

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

No: 19-1429

Don Mashak

Appellant

First National Repossessors, Inc.

v.

Commissioner of Internal Revenue

Appellee

Appeal from U.S. District Court for the District of Minnesota
(0:18-cv-02635-SRN)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

January 17, 2020

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

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

No: 19-1429

Don Mashak

Plaintiff - Appellant

First National Repossessors, Inc.

Plaintiff

v.

Commissioner of Internal Revenue

Defendant - Appellee

Appeal from U.S. District Court for the District of Minnesota
(0:18-cv-02635-SRN)

JUDGMENT

Before LOKEN, SHEPHERD, and GRASZ, Circuit Judges.

This court has reviewed the original file of the United States District Court. It is ordered by the court that the judgment of the district court is summarily affirmed. See Eighth Circuit Rule 47A(a). The appellant's motion for leave to proceed on appeal in forma pauperis is granted.

July 23, 2019

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

UNITED STATES DISTRICT COURT
District of Minnesota

First National Repossessors, Inc., and Don
Mashak, Personally, and as President of FNR,

JUDGMENT IN A CIVIL CASE

Plaintiff(s),

v.

Case Number: 18-cv-2635 (SRN/SER)

Commissioner of Internal Revenue,

Defendant(s).

☒ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED THAT:

1. Plaintiffs' Objection [Doc. No. 21] is **OVERRULED**;
2. Magistrate Judge Rau's R&R [Doc. No. 20] is **ADOPTED** in its entirety; and
3. Plaintiffs' Complaint [Doc. No. 1] is **DISMISSED WITHOUT PREJUDICE**.

Date: January 18, 2019

KATE M. FOGARTY, CLERK

s/Jennifer Beck

(By) Jennifer Beck, Deputy Clerk

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

First National Repossessors, Inc., and Don
Mashak, Personally, and as President of
FNR,

Plaintiffs,

v.

Commissioner of Internal Revenue,

Defendant.

Case No. 18-cv-2635 (SRN/SER)

**MEMORANDUM OPINION
AND ORDER ADOPTING REPORT
AND RECOMMENDATION OF
MAGISTRATE JUDGE**

First National Repossessors, Inc. and Don Mashak, Route 1, Box 231, Albertville, MN
55301, pro se.

SUSAN RICHARD NELSON, United States District Judge

This case is before the Court on Plaintiffs' objection ("Objection") [Doc. No. 21] to United States Magistrate Judge Steven Rau's December 4, 2018, Report and Recommendation ("R&R") [Doc. No. 20]. Magistrate Judge Rau recommended that the Court dismiss Plaintiff's complaint ("Complaint") [Doc. No. 1] without prejudice. (R&R at 3.) For the reasons set forth below, the Court overrules Plaintiff's Objection, adopts the R&R in full, and dismisses Plaintiff's Complaint without prejudice.

I. Background

On September 10, 2018, Plaintiffs filed their Complaint and an application to proceed *in forma pauperis* ("IFP") [Doc. No. 2]. On September 27, 2018, Magistrate Judge Rau denied the Plaintiffs' IFP application on the grounds that First National

Repossessors, Inc. (“FNR”) was ineligible to proceed IFP. (Sept. 27, 2018 Order [Doc. No. 5].) Plaintiffs were given 20 days to pay the required \$400.00 filing fee and were warned that, if they failed to do so, the action would be dismissed without prejudice for failure to prosecute. (*Id.* at 2.) That deadline was later extended to November 19, 2018. (Oct. 18, 2018 Order [Doc. No. 7].)

Plaintiffs never paid the required filing fee. As a result, on December 4, 2018, Magistrate Judge Rau recommended that the Complaint be dismissed without prejudice. (R&R at 3.) On December 19, 2018, Plaintiff filed a timely objection to Magistrate Judge Rau’s R&R. (Obj. at 1.)

II. Discussion

This Court reviews *de novo* any portion of the magistrate judge’s opinion to which specific objections are made, and “may accept, reject, or modify, in whole or in part, the findings or recommendations” contained in that opinion. 28 U.S.C. § 636(b)(1)(C); *see also* Fed. R. Civ. P. 72(b); D. Minn. L.R. 72.2(b)(3).

First, Plaintiffs object to the Court’s failure to dismiss FNR from the case. (Obj. at 1.) Mashak previously requested that FNR be dismissed if Plaintiffs’ request for additional time to pay the filing fee was not granted. (Defs.’ Oct. 19, 2018 Letter [Doc. No. 9] at 1.) However, because the motion for an extension of time was granted, the Court did not dismiss FNR from the case. (R&R at 2.) Neither Mashak nor FNR are eligible for IFP status and the filing fee remains unpaid. (*See* Sept. 27, 2018 Order.)

Second, Plaintiffs object to the Court’s interpretation of the statutory requirement that only natural persons may proceed IFP. (Obj. at 3–4.) However, the Court may not

disregard the IFP statute, 28 U.S.C. § 1915, or the clear direction of the Supreme Court that “only a natural person may qualify for treatment *in forma pauperis* under § 1915.” *Rowland v. California Men’s Colony, Unit II Men’s Advisory Council*, 506 U.S. 194, 196 (1993).

Finally, Plaintiffs object to the Court’s failure to unseal certain records from state court proceedings that he argues are relevant to this action. (Obj. at 10.) However, Mashak’s request is moot in light of the Court’s decision to dismiss the case without prejudice. (R&R at 3.)

IV. Conclusion

Based on the foregoing, and all the files, records and proceedings herein, **IT IS HEREBY ORDERED** that:

1. Plaintiffs’ Objection [Doc. No. 21] is **OVERRULED**;
2. Magistrate Judge Rau’s R&R [Doc. No. 20] is **ADOPTED** in its entirety; and
3. Plaintiffs’ Complaint [Doc. No. 1] is **DISMISSED WITHOUT PREJUDICE**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: January 18, 2019

s/ Susan Richard Nelson
SUSAN RICHARD NELSON
United States District Judge

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

FIRST NATIONAL REPOSSESSORS,
INC.; and DON MASHAK, Personally,
and as President of FNR,

Case No. 18-CV-2635 (SRN/SER)

Plaintiffs,

REPORT AND RECOMMENDATION

v.

COMMISSIONER OF INTERNAL
REVENUE,

Defendant.

In an order dated September 27, 2018, this Court denied the application to proceed *in forma pauperis* (“IFP”) of plaintiffs First National Repossessors, Inc. (“FNR”) and Don Mashak on the grounds that FNR was ineligible to proceed IFP. *See* ECF No. 5. Plaintiffs were given 20 days to pay the required \$400.00 filing fee, failing which it would be recommended that this action be dismissed without prejudice for failure to prosecute. *See* Fed. R. Civ. P. 41(b). That deadline was later extended to November 19, 2018. *See* ECF No. 7.

That deadline has now passed, and plaintiffs have not yet paid the required filing fee. Accordingly, this Court now recommends, in accordance with its prior order, that this action be dismissed without prejudice under Rule 41(b) for failure to prosecute. *See Henderson v. Renaissance Grand Hotel*, 267 Fed. App’x 496, 497 (8th Cir. 2008) (per curiam) (“A district court has discretion to dismiss an action under Rule 41(b) for a

plaintiff's failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order."'). A few further comments are necessary, however.

First, Mashak previously requested an extension of time in which to pay the required filing fee in this matter. In a letter sent to the Court before that request was granted, Mashak asked that, should the extension *not* be granted, FNR be removed from this litigation and the IFP application be reconsidered. *See* ECF No. 7. Mashak expressly noted that "[i]f said request for additional time is granted, this request [to remove FNR from the litigation] is rescinded." *Id.* at 1. Mashak's motion for an extension to pay the filing fee was granted; accordingly, FNR remains a party to this litigation. And because FNR remains a party to this action, neither plaintiff is eligible for IFP status, for the reasons explained in this Court's September 27 order.

Second, Mashak asks that this Court ignore the statutory requirement that only natural persons may proceed IFP due to the extraordinary nature of the allegations in the complaint. *See* ECF No. 16. The Court is not free to disregard the plain language of the IFP statute, *see* 28 U.S.C. § 1915, or the clear direction of the Supreme Court that "only a natural person may qualify for treatment *in forma pauperis* under § 1915."¹ *Rowland v. California Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 196 (1993).

Third, Mashak was referred to the Federal Bar Association ("FBA") for possible assistance by a volunteer attorney. *See* ECF No. 8. The FBA declined to assist Mashak.

¹ Even if the plaintiffs were each eligible for IFP status, this Court would recommend dismissal of the action. *See* 28 U.S.C. § 1915(e)(2)(B). The complaint filed in this action is nearly impossible to follow, full of irrelevancies and invective, and in many respects frivolous.

See ECF No. 13. Mashak asks that the Court investigate “perceived irregularities” at the FBA. *See* ECF No. 12. But the FBA — which provides *volunteer* assistance — had no obligation to assist Mashak and could decline intervention for any reason or no reason whatever. This Court has not *appointed* counsel to assist Mashak and would decline to do so had such a request been made.

Fourth, Mashak asks that this Court order unsealed certain records from state court proceedings that he argues are relevant to this action. *See* ECF No. 11. The request is moot in light of the recommendation of dismissal.

RECOMMENDATION

Based upon the foregoing, and on all of the files, records, and proceedings herein, IT IS HEREBY RECOMMENDED that this action be DISMISSED WITHOUT PREJUDICE under Fed. R. Civ. P. 41(b) for failure to prosecute.

Dated: December 4, 2018
Rau

s/ Steven E.

Steven E. Rau
U.S. Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See* Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).

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