

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

KENT E. HOVIND, *et al.*,

Plaintiffs,

v.

Case No. 3:20-cv-5484-TKW/MJF

UNITED STATES OF AMERICA, *et al.*,

Defendants.

ORDER

This case is before the Court based on the magistrate judge's Report and Recommendation (Doc. 12) and Plaintiffs' objections (Doc. 13). The Court has reviewed *de novo* the issues raised in the objections as required by Fed. R. Civ. P. 72(b)(3). Based on that review, the Court finds that this case should be remanded to the magistrate judge for further consideration.

The magistrate judge (Judge Frank) recommended that this case be dismissed based on Plaintiffs' failure to prosecute and failure to comply with (1) the order entered by Judge Cannon on July 23, 2020, requiring Plaintiffs to file a second amended complaint by August 6, 2020; and (2) the order to show cause entered by Judge Frank on August 24, 2020, giving Plaintiffs until September 8, 2020, to explain why they failed to comply with Judge Cannon's order. Plaintiffs argue in

their objections that (1) Judge's Cannon's order was unlawful and (2) they complied with Judge Frank's order by filing a "third amended petition" on "2020-Sept-04."

On the first point, putting aside the fact that Plaintiffs did not timely object to Judge Cannon's order within 14 days after it was entered, *see* Fed. R. Civ. P. 72(a), the Court finds no merit in their argument that the order was unlawful. The order correctly pointed out several of the many deficiencies in Plaintiffs' amended complaint, but rather than dismissing the complaint outright as frivolous (as Judge Cannon likely could have done), Plaintiffs were given an opportunity to re-plead their claims.

On the second point, the docket includes a second amended complaint (Doc. 14) that was apparently filed by Plaintiffs on September 4, 2020. This filing was not added to the docket until September 25, 2020, due to an administrative oversight in the Clerk's office, so Judge Frank did not have an opportunity to consider this filing before he issued the Report and Recommendation. Accordingly, it is

ORDERED that this case is **REMANDED** to the magistrate judge for further consideration in light of Plaintiffs' second amended complaint.

DONE and ORDERED this 25th day of September, 2020.

T. Kent Wetherell, II

T. KENT WETHERELL, II
UNITED STATES DISTRICT JUDGE