

NOT RECOMMENDED FOR FULL-TEXT
PUBLICATION

No. 19-5509

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EDWARD RONNY ARNOLD) ON APPEAL
Plaintiff-Appellant,) FROM THE
v.) UNITED STATES
HERBERT SLATERY, III) DISTRICT
Defendant-Appellee.) COURT FOR
) THE MIDDLE
) DISTRICT OF
) TENNESSEE
)
)

O R D E R

Before: CLAY, McKEAGUE, and BUSH, Circuit
Judges.

Edward Ronny Arnold, proceeding *pro se*, appeals
the district court's dismissal of his complaint seeking
to recover wages related to his previous state

employment for want of subject matter jurisdiction. This appeal has been referred to a panel of the Court that, upon examination, unanimously agrees that oral argument is not needed. *See Fed. R. App. P. 34(a).*

In his complaint, Arnold alleged that, pursuant to Tennessee law, State offices were open on October 12, 2015 (i.e. Columbus Day, a federal holiday) and closed on November 27, 2015 (i.e. the day after Thanksgiving) as a substituted holiday. See Tenn. Code. Ann. § 4-4-105(a)(3). According to Arnold, because he was required to work on October 12, 2015, and did not receive the benefits of the substituted holiday because his employment ended on November 24, 2015, he was owed \$180 in wages. On the motion of Attorney General of Tennessee Herbert H. Slatery,

III, and the recommendation of the magistrate judge, the district court dismissed Arnold's complaint without prejudice for want of subject matter jurisdiction.

We review a district court's decision to dismiss a complaint for want of subject matter jurisdiction *de novo*, accepting its factual findings as true unless they are clearly erroneous. *Davis v. United States*, 499 F.3d 590, 593-94 (6th Cir. 2007). Arnold bore the burden of proving jurisdiction, and he claimed the district court had subject matter jurisdiction because his case presented a federal question. *See id* 594; *see also* 28 U.S.C. § 1331 (giving federal courts jurisdiction in cases "arising under the Constitution,

laws, or treaties of the United States") "A claim under federal laws when the plaintiff's statement of his own cause of action shows that it is based upon federal laws or the federal Constitution." *Davis*, 499 F.3d at 594 (quoting *Cobb v. Contract Transp., Inc.*, 452 F.3d 543, 548 (6th Cir. 2006)).

According to Arnold, his case presents a federal question because it arises under 5 U.S.C. § § 5546 and 6103. But these statutes both concern employees of the federal government only. Because a state employee is not an "employee" for purposes of Title 5, which includes both statutes, Arnold's claim concerning wages that were not paid in his state employment does not arise under either statute, as the district court explained. Accordingly, the district court properly determined that it lacked subject matter jurisdiction.

Arnold also takes issue with the district court's conclusion service of certain filings. After Arnold responded to Slatery's motion to dismiss, Slatery moved to file a reply and, after the district court granted the motion, filed a reply that motion, serving both by mail. Arnold claimed that he did not receive either filing, arguing that Slatery violated Rule 5 of the Federal Rules of Civil Procedure and taking issue with the use of the electronic filing system. But as the district court explained, Slatery complied with Rule 5 by mailing the filings to Arnold's address of record and whether Arnold received the filings had no effect. See Fed. R. Civ. P. 5(b)(2)(C) (providing that "service is complete upon mailing"). And whether electronic filing effected service makes no difference because Slatery properly effected service by mail.

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We AFFIRM the judgment of the district court.

ENTERED BY ORDER OF THE COURT

/s/ Deborah S. Hunt

Deborah S. Hunt, Clerk

IN THE UNITED STATES DISTRICT COURT FOR
THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

EDWARD RONNY ARNOLD)
)
Plaintiff,)
) No:3:18-cv-00280
)
) JUDGE
) CAMPBELL
HERBERT SLATTERY, III,)
) MAGISTRATE
Defendant,)
) JUDGE
) NEWBERN
)

ORDER

Pending before the Court is the Magistrate Judge's Report and Recommendation (Doc. No. 18), recommending that the Court grant Defendant's Motion to Dismiss (Doc. No. 7). The *pro se* plaintiff filed objections (Doc. No. 19). Defendant responded to

Plaintiff's objections (Doc. No. 20) and Plaintiff filed a Response to Defendant's Response (Doc. No. 21).

The Magistrate Judge recommends the Compliant be dismissed for lack of subject matter jurisdiction.

After a *de novo* review, and for the following reasons, Plaintiff's objections are OVERRULED and the report and Recommendation is ADOPTED.

1. STANDARD OF REVIEW

Under 28 U.S.C. § 636(b)(1) and Local Rule 72.03(b)(3), a district court reviews *de novo* any portion of a report and recommendation to which a specific objection is made. *United States v. Curtis*, 237 F.3d 598, 603 (6th Cir. 2001). General or conclusory objections are insufficient. See *Zimmerman v. Cason*, 354 F. Appx. 228, 230 (6th Cir. 2001). Thus, "only those specific objections to the

magistrate's report made to the district court will be preserved for appellate review." *Id.* (quoting *Smith v. Detroit Fed'n of Teachers*, 829 F.2d 1370, 1373 (6th Cir. 1987)).

In combining the review, the court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate Judge.” 28 U.S.C. § 636(b)(1)(C).

II. ANALYSIS

Plaintiff raises two objections to the Report and Recommendation of the magistrate judge. First Plaintiff argues that the Court incorrectly construed the Complaint as an action for back wages because “the Civil Action does not allege the Defendant, Herbert Slattery III, State of Tennessee Attorney General and Reporter, owes the Plaintiff wages.” (*Id.* At 5) Plaintiff argues that the complaint challenges the Tennessee Attorney General’s legal opinion that 5 U.S.C. § 6103 “does not address compensation for a substituted holiday” and because the Attorney

General's opinion "affects U.S.C. § 541.602" his claim is "arising under" federal law. (Doc. No. 19 at 2-3.)

The magistrate judge determined that Plaintiff's claim was one for back wages and that the complaint alleged "Defend[a]nt owes Plaintiff for working Columbus Day, October 22, 2015." (Doc. No. 18 at 1.) A review of the complaint (Doc. No. 1) shows the magistrate judge's determination is correct. The Complaint clearly states: "Statement of Claim: Appeal from State of Tennessee Court of Appeals . . . Defendant owes Plaintiff wages earned for working Columbus day, October 22, 2015." (*Id.*) Therefore, the magistrate judge correctly determined that the claim was one for wages owed.

As basis for jurisdiction, the Complaint cites 5 U.S.C. § 6103. (*Id.*) The magistrate judge correctly

ruled that Section 6103 does not grant jurisdiction to the federal court to hear claims of state employees to which the statute clearly does not apply. Section 6103 provides that various days, including Columbus day, are "legal public holiday[s] ... for federal employees." Plaintiff has not shown that Section 6103 applied to his employment with the State of Tennessee. *See*

Ammons v. Ally Fin., Inc., 305 F. Supp. 3d 818, 820

(M.D. Tenn. 2018) (party asserting jurisdiction has the burden of establishing that subject-matter jurisdiction exists).

Plaintiff's second objection to the Report and Recommendation is that the magistrate judge improperly considered the Reply in Further Support of the Motion to Dismiss (Doc. No. 13), because the reply was not properly served upon Plaintiff. (Doc. No. 19 at 4.) The certificate of service included with the reply indicates that the reply was electronically filed with the court, emailed to Plaintiff, and mailed to Plaintiff's address of record. Plaintiff claims that service was invalid because he did not consent to electronic service and he did not receive the copy of the reply sent by mail to his address of record. (Doc. No. 4.)

Federal Rule of Civil Procedure 5(b)(2)(C) provides the paper is served “by mailing it to the person’s last known address-in which event service is complete upon mailing.” The fact the Defendant also emailed a copy to Plaintiff and electronically filed the document with the court, does not render service by mail improper or ineffective, Plaintiff’s argument that service was not complete is without merit.

III. CONCLUSION

The Court has reviewed the Report and Recommendation and concludes that it should be adopted and approved. Accordingly, Defendant’s Motion to Dismiss is **GRANTED**. This Order shall constitute the final judgment in this case pursuant to Fed. R. Civ. P. 38.

It is so ORDERED.

JR. /s/ William L. Campbell, Jr.
WILLIAM L. CAMPBELL,
UNITED STATES
DISTRICT JUDGE

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IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF TENNESSEE

EDWARD RONNY ARNOLD (NO: 3:18-cv-00280
Plaintiff, (*Primary*)
(Judge Campbell
(Magistrate Judge
(Newbern
(
(NO: M2017-00808-
(COA-RS-CV
HERBERT SLATERY III (*Secondary*)
Defendant, (

DEFENDANT'S VIOLATION OF FED. RULE. CIV.
P. 5 (B) (E) IN FILING OF MOTION FOR LEAVE
TO FILE REPLY

Comes Plaintiff Edward Ronny Arnold, Pro Se,
respectfully presenting notice to Magistrate Judge
Newbern of a violation of Fed. Rule. Civ. P. 5 (b) (e),
Certificate of Service, as submitted to the court in

the Defendant's filing of the Leave of the Court
pursuant to Local Rule 7.01 (b) to file a REPLY IN
FURTHER SUPPORT OF DEFENDANT'S MOTION
TO DISMISS via Electronic Case Filing (ECF).

Local Rule 7.01 (b) allows the Defendant, Herbert Slattery, III, State of Tennessee Attorney General and Reporter, to file a reply memorandum upon leave to the court. Hence, a failure to file a timely response by the Plaintiff, shall indicate that there is no opposition to the motion submitted by the Defendant.

Fed. Rule. Civ. P. 5 (b) (e) requires proper service upon the Plaintiff which was not completed. In this case, the Defendant, by and through counsel, filed a reply memorandum to the court via Electronic Case Filing (ECF) with full knowledge the Plaintiff did not

have access to the system. The Certificate of Service states the REPLY IN FURTHER SUPPORT OF DEFENDANT'S MOTION TO DISMISS was forwarded by first class mail. This action was not completed as the Plaintiff did not receive a copy and only discovered the filing by the receipt of the GRANTED motion sent by the United States District Court Clerk's Office.

Tennessee State Courts, and the State of Tennessee Office of the Attorney General and Reporter, have been notified of issues related to Departments of the State of Tennessee receiving certified mail in the case of *Edward Ronny Arnold v. Burns Phillips Commissioner of the State of Tennessee Department of Labor and Workforce Development* M2017-01103-COA-R3-CV (Tenn. Ct. App. 2018). As the result of issues related to claims

by representatives of the State of Tennessee
Department of Labor and Workforce Development
not receiving certified mail from the Plaintiff, it
became necessary for all correspondence between the
Plaintiff and the Defendant to be completed by the
Plaintiff through United States Postal Service
certified mail, return receipt.

Please find a brief outlining the improper filing of
the Defendant's Reply Memorandum to the Court
filed April 27, 2018.

Respectfully submitted this _____ day of May,
2018,

/s/ Edward Ronny Arnold

Edward Ronny Arnold, Pro Se
5036 Suter Drive
Nashville, Tennessee 37211
(615) 331-7107

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing DEFENDANT'S VIOLATION OF FED. RULE. CIV. P. 5 (b) (e) IN FILING OF MOTION FOR LEAVE TO FILE REPLY has been served upon counsel for Defendant by U.S. Mail, postage prepaid, addressed to:

Herbert Slatery III
State of Tennessee Attorney General and Reporter
Rachel Jackson Building
320 6th Avenue North.
Nashville, TN. 37243

Taylor Jenkins
Assistant Attorney General
Civil Litigation and State Services Division
P.O. Box 20207
Nashville, Tennessee 37202-0207

On this the _____ day of May, 2018

/s/ Edward Ronny Arnold

Edward Ronny Arnold, Pro Se
5036 Suter Drive
Nashville, Tennessee 37211

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF TENNESSEE

DEFENDANT'S VIOLATION OF FED. RULE. CIV.
P. 5 (B) (E)IN FILING OF MOTION FOR LEAVE
TO FILE REPLY AND REPLY IN FURTHER
SUPPORT OF DEFENDANT'S MOTION TO
DISMISS

Comes Plaintiff Edward Ronny Arnold, Pro Se,
respectfully presenting notice to Magistrate Judge
Newbern of a violation of Fed. Rule. Civ. P. 5 (b) (e),
Certificate of Service, as submitted to the court in
the Defendant's filing of the Leave of the Court
pursuant to Local Rule 7.01 (b) to file a reply in
support of Defendant's Motion to Dismiss via
Electronic Case Filing (ECF).

While the PRACTICE AND PROCEDURE
MANUAL FOR JUDGES AND MAGISTRATE
JUDGES FOR THE MIIDDLE DISTRICT OF
TENNESSEE (Magistrate Judge Alistair E.
Newbern), is not an official statement of the Court
and this Manual may not be cited as authority, it
presents guidelines for the administration of legal
issue before the court. In this case, section B. defines
communication with the court are to follow the

Federal Rules of Civil Procedure and section E. Pro
se litigants are expected to follow the Federal Rules
of Civil Procedure, the Court's Local Rules and these
guidelines, as are all parties.

It is reasonable to conclude this case, currently
under court order by Federal Judge Campbell to
Magistrate Newbern, is to follow the standard.

In this case, the Defendant, Herbert Slattery, III,
State of Tennessee Attorney General and Reporter,
as represented by the State of Tennessee Office of
the Attorney General, did not comply with Fed. R.
Civ. P. 5 (b) (e) in the process of the DEFENDANT'S
MOTION FOR LEAVE TO FILE REPLY and REPLY
IN FURTHER SUPPORT OF DEFENDANT'S
MOTION TO DISMISS submitted April 27, 2018.

In this case, the Defendant's representative was aware the Plaintiff, Pro Se, was not a practicing attorney in the Middle District of Tennessee, registered as a Filing User of the Electronic Filing System and authorized to file and receive documents by electronic means as set forth in Administrative Order No. 167, Administrative Practices and Procedures for Electronic Case Filing (ECF).

Furthermore, the attorney of record was informed that the Plaintiff did not consent to electronic communications, which includes e-mail, in the process of legal action in the case of *Edward Ronny Arnold v. Bob Oglesby, Et Al.*, NO: M2017-00808-COA-RS-CV.

I. A MAIN ISSUE IN THE CASE OF *Edward*

*Ronny Arnold v. Burns Phillips Commissioner of
the State of Tennessee Department of Labor and
Workforce Development* M2017-01103-COA-R3-
CV (Tenn. Ct. App. 2018) IS THE CLAIMS OF
REPRESENTATIVES THEY DID NOT
RECEIVE CERTIFIED MAIL FROM THE
PETITIONER, ARNOLD

Representatives of The State of Tennessee Office
of the Attorney General and Reporter have been
made aware of issues related to agencies of the State
of Tennessee claims to not receiving certified mail.
This issue has been presented before the Davidson
County Chancery Court, State of Tennessee Court of
Appeals and currently an Application for Appeal to
the State of Tennessee Supreme Court in the case of

*Edward Ronny Arnold v. Burns Phillips
Commissioner of the State of Tennessee Department
of Labor and Workforce Development M2017-01103-
COA-R3-CV (Tenn. Ct. App. 2018), On Appeal from
Chancery Court for Davidson County Case No. 16-
1174-IV, Russell T. Perkins Chancellor.*

The alleged failure of representatives of the State of Tennessee to receive certified mail from the United States Postal Service requires the Plaintiff to send all correspondence via certified mail with return receipt.

It appears the issue of the State of Tennessee not receiving certified mail from the United States Postal Service has reversed to where mail, which is sent, is not being delivered by the United States Postal Service.

In this case, the Plaintiff did not receive proper service.

It is reasonable to conclude Fed. R. Civ. P. 5 (b) (e) applies to first-class mail in addition to electronic service. In this case, the filing by the Defendant is not effective as the Plaintiff was not properly served as knowledge of the filing was obtained at a later date, through the Office of the U. S. District Court Clerk.

If the Court Clerk had not sent a copy of the filing order to the Plaintiff, the Plaintiff would have had no knowledge of the filing, placing the Plaintiff at a disadvantage of being denied the opportunity to respond within the court designated time frame.

A United States District Court order based on an improper filing may constitute grounds for an appeal to the United States Sixth Circuit Court of Appeals.

It is respectfully requested the court, Magistrate Judge Newbern, direct the Defendant, Herbert Slattery, III, State of Tennessee Attorney General and Reporter, and the Defendant's representatives, to comply with Fed. R. Civ. P. 5 (b), in that all correspondence between the Plaintiff and the Defendant be administered by certified mail with return receipt.

Respectfully submitted this _____ day of May, 2018.

/s/ Edward Ronny Arnold

Edward Ronny Arnold, Pro Se
5036 Suter Drive
Nashville, Tennessee 37211
(615) 331-7107

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing DEFENDANT'S VIOLATION OF FED. RULE. CIV. P. 5 (b) (e) IN FILING OF MOTION FOR LEAVE TO FILE REPLY AND REPLY TO FURTHER SUPPORT OF DEFENDANT'S MOTION TO DISMISS has been served upon counsel for Defendant by U.S. Mail, postage prepaid, addressed to:

Herbert Slatery III
State of Tennessee Attorney General and Reporter
Rachel Jackson Building
320 6th Avenue North.
Nashville, TN. 37243

Taylor Jenkins
Assistant Attorney General
Civil Litigation and State Services Division
P.O. Box 20207
Nashville, Tennessee 37202-0207

On this the _____ day of May, 2018

/s/ Edward Ronny Arnold

Edward Ronny Arnold, Pro Se
5036 Suter Drive
Nashville, Tennessee 37211

May 17, 2018

Taylor Jenkins
Assistant Attorney General
Civil Litigation and State Services Division
P.O. Box 20207
Nashville, Tennessee 37202-0207

Mr. Jenkins,

Please find DEFENDANT'S VIOLATION OF FED. RULE. CIV. P. 5 (B) (E) IN FILING OF MOTION FOR LEAVE TO FILE REPLY, Edward Ronny Arnold, for Case No. 3:18-cv-00280, Edward Ronny Arnold Plaintiff v. Herbert Slatery III, State of Tennessee Attorney General and Reporter Defendant.

The State of Tennessee Office of the Attorney General has been made aware of issues related to representatives of the State of Tennessee Department of Labor and Workforce Development claiming they did not receive certified mail. This ongoing issue requires the Petitioner / Plaintiff to submit all documentation to the State of Tennessee as certified mail with a return receipt as evidence the documents were properly sent and properly received.

The inability of agencies of the State of Tennessee to receive and send mail presents an issue to which the court should be aware and to which a request has been made to confirm the Certificate of Service.

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Thank you,

/s/ Edward Ronny Arnold

Edward Ronny Arnold
Pro Se
5036 Suter Drive
Nashville, Tennessee 37211
(615) 331-7107
(615) 999-8044

May 17, 2018

Herbert Slatery III
State of Tennessee Attorney General and Reporter
Rachel Jackson Building
320 6th Avenue North
Nashville, TN. 37243

Sir,

Please find DEFENDANT'S VIOLATION OF FED. RULE. CIV. P. 5 (B) (E) IN FILING OF MOTION FOR LEAVE TO FILE REPLY, Edward Ronny Arnold, for Case No. 3:18-cv-00280, Edward Ronny Arnold Plaintiff v. Herbert Slatery III, State of Tennessee Attorney General and Reporter Defendant.

The State of Tennessee Office of the Attorney General has been made aware of issues related to representatives of the State of Tennessee Department of Labor and Workforce Development claiming they did not receive certified mail. This ongoing issue requires the Petitioner / Plaintiff to submit all documentation to the State of Tennessee as certified mail with a return receipt as evidence the documents were properly sent and properly received.

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court should be aware and to which a request has been made to confirm the Certificate of Service.

Thank you,

/s/ Edward Ronny Arnold

Edward Ronny Arnold
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