

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Eric Lee Hasselbrock v. John Scott Wilson

No. CV-25-08195-PCT-JJT (MTM), United States District Court for the District of Arizona (March 23, 2026)

SUMMARY

The United States District Court for the District of Arizona overruled Plaintiff Eric Lee Hasselbrock’s objections, adopted the magistrate judge’s Report and Recommendation, and dismissed the action without prejudice for failure to properly serve Defendant. The court also denied the motions for default and default judgment and denied the in forma pauperis application as moot.

CASE DETAILS

COURT	United States District Court for the District of Arizona
JURISDICTION	United States District Court for the District of Arizona
DECIDED	March 23, 2026
DOCKET	CV-25-08195-PCT-JJT (MTM)
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiff sought review of a magistrate judge's Report and Recommendation recommending dismissal without prejudice under Federal Rules of Civil Procedure 4(m) and 41(b). The district court construed Plaintiff's notice of appeal as a timely objection, overruled the objection, adopted the R&R, dismissed the action without prejudice, and denied the pending motions.
STANDARD OF REVIEW	The district court reviewed the magistrate judge's Report and Recommendation after construing Plaintiff's notice of appeal as an objection; it accepted the recommendation without further process after finding no error in the R&R.
PRECEDENTIAL VALUE	unpublished district court order

TOPICS

- service of process
- default judgment
- default
- appellate procedure
- civil procedure

PRACTICE AREAS

- civil procedure
- prisoner civil rights
- appellate procedure

QUESTIONS PRESENTED

1. Whether Plaintiff's notice of appeal, filed one day after the objection deadline, should be construed as an objection to the magistrate judge's Report and Recommendation.
2. Whether Plaintiff established that Defendant had been properly served under the Federal Rules of Civil Procedure.
3. Whether dismissal without prejudice was proper under Rules 4(m) and 41(b).
4. Whether Plaintiff was entitled to default or default judgment despite the absence of completed service.

HOLDINGS

1. The court construed Plaintiff's notice of appeal as an objection to the Report and Recommendation and excused the one-day delay for good cause.
2. Plaintiff did not establish valid service because the process-server attempts were unsuccessful and service by certified mail was not an approved method under the Federal Rules of Civil Procedure.
3. Defendant could not be in default because service had never been completed; Plaintiff's Motion for Default and Motion for Entry of Default Judgment were therefore denied.
4. The complaint and action were dismissed without prejudice, and the magistrate judge's Report and Recommendation was adopted.

KEY QUOTATIONS

“service by certified mail is not an approved or acceptable method of service under the Federal Rules of Civil Procedure.” (at 2)

“Service never having been completed on Defendant, he cannot have defaulted.” (at 2)

FACTUAL BACKGROUND

Plaintiff attempted to serve Defendant through several process servers, but each attempt was unsuccessful. Plaintiff also sent the summons and complaint by certified mail, which the court held was not an acceptable method of service under the Federal Rules of Civil Procedure. Because service was never completed, Defendant had not defaulted.

PROCEDURAL HISTORY

Magistrate Judge Michael T. Morrissey recommended dismissal without prejudice because Plaintiff had not properly served Defendant. Plaintiff did not file a formal objection within the fourteen-day period but filed a notice of appeal one day later, which the district court construed as an objection and considered on the merits. The district court adopted the R&R, dismissed the complaint without prejudice, directed entry of judgment, and denied Plaintiff's motions for default, default judgment, and in forma pauperis status as moot.

DISPOSITION

dismissed

CASES CITED

- United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir. 2003)

OPINION

1 2 3 4 5 6 IN THE UNITED STATES DISTRICT COURT 7 FOR THE DISTRICT OF
ARIZONA 8 9 Eric Lee Hasselbrock, No. CV-25-08195-PCT-JJT (MTM) 10 Plaintiff, ORDER 11
v. 12 John Scott Wilson, 13 Defendant. 14 15 At issue is the Report and Recommendation (Doc.
18, “R&R”) entered by United 16 States Magistrate Judge Michael T. Morrissey recommending
that Plaintiff’s claims 17 against Defendant be dismissed without prejudice under Rules 4(m) and
41(b) of the 18 Federal Rules of Civil Procedure.

In the R&R, Judge Morrissey warned the parties that 19 they would have “14 days from the date
of service of a copy of this report and 20 recommendation within which to file specific written
objections with the court.” (R&R at 21 5.) Judge Morrissey further warned that “failure to timely
file objections to the magistrate 22 judge’s report and recommendation may result in the
acceptance of the report and 23 recommendation by the district court without further review,”
citing United States v. 24 Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir.

2003). Judge Morrissey also warned that 25 “failure to timely file objections to any factual
determinations of the magistrate judge will 26 be considered a waiver of a party’s right to
appellate review of the findings of fact in an 27 order of judgment entered pursuant to [the R&R].”
28 1 The R&R was entered onto the docket, and is therefore deemed served, January 29, 2 2026.

The parties therefore had until February 12, 2026 to file any objections. 3 Mr. Hasselbrock never
filed an objection, either within the time period he was warned 4 about or since. He did file a
notice of appeal with the United States Court of Appeals for 5 the Ninth Circuit on February 13,
2026. But the notice of appeal had no effect because, as 6 Judge Morrissey stated in the R&R,
“this recommendation is not an order that is 7 immediately appealable to the Ninth Circuit Court
of Appeals.

Any notice of appeal 8 pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not
be filed until 9 entry of the district court’s judgment.” There has been no entry of judgment in this
matter 10 by the district court. 11 The Court is thus empowered to accept the recommendations in
the R&R without 12 further process and dismiss this matter without prejudice.

However, in light of the fact that 13 Mr. Hasselbrock is a non-law-trained self-represented litigant,
the Court entertains the 14 possibility that his errant filing of a notice of appeal with the Ninth
Circuit was actually an 15 attempt to object to the R&R, and if so construed, would only have
been one day late, 16 which the Court would find good cause for excusing.

Thus the court will deem 17 Mr. Hasselbrock’s filing as an objection timely filed and consider it
on its merits. 18 But turning to the merits, Mr. Hasselbrock fails to demonstrate that the R&R, or

any 19 of its findings, were in error. Mr. Hasselbrock attached several records of communications 20 with various process servers in an attempt to demonstrate that he had effected service of 21 the summons and complaint on Defendant Mr. Wilson.

But all of the communications from 22 the process servers confirm that service was unsuccessful in each server's attempt. 23 Mr. Hasselbrock also attaches copies demonstrating a certified mailing of the summons 24 and complaint to Mr. Wilson. But as Mr. Hasselbrock was warned by Judge Morrissey 25 previously, service by certified mail is not an approved or acceptable method of service 26 under the Federal Rules of Civil Procedure.

The Court thus overrules Plaintiff's objections. 27 The Court also will deny Plaintiff's Motion for Default and Motion for Entry of 28 Default Judgment (Docs. 16, 17). Service never having been completed on Defendant, he 1 || cannot have defaulted.

The Court also will deny Plaintiff's Application for leave to proceed 2|| in forma pauperis (Doc. 20) as moot. 3 For all of these reasons, 4 IT IS ORDERED overruling Plaintiff's Objections (Doc. 19.) 5 IT IS FURTHER ORDERED adopting the R&R entered in this matter by Judge || Morrissey (Doc. 18.) 7 IT IS FURTHER ORDERED dismissing the Complaint (Doc. 1) and this matter 8 || without prejudice.

The clerk of court shall enter judgment and close this case. 9 IT IS FURTHER ORDERED denying as moot the Motions at Docs. 16, 17 and 20. 11 Dated this 23rd day of March, 2026. CN 12 "wok: United State\$District Judge 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 _3-