has properly objected. *See also Wimmer v. Cook*, 774 F.2d 68, 73 (4th Cir. 1985) (“[A]ny individual findings of fact or recommendations for disposition by [the Magistrate Judge], if objected to, are subject to final *de novo* determination . . . by a district judge . . .”).

Federal Rule of Civil Procedure 12(b)(1) permits a defendant to challenge a complaint on the basis that a court lacks subject matter jurisdiction. The plaintiff bears the burden of proving that subject matter jurisdiction exists. *Richmond, Fredericksburg & Potomac R. Co. v. United States*, 945 F.2d 765, 768 (4th Cir. 1991). “In determining whether jurisdiction exists, the district court is to regard the pleadings’ allegations as mere evidence on the issue, and may consider evidence outside the pleadings without converting the proceeding to one for summary judgment.” *Id.*

## II. BACKGROUND

On February 26, 2016, Plaintiff obtained a judgment in Portsmouth City Circuit Court against her former husband, Christopher Lee Johnson, for \$83,500.00, plus costs and interest, for unpaid spousal support. *See* ECF No. 3-1 at 13. On October 5, 2017, the Circuit Court entered a garnishment order directing that the SSA pay directly to Plaintiff sixty-five percent of the regularly monthly social security benefit “if [Mr. Johnson] is entitled to receive [such benefits,] each month continuing until further order of this Court.” *Id.* at 15–16. On October 16, 2017, the SSA sent Ms. Johnson a letter informing her that Mr. Johnson was not receiving any form of “Social Security Retirement, Survivors, or Disability insurance payments.” *Id.* at 7. Ms. Johnson replied by stating that her ex-husband had “a present . . . unconditional right to receive a monthly payment [] from the Social Security Administration NOW . . . .” *Id.* at 1 (emphasis in original). The SSA responded by informing her that her request for garnishment could not be

fulfilled at the time because Mr. Johnson was not receiving a monthly benefit “nor is he required by law to file for such benefit.” *Id.* at 6. On October 30, 2017, the Circuit Court served on the SSA a “Writ of Fieri Facias” directing the SSA to “levy upon the goods, chattels, current money, bank notes and real estate” of Mr. Johnson. ECF No. 10-1 at 3–5. The Sheriff’s return notes that the writ “placed [a] lien on future income.” *Id.* at 5. On December 11, 2017, the SSA sent another letter to Ms. Johnson noting that Mr. Johnson was not currently receiving any Retirement, Survivors, or Disability insurance payments, and that the writ did not change the SSA’s previous notification. ECF No. 10-1 at 1.

On November 6, 2017, Ms. Johnson filed this action pursuant to 42 U.S.C. § 659. Her Complaint seeks a declaratory judgment against the SSA requiring the SSA to immediately commence the payment of Social Security insurance benefits “which spousal support judgment debtor [Mr. Johnson] has a current right to be paid . . . .” ECF No. 3 at 8. The SSA then filed a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1). ECF No. 1.

As reviewed above, the Magistrate Judge’s R&R recommended that the Motion to Dismiss be granted and the Complaint be dismissed without prejudice. ECF No. 23 at 7. Plaintiff’s filed Objections to the Magistrate Judge’s R&R (ECF No. 25), to which the SSA filed a Response (ECF No. 26). It appears that Plaintiff objects generally to the Magistrate Judge’s R&R, arguing that the “[Fourteenth] Amendment due process clause [of the United States Constitution protects Plaintiff] from having to wait to enforce her spousal support judgment” until Mr. Johnson applies for Social Security benefits. ECF No. at 25 at 14.

### III. ANALYSIS

As the R&R correctly recognized, 42 U.S.C. § 659 waives the sovereign immunity of federal agencies in order to honor state court garnishment orders for the provision of child support and alimony. 42 U.S.C. § 659(a). However, § 659 provides neither a federal cause of

action nor an avenue for bringing suit in federal court against federal agencies. *See Stephens v. U.S. Dep't of Navy*, 589 F.2d 783, 783 (4th Cir. 1979) (“Section 659 . . . does not confer federal jurisdiction. . . . And jurisdiction does not lie under 28 U.S.C. § 1346(a)(2) since § 659 merely waives the defense of sovereign immunity to state proceedings, while not creating a federal cause of action.”). Because § 659 does not create a federal cause of action, this Court lacks jurisdiction over Plaintiff’s Complaint.

Furthermore, the Circuit Court’s garnishment order directed the SSA to pay Plaintiff a percentage of Mr. Johnson’s social security benefits “if Judgment debtor, Christopher Lee Johnson[,] is entitled to receive” such benefits. ECF No. 3-1 at 15–16. The SSA cannot act on the Circuit Court order until Mr. Johnson files for benefits from the SSA. As the R&R correctly recognized, “[t]he Court is unaware of any law authorizing either the Court or the SSA to force Mr. Johnson to file for such benefits.” ECF No. 23 at 6. Accordingly, the Court lacks subject matter jurisdiction because the case is not yet ripe for review. *Texas v. United States*, 523 U.S. 296, 300 (1998) (recognizing that a claim is not ripe for review if it rests on future events that may not occur as expected or at all).

For the reasons outlined above, this Court lacks subject matter jurisdiction over Plaintiff’s Complaint, which must be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(1). Furthermore, to the extent Plaintiff contends that the SSA’s actions violate the Fourteenth Amendment, the SSA is immune from suit for any alleged constitutional violation. *F.D.I.C. v. Meyer*, 510 U.S. 471, 475 (1994) (“Absent a waiver, sovereign immunity shields the Federal Government and its agencies from suit.”). To the extent the Plaintiff objects to the Magistrate Judge’s denial of her Motion for Sanctions and Motion to Compel, *see* ECF No. 24,

such denial was proper because this Court lacks of subject matter jurisdiction over Plaintiff's case. Accordingly, the Magistrate Judge's analysis does not contain errors warranting reversal.

#### IV. MOTION TO AMEND

On June 26, 2018, Plaintiff also filed a Motion to Amend. ECF No. 27. Pursuant to Rule 15(a)(1) of the Federal Rules of Civil Procedure, a party may amend its complaint once, "as a matter of course," within 21 days after the service of a motion brought pursuant to Rule 12(b). Fed. R. Civ. P. 15(a)(1)(B). Plaintiff's Motion to Amend was not filed within 21 days after the January 19, 2018 Motion to Dismiss (ECF No. 7), and cannot be granted as a matter of course.

Rule 15(a)(2) of the Federal Rules of Civil Procedure provides that "[i]n all other cases, a party may amend its pleadings only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). If a proposed amendment would be futile, however, the court should deny the motion to amend. *Laber v. Harvey*, 438 F.3d 404, 426–27 (4th Cir. 2006).

Plaintiff's proposed amendment would be futile. As explained in the R&R filed on April 2, 2018, the Court lacks subject matter jurisdiction over Plaintiff's claims because (1) sovereign immunity shields the SSA from Plaintiff's 14th Amendment claims; (2) 42 U.S.C. §659 does not create a federal cause of action; and (3) the case is not ripe for review as Mr. Johnson has not yet claimed his social security benefits, against which Plaintiff has a claim for unpaid spousal support. Accordingly, Plaintiff's Motion to Amend must be denied.

#### V. CONCLUSION

Following this Court's *de novo* review of the R&R filed on April 2, 2018, and of the objection filed thereto, and finding no errors, the Court ADOPTS AND APPROVES in full the findings and recommendations set forth in the R&R. ECF No. 23. Accordingly, the SSA's

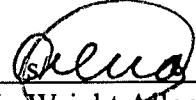
Motion to Dismiss for Lack of Jurisdiction (ECF No. 7) is GRANTED and this case is DISMISSED WITHOUT PREJUDICE. Furthermore, for the reasons stated herein, Plaintiff's Motion to Amend (ECF No. 27) is DENIED.

The parties are ADVISED that an appeal from this Final Order may be commenced by forwarding a written notice of appeal to the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510. This written notice must be received by the Clerk within sixty days from the date of this Final Order.

The Clerk is REQUESTED to forward a copy of this Order to all parties.

IT IS SO ORDERED.

Aug-2nd, 2018  
Norfolk, Virginia

  
\_\_\_\_\_  
Arenda L. Wright-Allen  
United States District Judge

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division**

VERONICA M. JOHNSON,

Plaintiff,

v.

ACTION NO. 2:17cv575

SOCIAL SECURITY ADMINISTRATION,

Defendant.

**UNITED STATES MAGISTRATE JUDGE'S  
REPORT AND RECOMMENDATION**

This matter comes before the Court on the Social Security Administration's ("the SSA") motion to dismiss, filed on January 19, 2018. ECF No. 7. An order of reference dated February 16, 2018 assigned this matter to the undersigned. ECF No. 17. Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B), Rule 72(b) of the Federal Rules of Civil Procedure, and Local Civil Rule 72, it is hereby recommended that the SSA's motion to dismiss be **GRANTED** and the complaint be **DISMISSED without PREJUDICE**.

**I. PROCEDURAL AND FACTUAL BACKGROUND**

Veronica M. Johnson ("Johnson") obtained a judgment on February 26, 2016 in the Circuit Court for the City of Portsmouth against her ex-husband, Christopher Lee Johnson, for \$83,500.00, plus costs and interest, for unpaid spousal support. *Johnson v. Johnson*, CL 11001492-00 (Va. Cir. Feb. 26, 2016). ECF No. 3-1 at 13. On October 5, 2017, the circuit court entered a garnishment order directing that, "the Garnishee, SOCIAL SECURITY

**APPENDIX-C**

ADMINISTRATION, pay directly to Judgment Creditor, Veronica Moody-Johnson . . . 65 (sixty-five) percent of the regular monthly social security benefit if Judgment debtor, Christopher Lee Johnson is entitled to receive each month continuing until further order of this Court.” *Johnson v. Johnson*, CL 17-3225 (Va. Cir. Oct. 5, 2017); ECF No. 3-1 at 15–16.

On October 16, 2017, the SSA sent a letter informing Ms. Johnson that “Mr. Johnson does not currently receive any Social Security Retirement, Survivors, or Disability insurance payments.” ECF No. 3-1 at 7. Ms. Johnson wrote to the SSA on October 24, 2017, stating “Christopher Lee Johnson has a present (as distinguished from a future) unconditional right to receive a monthly payment [] from the Social Security Administration NOW. (Pursuant to 42 USC 659 and 42 USC 407).” ECF No. 3-1 at 1. The SSA responded with a second letter to Ms. Johnson, on October 31, 2017, stating that, “Mr. Johnson is not receiving a monthly benefit nor is he required by law to file for such a benefit. Therefore, your request for garnishment cannot be granted at this time.” ECF No. 3-1 at 6.

On October 30, 2017, the SSA was served with a “Writ of Fieri Facias” from the Circuit Court for the City of Portsmouth directing the SSA to “levy upon the goods, chattels, current money, bank notes and real estate” of Christopher Lee Johnson. ECF No. 10-1 at 3–5. The sheriff’s return specifies that the writ of *fieri facias* “placed [a] lien on future income.” *Id.* at 5. The SSA responded with a third letter to Ms. Johnson on December 11, 2017, stating, “Mr. Johnson does not currently receive any Social Security Retirement, Survivors, or Disability insurance payments. The ‘Writ of Fieri Facias’ does not change our previous notification to the Spousal Support Withholding of Social Security Benefits Order #17-3225.” ECF No. 10-1 at 1.

Ms. Johnson commenced this action on November 6, 2017, filing a motion for leave to proceed *in forma pauperis*, which was granted November 15, 2017. Ms. Johnson’s *pro se*

complaint seeks a declaratory judgment against the SSA that requires the SSA “to immediately implement an administrative, involuntary commencement of the payment of the Social Security Insurance Benefit which spousal support judgment debtor Christopher L. Johnson has a current right to be paid. . . .” ECF No. 3 at 8.

On January 19, 2018, the SSA filed a motion to dismiss the complaint asserting the Court lacks subject matter jurisdiction. ECF No. 7.<sup>1</sup> Ms. Johnson filed an opposition to the motion to dismiss on February 2, 2018, and the SSA filed a reply on February 6, 2018. ECF Nos. 10, 14.<sup>2</sup> This matter is now ripe for decision.<sup>3</sup>

## II. STANDARD OF REVIEW

Federal Rule of Civil Procedure 12(b)(1) allows a defendant to challenge a complaint on the ground that a court lacks subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). The plaintiff bears the burden to prove that the court has subject matter jurisdiction. *Richmond, Fredericksburg & Potomac R. Co. v. United States*, 945 F.2d 765, 768 (4th Cir. 1991). “In determining whether jurisdiction exists, the district court is to regard the pleadings’ allegations as mere evidence on the issue, and may consider evidence outside the pleadings without converting the proceeding to one for summary judgment.” *Id.* In considering a motion to dismiss under Rule 12(b)(1), a court may consider evidence extrinsic to the complaint, such as the declaration and attachments to the SSA’s memorandum in this case. *See Adams v. Bain*, 697 F.2d 1213,

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<sup>1</sup> This motion to dismiss included a separately filed notice, pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), and Local Rule 7(K), providing Johnson with notice of how to timely respond thereto and the potential consequences for failing to do so. ECF No. 9.

<sup>2</sup> Ms. Johnson has filed two motions to compel production of documents, and a motion for sanctions pursuant to Federal Rule of Civil Procedure 11. ECF Nos. 12, 15, and 18. These motions will be addressed in a separate order.

<sup>3</sup> Ms. Johnson filed a memorandum of law in support of her declaratory judgment action on March 26, 2018. ECF No. 22.

1219 (4th Cir. 1982).

A court must construe the pleadings of a *pro se* plaintiff liberally, *Erickson v. Pardus*, 551 U.S. 89, 94 (2007); however, when considering a motion to dismiss, a court must evaluate the *pro se* plaintiff's pleadings according to the standards set forth in the Federal Rules of Civil Procedure. *T.W. v. Hanover Cty. Pub. Sch.*, 900 F. Supp. 2d 659, 663 (E.D. Va. 2012) (citation omitted). “[T]he Court may not act as the litigant’s advocate and construct legal arguments that the plaintiff has not made.” *Id.* (citing *Brock v. Carroll*, 107 F.3d 241, 242–43 (4th Cir. 1997) (Luttig, J., concurring); *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985)).

### III. ANALYSIS

The SSA argues that this Court lacks subject matter jurisdiction over Ms. Johnson’s complaint, for the following two reasons: (1) 42 U.S.C. § 659 does not create a federal right of action, and (2) the case is not ripe for review because the SSA cannot act pursuant to the state’s garnishment order as Mr. Johnson does not receive, and is not required to file a claim for, social security retirement benefits. ECF No. 8 at 4–5. In her opposition to the motion to dismiss, Ms. Johnson asserts that she has a “‘right’, as a spousal support judgment creditor, to levy on her ex-spouse’s Federal Social Security Insurance Entitlement Benefit even though the ex-spouse, . . . has not yet applied to commence payment of his benefit,” and that the SSA’s refusal to proceed pursuant to the levy constitutes a violation of her Fourteenth Amendment right to procedural due process. ECF No. 10 at 1–2, 5.

Title 42, United States Code, section 659, entitled “Consent by United States to income withholding, garnishment, and similar proceedings for enforcement of child support and alimony obligations,” waives sovereign immunity allowing federal agencies to honor state court

garnishment orders for the enforcement of child and spousal support,<sup>4</sup> but does not create a federal cause of action. The federal government and federal government agencies, like the SSA, may not be sued without the government's consent, which is given when the government waives sovereign immunity. *F.D.I.C. v. Meyer*, 510 U.S. 471, 475 (1994) ("Absent a waiver, sovereign immunity shields the Federal Government and its agencies from suit."). Sovereign immunity must be waived before the court has jurisdiction. *Id.* ("Sovereign immunity is jurisdictional in nature.") "A waiver of the Federal Government's sovereign immunity must be unequivocally expressed in statutory text" and "will be strictly construed, in terms of its scope, in favor of the sovereign." *Lane v. Pena*, 518 U.S. 187, 192 (1996) (internal citations omitted).

Although 42 U.S.C. § 659 allows federal agencies to honor state court garnishment orders, it does not provide an avenue for bringing suit in federal court against federal agencies. *Stephens v. U.S. Dep't of Navy*, 589 F.2d 783, 783 (4th Cir. 1979) (This statute "merely waives the defense of sovereign immunity to state proceedings, while not creating a federal cause of action."). In *Stephens*, the Fourth Circuit upheld the district court's finding that it lacked jurisdiction over a wife's complaint against the Navy for failing to garnish her former husband's

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<sup>4</sup> Section 659(a) provides:

Notwithstanding any other provision of law (including section 407 of this title and section 5301 of Title 38), effective January 1, 1975, moneys (the entitlement to which is based upon remuneration for employment) due from, or payable by, the United States or the District of Columbia (including any agency, subdivision, or instrumentality thereof) to any individual, including members of the Armed Forces of the United States, shall be subject, in like manner and to the same extent as if the United States or the District of Columbia were a private person, to withholding in accordance with State law enacted pursuant to subsections (a)(1) and (b) of section 666 of this title and regulations of the Secretary under such subsections, and to any other legal process brought, by a State agency administering a program under a State plan approved under this part or by an individual obligee, to enforce the legal obligation of the individual to provide child support or alimony.

pay pursuant to a state court judgment, holding that 42 U.S.C. § 659 does not create a federal cause of action. *Id.*; see also *Jacobson v. United States*, No. CIVA08-1970(MLC), 2008 WL 4126287, at \*4 (D.N.J. Aug. 29, 2008) (finding 42 U.S.C. § 659 does not create a federal cause of action and dismissing federal action to enforce state court garnishment order without prejudice to reinstate in state court); *Eichenholz v. U.S. Dep't of Veterans Affairs*, 765 F. Supp. 630, 630 (C.D. Cal. 1991) (finding 42 U.S.C. § 659 does not create a federal cause of action and remanding action to state court due to lack of jurisdiction where husband sought to quash a state garnishment order that resulted in the Department of Veterans Affairs garnishing his wages for spousal support). Accordingly, 42 U.S.C. § 659 does not create a federal cause of action, and this Court lacks jurisdiction over Ms. Johnson's complaint.

In addition, the garnishment order at issue in this case directs the SSA to pay Ms. Johnson "65 (sixty-five) percent of the regular monthly social security benefit if Judgment debtor, Christopher Lee Johnson is entitled to receive each month continuing until further order of this Court." ECF No. 3-1 at 15–16 (emphasis added). Ms. Johnson argues that, pursuant to the writ of *fiery facias*, she has a "right", as a spousal support judgment creditor, to levy on her ex-spouse's Federal Social Security Insurance Entitlement Benefit even though the ex-spouse, . . . has not yet applied to commence payment of his benefit." ECF No. 10 at 1–2. Ms. Johnson is attempting to use the writ of *fiery facias* to force Mr. Johnson to make a claim for social security benefits now, as opposed to merely placing a lien on future benefits he may receive. The Court is unaware of any law authorizing either the Court or the SSA to force Mr. Johnson to file for such benefits. The SSA cannot act on the garnishment and writ of *fiery facias* until such future time that Mr. Johnson files for social security benefits. As a result, this Court further lacks subject matter jurisdiction, because the case is not ripe for review. See *Texas v. United States*,

523 U.S. 296, 300 (1998) (“A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.”) (internal quotations omitted); *Sansotta v. Town of Nags Head*, 724 F.3d 533, 548 (4th Cir. 2013) (stating that a case must be ripe before a district court has subject matter jurisdiction).

Accordingly, Ms. Johnson’s complaint should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction.

#### IV. RECOMMENDATION

For the foregoing reasons, the Court recommends that the SSA’s motion to dismiss, ECF No. 7, be **GRANTED** and this case be **DISMISSED without PREJUDICE**.

#### V. REVIEW PROCEDURE

By copy of this report and recommendation, the parties are notified that pursuant to 28 U.S.C. § 636(b)(1)(C):

1. Any party may serve upon the other party and file with the Clerk written objections to the foregoing findings and recommendations within fourteen (14) days from the date of mailing of this report to the objecting party, *see* 28 U.S.C. § 636(b)(1), computed pursuant to Rule 6(a) of the Federal Rules of Civil Procedure. Rule 6(d) of the Federal Rules of Civil Procedure permits an extra three (3) days, if service occurs by mail. A party may respond to any other party’s objections within fourteen (14) days after being served with a copy thereof. *See* Fed. R. Civ. P. 72(b)(2) (also computed pursuant to Rule 6(a) and (d) of the Federal Rules of Civil Procedure).

2. A district judge shall make a *de novo* determination of those portions of this report or specified findings or recommendations to which objection is made.

The parties are further notified that failure to file timely objections to the findings and recommendations set forth above will result in a waiver of appeal from a judgment of this Court

based on such findings and recommendations. *Thomas v. Arn*, 474 U.S. 140 (1985); *Carr v. Hutto*, 737 F.2d 433 (4th Cir. 1984); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).



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Robert J. Krask  
United States Magistrate Judge

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Robert J. Krask  
UNITED STATES MAGISTRATE JUDGE

Norfolk, Virginia  
April 2, 2018

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division**

VERONICA M. JOHNSON,

Plaintiff,

v.

ACTION NO. 2:17cv575

SOCIAL SECURITY ADMINISTRATION,

Defendant.

**ORDER**

Veronica M. Johnson commenced this action on November 6, 2017, seeking a declaratory judgment against the Social Security Administration (“the SSA”) that requires the SSA “to immediately implement an administrative, involuntary commencement of the payment of the Social Security Insurance Benefit which spousal support judgment debtor Christopher L. Johnson has a current right to be paid.” ECF No. 3 at 8.

Ms. Johnson filed a motion for production of documents on February 2, 2018, seeking a copy of her ex-spouse’s social security administrative record. ECF No. 12. The SSA filed an opposition to the motion on February 6, 2018, noting that Local Civil Rule 7(C) requires the SSA to file administrative records only in “actions for benefits under the Social Security Act.” ECF No. 14 at 2. Because Ms. Johnson is not seeking benefits under the Social Security Act, but is seeking to compel the SSA to levy upon benefits to which she believes her ex-spouse is entitled, Local Civil Rule 7(C) does not require that the administrative record be filed.

Ms. Johnson filed a second motion for production of documents on February 14, 2018, again seeking the filing of her ex-spouse’s administrative record, and the SSA filed an opposition


**APPENDIX-D**

on February 16, 2018. ECF Nos. 15, 16.

Ms. Johnson then filed a motion for sanctions with a memorandum in support, on February 22, 2018, seeking sanctions against the SSA for failing to produce her ex-spouse's administrative record. ECF Nos. 18, 19. The SSA filed an opposition to the motion, and Ms. Johnson replied. ECF Nos. 20, 21.

On April 2, 2018, the undersigned filed a report and recommendation recommending that the SSA's motion to dismiss, ECF No. 7, be granted and this case be dismissed without prejudice due to lack of subject matter jurisdiction. ECF No. 23. Because the Court does not have subject matter jurisdiction over this case, Ms. Johnson's motions to compel and motion for sanctions are DENIED.

The Clerk is directed to send copies of this order to plaintiff and counsel of record for the SSA.

  
\_\_\_\_\_  
Robert J. Krask  
United States Magistrate Judge  
\_\_\_\_\_  
Robert J. Krask  
United States Magistrate Judge

Norfolk, Virginia  
April 4, 2018

FILED: January 22, 2019

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 18-2015  
(2:17-cv-00575-AWA-RJK)

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VERONICA MOODY JOHNSON

Plaintiff - Appellant

v.

SOCIAL SECURITY ADMINISTRATION

Defendant - Appellee

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O R D E R

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The court denies appellant's motion to appoint counsel and the petition for rehearing.

Entered at the direction of the panel: Judge Motz, Judge Harris, and Senior Judge Hamilton.

For the Court

/s/ Patricia S. Connor, Clerk

APPENDIX-F

**Additional material  
from this filing is  
available in the  
Clerk's Office.**