

UNPUBLISHED**UNITED STATES COURT OF APPEALS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

No. 18-2368

UNITED STATES OF AMERICA,**Plaintiff - Appellee,****v.****DIANNE MICHELE CARTER,****Defendant - Appellant.**

**Appeal from the United States District Court for the Western District of North Carolina,
at Charlotte. Frank D. Whitney, Chief District Judge. (3:16-cv-00673-FDW-DCK)**

Submitted: April 4, 2019

Decided: April 8, 2019

Before NIEMEYER and HARRIS, Circuit Judges, and SHEDD, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

**Dianne Michele Carter, Appellant Pro Se. Francesca Ugolini, Tax Division, UNITED
STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Appellee.**

Unpublished opinions are not binding precedent in this circuit.*Appendix A1*

PER CURIAM:

Dianne Michele Carter appeals the district court's order denying her postjudgment motion in the underlying action filed by the Government seeking injunctive relief. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *United States v. Carter*, No. 3:16-cv-00673-FDW-DCK (W.D.N.C. Nov. 14, 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

FILED: April 8, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-2368
(3:16-cv-00673-FDW-DCK)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

DIANNE MICHELE CARTER

Defendant - Appellant

JUDGMENT

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO. 3:16-cv-00673-FDW-DCK

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 DIANNE M. CARTER,)
)
 Defendant.)
)
)
)

ORDER

THIS MATTER is before the Court on Defendant's "Jurisdictional Challenge." (Doc. No. 40). The Court construes Defendant's filing as yet another motion for relief from this Court's previous orders. In her filing, Defendant argues that this Court did not have personal or subject matter jurisdiction when the Court issued a show cause order, bench warrant, and subsequent order to facilitate execution of that warrant. (Doc. No. 40, p. 1). Defendant's motion is DENIED for the reasons stated below.

The Court has subject matter jurisdiction in this matter. According to 28 U.S.C. § 1343, "[e]xcept as otherwise provided by Act of Congress, the district courts shall have original jurisdiction of all civil actions . . . commenced by the United States . . ." 28 U.S.C. § 1343. In addition, this Court is explicitly authorized to issue injunctions regarding tax filings under the Internal Revenue Code. See 26 U.S.C. § 7402(a) ("The district courts of the United States . . . shall have such jurisdiction to make and issue in civil actions, writs and orders of injunction . . . and to render such judgments and decrees as may be necessary or appropriate for the enforcement of the

internal revenue laws."); see also 28 U.S.C. § 1340 ("The district courts shall have original jurisdiction of any civil action arising under any Act of Congress providing for internal revenue . . .").

Here, this case was filed by the United States seeking an injunction to keep Defendant from filing fraudulent tax returns. Thus, the Court had subject matter jurisdiction to decide this case, enjoin Defendant from preparing more tax returns, and order Defendant to turn over a list of names of individuals that she had prepared tax returns for on October 2, 2017. (Doc. No. 16). After two months, Defendant showed no indications of compliance with the Court's order and the Court ordered Defendant to appear before this Court to explain her noncompliance. This Order to Show Cause was mailed to Defendant on December 21, 2017. In addition, the United States attempted multiple times to personally serve Defendant with the Show Cause Order. When Defendant failed to show at this hearing, *or make any other indications that she would comply*, the Court issued a bench warrant pursuant to its authority under 18 U.S.C. § 401. See 18 U.S.C. § 401 ("A court of the United States shall have power to punish by fine or imprisonment, or both, at its discretion, such contempt of its authority . . ."). These orders were all made under the Court's valid exercise of statutory and constitutional authority.

This Court also has personal jurisdiction over Defendant. Defendant was served with the initial summons in this case and admits to being a domiciliary of North Carolina.¹ (Doc. No. 5, p. 3). See Fed. R. Civ. P. 4(k) ("Serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant . . . who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located . . ."). Defendant argues that she never received

¹ Defendant has also waived any objections to insufficient service of process by failing to raise the issue in her earlier Motion to Dismiss. (See generally Doc. No. 7; see also Fed. R. Civ. P. 12(h) (stating that Rule 12(b)(2)-(b)(5) defenses are waived if the party fails to make it in a motion)).

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11/14/2018

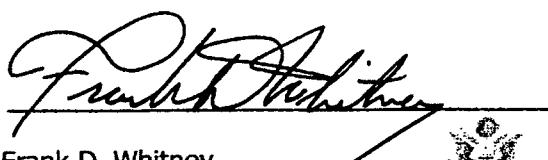
Appendix B:
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personal service of this Court's Show Cause Order, and thus, this Court lacked personal jurisdiction over her to issue a bench warrant. However, the Defendant is not entitled to personal service of every single document in litigation; rather, this Court's personal jurisdiction over her attached when she was served with the complaint and summons in this case. The Clerk of Court mailed Defendant a copy of the Show Cause Order upon its entry on December 21. In the Show Cause Order, the Court did give directions to serve the order in accordance with Rule 4(e), (Doc. No. 25, p. 1-2), but these directions were merely additional attempts to compel Defendant's presence before this Court. The fact this order was not personally served on Defendant does not excuse Defendant from her refusal to follow the Court's orders for over two months and certainly does not strip the Court of personal jurisdiction over her.

For these reasons, and for the reasons stated in this Court's previous order dated September 14, 2018, Defendant's current motion for relief is DENIED. This is now Defendant's third frivolous filing regarding these same issues. (See Doc. Nos. 37, 39, 40). **Defendant is hereby put on notice that these filings are frivolous and in violation of Rule 11(b) of the Federal Rules of Civil Procedure. Future frivolous filings will result in the Court ordering sanctions to deter further misconduct.**

IT IS SO ORDERED.

Signed: November 13, 2018



Frank D. Whitney
Chief United States District Judge


UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO. 3:16-cv-00673-FDW-DCK

UNITED STATES OF AMERICA,)
Plaintiff,)
vs.)
DIANNE M. CARTER,) ORDER
Individually and Doing Business As)
Carter Sensible Tax Service)
Defendant.)

)

THIS MATTER is before the Court on Plaintiff's Motion for Order to Show Cause (Doc. No. 24). Plaintiff's Motion alleges that Defendant has neither provided counsel for the United States a list of the persons for whom she prepared federal income tax returns or refund claims, nor shown that she contacted individuals for whom she prepared federal tax returns to inform them of this Court's injunction as was required by this Court's October 2, 2017, Order of Permanent Injunction (Doc. No. 16). Accordingly, Plaintiff's Motion, for the reasons stated therein, is GRANTED.

IT IS THEREFORE ORDERED and the parties shall **TAKE NOTICE** that Defendant **shall appear before this Court on Friday, January 5, 2018, at 2:00 p.m., in Courtroom #1-1 at the Charles R. Jonas Federal Building, 401 West Trade Street, Charlotte, North Carolina, 28202, whereby Defendant shall show cause why it has not complied with the terms of this Court's Order (Doc. No. 16) and why Defendant should not be held in contempt for non-compliance.**

IT IS FURTHER ORDERED that:

1. A copy of this Order shall be served in accordance with Rule 4(e) of the Federal

Rules of Civil Procedure within fourteen (14) days of the date that this Order is served upon counsel for the United States or as soon thereafter as possible.

2. Proof of service done pursuant to paragraph 1, above, shall be filed with the Clerk as soon as practicable

3. Because the United States has made a *prima facie* showing that Defendant has violated the Court's Order, the Defendant has the burden of showing that her noncompliance justified or excused.

4. If Defendant has any defense to present or opposition to the United States' motion, such defense or opposition shall be made in writing and filed with the Clerk and copies served on counsel for the United States at least fourteen (14) days prior to the date set for the show cause hearing. The United States may file a reply memorandum to any opposition at least five (5) days prior to the date set for the show cause hearing.

5. At the show cause hearing, only those issues brought into controversy by the responsive pleadings and factual allegations supported by affidavit or declaration will be considered. Any uncontested allegation will be considered admitted.

Defendant is hereby notified that a failure to comply with this Order may subject her to sanctions for contempt of court.

IT IS FURTHER ORDERED that Defendant's Motion to Stay the Court's Order pending appeal (Doc. No. 19) is DENIED AS MOOT.

IT IS SO ORDERED.

Signed: December 21, 2017


Frank D. Whitney
Chief United States District Judge

Appendix D
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UNITED STATES DISTRICT COURT

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for the

Western District of North Carolina

United States of America

v.

DIANNE M. CARTER

Case No. 3:16CV673-FDW

FILED
CHARLOTTE, NC

MAR -1 2018

US District Court
Western District of NC

Defendant

BENCH WARRANT

To: Any authorized law enforcement officer

YOU ARE COMMANDED to arrest and bring before a United States District Court judge without unnecessary delay (name of person to be arrested) DIANNE M. CARTER

who is accused of an offense or violation based on the following document filed with the court:

Indictment Superseding Indictment Information Superseding Information Complaint
 Probation Violation Petition Supervised Release Violation Petition Violation Notice Order of the Court

This offense is briefly described as follows:

Contempt of Court for failure to comply with the Court's October 2, 2017 Order.

Date: 01/05/2018

Issuing officer's signature

City and state: Charlotte, NC

Chief Judge Frank D. Whitney

Printed name and title

Return

→ This warrant was received on (date) 1/5/2018, and the person was arrested on (date) 2/26/2018
 at (city and state) CHARLOTTE, NC

Date: 2/26/2018

Arresting officer's signature

THOMAS PELLIGRINE, SD16511

Printed name and title

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO. 3:16-cv-00673-FDW-DCK

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
DIANNE M. CARTER,)
Individually and Doing Business as Carter)
Sensible Tax Service)
)
Defendant.)
)

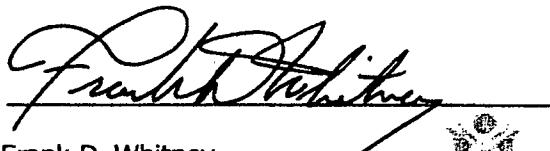
ORDER

THIS MATTER is before the Court on Plaintiff's Motion for Order Authorizing all Necessary Actions to Execute Bench Warrant against Defendant (Doc. No. 29). Plaintiff alleges that the United States Marshals Service has been unable to procure Defendant's voluntary surrender pursuant to the bench warrant issued in this case for Defendant's failure to attend the Show Cause hearing held on January 5, 2018. For the reasons stated in the United States' motion (Doc. No. 29), the motion is GRANTED.

It is further ORDERED that, pursuant to the Bench Warrant (Doc. No. 28) issued in this action on January 5, 2018, the United States Marshals Service is authorized and directed to take all reasonable actions, including but not limited to the use of reasonable force, necessary to execute the bench warrant and procure Defendant's attendance before the Court.

IT IS SO ORDERED.

Signed: January 24, 2018



Frank D. Whitney
Chief United States District Judge



Appendix
F

Federal Rules of Civil Procedure

Rule 4. Summons

(e) Serving an Individual Within a Judicial District of the United States. Unless federal law provides otherwise, an individual ... may be served in a judicial district of the United States by:

- (1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made; or
- (2) doing any of the following:
 - (A) delivering a copy of the summons and of the complaint to the individual personally;
 - (B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or
 - (C) delivering a copy of each to an agent authorized ... to receive service of process.

(l) Proving Service.

(1) *Affidavit Required.* Unless service is waived, proof of service must be made to the court.

Except for service by a United States marshal ... proof must be by the server's affidavit.

(m) Time Limit for Service. If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Rule 5. Serving and Filing Pleadings and Other Papers

(a) **Service When Required.**

(1) *In General.* Unless these rules provide otherwise, each of the following papers must be served on every party:

- (A) an order stating that service is required;
- (E) a written notice, appearance, demand, or offer of judgment, or any similar paper.

(2) *If a Party Fails to Appear.* No service is required on a party who is in default for failing to appear. But a pleading that asserts a new claim for relief against such a party must be served on that party under Rule 4.

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