

NOT RECOMMENDED FOR PUBLICATION

No. 23-4039

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Jul 17, 2024

KELLY L. STEPHENS, Clerk

ORDER

Before: BOGGS, MOORE, and MURPHY, Circuit Judges.

Willie Bandy, a pro se Ohio prisoner, appeals the district court's judgment dismissing his complaint seeking a \$600 economic-impact payment from the federal government. This case 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). As set forth below, we affirm the district court's judgment dismissing Bandy's complaint for lack of subject-matter jurisdiction.

In response to the COVID-19 pandemic, Congress passed three rounds of economic-impact payments. First, the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, § 2201(a), 134 Stat. 281, 335-37 (2020) (codified as amended at 26 U.S.C. § 6428), provided that eligible individuals could claim up to \$1,200. Second, the Tax Relief Act of 2020, Pub. L. No. 116-260, § 272(a), 134 Stat. 1182, 1965-71 (codified as amended at 26 U.S.C. § 6428A), provided for an additional payment up to \$600 for eligible individuals. And finally, the American Rescue Plan Act of 2021, Pub. L. No. 117-2, § 9601(a), 135 Stat. 4, 138-42 (codified as

amended at 26 U.S.C. § 6428B), provided for a third payment up to \$1,400 for eligible individuals. The economic-impact payments took the form of either advance refund payments for those who (unlike Bandy) had filed 2018 or 2019 tax returns or, after certain statutory deadlines, recovery-rebate credits claimed on an individual's 2020 tax return.

Bandy has been incarcerated and unemployed "for more than two decades." In February 2021, Bandy filed a tax return for the 2020 tax year, claiming the first two economic impact payments of \$1,200 and \$600 as recovery-rebate credits. Following the enactment of the American Rescue Plan Act in March 2021, Bandy received a \$1,400 check from the Treasury Department. In September 2021, the Internal Revenue Service (IRS) notified Bandy that a refund for the 2020 tax year had been approved in the amount of \$1,820.86 (the recovery-rebate credits for the first two economic-impact payments plus interest) but had been offset to pay a non-tax debt to the Cuyahoga County Child Support Enforcement Agency.

Bandy later filed this lawsuit against Treasury Secretary Janet Yellen and IRS Commissioner Charles P. Rettig, in their official capacities. Bandy conceded that the first economic-impact payment of \$1,200 under the CARES Act was subject to offset for back child support but argued that the second economic-impact payment of \$600 was not. Bandy did not dispute that he owed back child support. Bandy sought payment of \$600 plus interest and costs.

Bandy moved for default judgment against the defendants. Denying Bandy's motion without prejudice, a magistrate judge pointed out that he had not served the United States Attorney for the Northern District of Ohio, had attempted to serve the defendants by FedEx rather than registered or certified mail, and had not applied for entry of default by the clerk. *See* Fed. R. Civ. P. 4(i)(1)(A)-(B), (i)(2); Fed. R. Civ. P. 55(a). Within 60 days after service on the United States Attorney for the Northern District of Ohio, the defendants moved to dismiss Bandy's complaint for lack of subject-matter jurisdiction and failure to state a claim upon which relief can be granted. *See* Fed. R. Civ. P. 12(a)(2), (b)(1), (b)(6). In response to the defendants' motion to dismiss, Bandy maintained that he was entitled to default judgment. The magistrate judge recommended that the district court grant the defendants' motion to dismiss and deny Bandy's

renewed motion for default judgment. Over Bandy's objection, the district court adopted the magistrate judge's report and recommendation and entered judgment in favor of the defendants.

This timely appeal followed. Bandy contends that the district court erred in denying his motion for default judgment and dismissing his complaint.

The district court granted the defendants' motion to dismiss Bandy's complaint for lack of subject-matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1). "Subject matter jurisdiction is always a threshold determination." *Am. Telecom Co. v. Republic of Lebanon*, 501 F.3d 534, 537 (6th Cir. 2007) (affirming dismissal for lack of subject-matter jurisdiction without addressing default issue). We review de novo the district court's dismissal for lack of subject-matter jurisdiction. *Int'l Outdoor, Inc. v. City of Troy*, 974 F.3d 690, 701 (6th Cir. 2020).

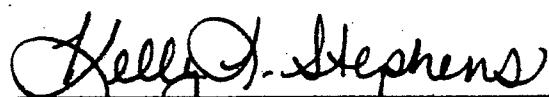
Section 6402 of the Internal Revenue Code addresses the Treasury Department's authority to offset certain unpaid debts against tax overpayments and apply the overpayment to the unpaid debt. Section 6402(c) requires the offset of past-due child support against overpayments: "The amount of any overpayment to be refunded to the person making the overpayment shall be reduced by the amount of any past-due support . . . owed by that person." 26 U.S.C. § 6402(c). The Treasury Department remits that amount to the State collecting the past-due child support. *Id.* The Treasury Department's offset actions are not subject to judicial review: "No court of the United States shall have jurisdiction to hear any action, whether legal or equitable, brought to restrain or review a reduction authorized by subsection (c) . . ." *Id.* § 6402(g).

Pursuant to § 6402(c), the IRS applied Bandy's refund for the 2020 tax year (the recovery-rebate credits for the first two economic-impact payments plus interest) to his back child support owed to the Cuyahoga County Child Support Enforcement Agency. Bandy argued that the \$600 economic-impact payment was not subject to this offset. Because Bandy challenged the offset of past-due child support against his refund under § 6402(c), however, the district court lacked jurisdiction over his complaint. *See Hadsell v. United States*, No. 22-15760, 2023 WL 4418589, at *1 (9th Cir. July 10, 2023); *Johnson v. United States*, 469 F. App'x 79, 81 (3d Cir. 2012) (per

curiam); *see also Prance v. United States*, No. 22-1905, 2023 WL 6799101, at *2-3 (Fed. Cl. Ct. Oct. 13, 2023).

Accordingly, we **AFFIRM** the district court's judgment dismissing Bandy's complaint for lack of subject-matter jurisdiction.

ENTERED BY ORDER OF THE COURT



Kelly L. Stephens, Clerk

APPENDIX

B

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

WILLIE L. BANDY,)	CASE NO. 1:23 CV 54
Plaintiff,)	
v.)	JUDGE DONALD C. NUGENT
SECRETARY OF THE DEPARTMENT OF TREASURY, et al.,)	Magistrate Judge James E. Grimes Jr.
Defendants.)	<u>MEMORANDUM OPINION</u>

This matter is before the Court on the Motion to Dismiss for Failure to State a Claim and Motion to Dismiss for Lack of Jurisdiction (Docket #23) filed by Defendants, Secretary of the Department of Treasury and Commissioner of Internal Revenue Service, pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), and the Motion for Default Judgment (Docket #24) filed by Plaintiff, Willie L. Bandy.

This case was previously referred to Magistrate Judge James E. Grimes Jr. for pretrial supervision. (Docket #4.) On November 9, 2023, Magistrate Judge Grimes issued a Report and Recommendation on the Parties' Motions. (Docket #28.) Magistrate Judge Grimes recommends that the Court grant Defendants' Motion to Dismiss, finding that the Court lacks subject matter jurisdiction over Mr. Bandy's challenge to the Treasury Department's offset under 26 U.S.C. §

6402(c) of the \$600 economic impact payment and, that even if the Court had jurisdiction over Mr. Bandy's tax-related claim, Mr. Bandy has otherwise failed to state a claim upon which relief can be granted. Further, the Magistrate Judge recommends that the Court deny Mr. Bandy's Motion for Default Judgment, explaining that Mr. Bandy's first service was not proper and that Defendants filed their Motion to Dismiss on October 6, 2023, within 60 days of service having been executed on all of the proper individuals.

On November 22, 2023, Mr. Bandy filed an Objection to the Report and Recommendation. (Docket #29.) On December 1, 2023, Defendants filed their Response Brief. (Docket #30.)

Standard of Review for a Magistrate Judge's Report and Recommendation

The applicable district court standard of review for a magistrate judge's report and recommendation depends upon whether objections were made to the report. When objections are made to a report and recommendation of a magistrate judge, the district court reviews the case *de novo*. FED. R. CIV. P. 72(b) provides:

The district judge must determine *de novo* any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

Conclusion

The Court has reviewed the Magistrate Judge's Report and Recommendation *de novo*, analyzing Mr. Bandy's Objection to the Report and Recommendation and Defendants' Response thereto. Magistrate Judge Grimes thoroughly and exhaustively reviewed the Parties' Motions and all responsive briefing, in conjunction with the applicable statutory and case law. Magistrate Judge Grimes properly concluded that Mr. Bandy is not entitled to default judgment; that the Court lacks subject matter jurisdiction over Mr. Bandy's tax-related claim; and, that Mr. Bandy has otherwise

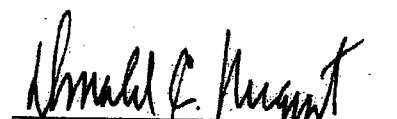
failed to state a claim upon which relief can be granted.

Accordingly, the Report and Recommendation issued by Magistrate Judge Grimes (Docket #28) is hereby ADOPTED in its entirety.

The Motion to Dismiss for Failure to State a Claim and Motion to Dismiss for Lack of Jurisdiction (Docket #23) filed by Defendants, Secretary of the Department of Treasury and Commissioner of Internal Revenue Service, is hereby GRANTED. The Motion for Default Judgment (Docket #24) filed by Plaintiff, Willie L. Bandy, is hereby DENIED.

This case is hereby TERMINATED.

IT IS SO ORDERED.



DONALD C. NUGENT
United States District Judge

DATED: December 6, 2023

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

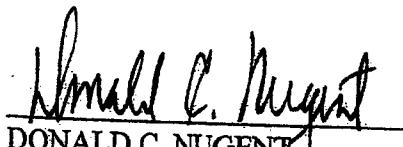
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Defendants.)	<u>JUDGMENT</u>

For the reasons stated in the Memorandum Opinion filed contemporaneously herewith, the Report and Recommendation issued by Magistrate Judge Grimes (Docket #28) is hereby ADOPTED in its entirety.

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WILLIE BANDY,)
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v.)
SECRETARY, U.S. DEPARTMENT OF THE) ON APPEAL FROM THE UNITED
TREASURY, Janet Yellen, in her official capacity;) STATES DISTRICT COURT FOR
COMMISSIONER OF INTERNAL REVENUE,) THE NORTHERN DISTRICT OF
Charles P. Rettig, in his official capacity,) OHIO
Defendants-Appellees.)

O R D E R

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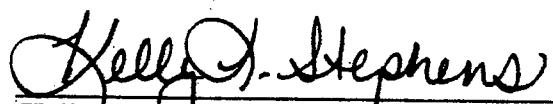
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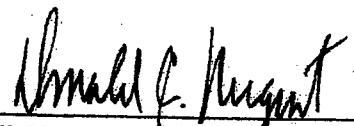
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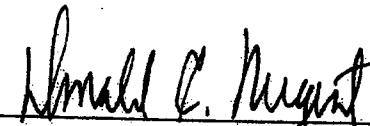
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United States District Judge

DATED: December 6, 2023

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Willie
Bandy

Petitioner

Case No. _____

vs.

COA Case No. 23-4039

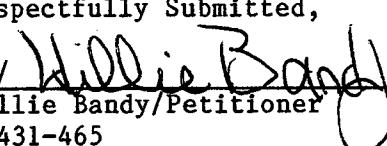
Janet
Yellen, Secretary, U.S.
Treasury Department, et al.

Respondent

NOTICE OF APPEAL

Notice is hereby given that Petitioner Willie Bandy in the above named case, hereby appeal to the United States Supreme Court from the final judgment of the United States Court of Appeals for the Sixth Circuit entered in this action on the 17th day of July, 2024.

Respectfully Submitted,

/s/ 
Willie Bandy/Petitioner
#A431-465
Grafton Correctional Institution
2500 S. Avon Belden Road
Grafton, Ohio 44044

SERVICE

I hereby certify that a true copy of the foregoing NOTICE OF APPEAL has been sent by regular U.S. Mail to the Tax Division Department of Justice to Marie E. Wicks at Post Office Box 502, Washington, D.C. 20044, on this 6th day of September, 2024.

/s/ Willie Bandy
Willie Bandy/Petitioner/Pro Se
#A431-465