3-16-2012

Thomas Marcinek v. IRS

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 11-3666

THOMAS J. MARCINEK,
Appellant

v.

COMMISSIONER OF INTERNAL REVENUE,
Appellee

On Appeal from the United States Tax Court
(Tax Court Action No. 003775-08 L)
Tax Court Judge: Honorable Joseph H. Gale

Submitted Pursuant to Third Circuit LAR 34.1(a)

March 15, 2012

Before: SLOVITER, SMITH and GREENBERG, Circuit Judges

(Opinion filed: March 16, 2012)

OPINION

PER CURIAM

Thomas Marcinek, proceeding pro se, appeals a United States Tax Court decision granting summary judgment in favor of the Internal Revenue Service (IRS), the effect of which was to allow the IRS to proceed with a collection action against him. We will

affirm.

As the parties are familiar with the history of this case, and as the arguments raised on appeal lack merit, our discussion will be brief.[1] We have jurisdiction under 26 U.S.C. § 7482(a)(1) and conduct plenary review of the Tax Court's order granting the IRS's summary judgment motion, viewing the evidence in the light most favorable to Marcinek. Hartmann v. Comm'r, 638 F.3d 248, 249 (3d Cir. 2011) (per curiam); Nestle Purina Petcare Co. v. Comm'r, 594 F.3d 968, 970 (8th Cir. 2010). Factual findings are reviewed for clear error. Estate of Thompson v. Comm'r, 382 F.3d 367, 374 n.12 (3d Cir. 2004). While we are under an obligation to liberally construe the submissions of a pro se litigant, see Wheeler v. Comm'r, 528 F.3d 773, 781 (10th Cir. 2008), issues not briefed on appeal—even by parties proceeding pro se—are deemed waived or abandoned. Timson v. Sampson, 518 F.3d 870, 874 (11th Cir. 2008).

Marcinek argues first that the agency abused its discretion in trying to deprive him of certain rights during a two-year period, such as his right to a face-to-face hearing and his right to make an audio recording of the proceedings. The IRS rejects Marcinek's narrative of events. Even if Marcinek's story were true, however, the delay would not entitle him to any independent relief. As Marcinek concedes, the IRS (eventually) granted his requests, and Marcinek does not explain how he was prejudiced by any delay.

Second, Marcinek challenges the validity of the Notices of Deficiency that were

[1] Our previous opinion in this matter arose out of near-identical circumstances. See generally Marcinek v. Comm'r, 422 F. App'x 132 (3d Cir. 2011).

sent in response to his failure to file returns for a number of years. For example, he claims that the Notices were faulty because they were not signed. He does not argue that he failed to receive the Notices, nor does he contest the information contained in them.[2] Marcinek also attacks the procedures used in the preparation of substitutes for returns, and cites passages from various training manuals that purportedly show procedural deficiencies in his case.

These claims, to which the IRS responded in good faith, are by and large "legal arguments typical of those asserted by 'tax protestors.'" Sauers v. Comm'r, 771 F.2d 64, 66 (3d Cir. 1985). It is well established, for instance, that Notices of Deficiency serve "only to advise the person who is to pay the deficiency that the Commissioner means to assess him." Geiselman v. United States, 961 F.2d 1, 4–5 (1st Cir. 1992) (citing Olsen v. Helvering, 88 F.2d 650, 651 (2d Cir. 1937)). The Internal Revenue Code "does not expressly require a notice of deficiency to be signed," Tavano v. Comm'r, 986 F.2d 1389, 1390 (11th Cir. 1993) (per curiam); therefore, "no signature is required to render a deficiency notice valid," Selgas v. Comm'r, 475 F.3d 697, 700 (5th Cir. 2007). Marcinek complains at great length about this state of circumstances, but does not explain how a lack of signatures affected his ability to challenge the truth of the claims against him in Tax Court or elsewhere. Rather, he implies that signatures would allow him to "know to

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[2] We agree with the Tax Court's interpretation of this matter. Marcinek admitted on various occasions his contemporaneous receipt of documents that he believed to be "fraudulent."

whom a civil lawsuit for the violation of constitutional rights may be addressed" under Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971). But see Shreiber v. Mastrogiovanni, 214 F.3d 148, 152 (3d Cir. 2000) ("[A] Bivens action should not be inferred to permit suits against IRS agents accused of violating a taxpayer's constitutional rights in the course of making a tax assessment.").

We need not address Marcinek's remaining claims at length. Some of them are included on the IRS's "The Truth About Frivolous Tax Arguments," available at http://www.irs.gov/pub/irs-utl/friv_tax.pdf. Others, such as those relating to the identity and authority of a Mr. Dennis Parizek, are of dubious value in resolving the appeal, and were in any event addressed to our satisfaction by the Tax Court. Far from representing "an unshakable legal position . . . that the IRS is collecting the income tax illegally," Inf. Br. 23–24, the majority of Marcinek's claims have been rejected by all courts to have considered them. We add our voice to that chorus.[3]

[3] We have not considered the arguments raised in Marcinek's lengthy affidavit/manifesto, which he included below but attempted to incorporate into the record on appeal only by reference to an external source. His reply brief, which raises other tax-protestor claims discussed in the IRS resource referenced above the margin—for example, that the Fifth Amendment is in conflict with tax-filing requirements, or that the Sixteenth Amendment was intended to be an excise tax—does not suffice to preserve them for our review; "[a]s a general matter, the courts of appeals will not consider arguments raised on appeal for the first time in a reply brief." Hoxworth v. Blinder, Robinson & Co., 903 F.2d 186, 204 n.29 (3d Cir. 1990). In any case, the arguments adopted in those submissions reflect a reliance on a patchwork of out-of-context quotations from judicial opinions, policy statements, internal regulations, and the like, demonstrating a misunderstanding of the well-settled state of the law. In fact, raising these arguments can be cause for

We have examined the rest of Marcinek's brief and detect no arguments giving cause for disturbing the Tax Court's conclusion, and we will not reach outside of the four corners of the brief to address claims that were not raised. We will therefore affirm the judgment of the Tax Court.

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additional penalties. See 26 U.S.C. §§ 6702, 6673; Coleman v. Comm'r, 791 F.2d 68, 69 (7th Cir. 1986) ("The government may not prohibit the holding of these beliefs, but it may penalize people who act on them.").