

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

J. Michael McConnell,  
Plaintiff,

v.

Civ. No. 04-2711 (JNE/JGL)  
ORDER

United States of America,  
Defendant.

J. Michael McConnell brought this action against the United States of America (Government), seeking a federal income tax refund in the amount of \$793.28 and a declaration that he is “a full citizen who is lawfully married and, by that fact, entitled to be treated the same as every other married Minnesotan, similarly situated.” The case is before the Court on McConnell’s objections to a Report and Recommendation dated November 2, 2004. For the reasons set forth below, the Court adopts the Report and Recommendation.

**I. BACKGROUND**

The facts and procedural history are more fully recited in the Report and Recommendation and are adopted herein. Briefly, McConnell, a male, and his partner, Richard John Baker,<sup>1</sup> a male, applied for a marriage license in Hennepin County in 1971. Hennepin County denied their request, and McConnell and Baker initiated a lawsuit in Minnesota state court related to that denial. *See Baker v. Nelson*, 191 N.W.2d 185 (Minn. 1971) (appeal to United States Supreme Court dismissed for want of a substantial federal question at 409 U.S. 810 (1972)). While that case was pending, McConnell and Baker received a marriage license on

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<sup>1</sup> For convenience, the Court refers to McConnell’s partner as Baker throughout this Order. For some period of time, Baker legally changed his name to Pat Lyn McConnell and then later reclaimed the name Baker. *See* Report and Recommendation at 2, n. 1 (discussing Baker’s name change).

August 16, 1971, from the Clerk of District Court in Blue Earth County, Minnesota, and on September 3, 1971, they participated in a marriage ceremony. On October 15, 1971, the Minnesota Supreme Court issued its opinion in *Baker*, holding that Minnesota law “does not authorize marriage between persons of the same sex and that such marriages are accordingly prohibited.” *Baker*, 191 N.W.2d at 186. Five years later, McConnell commenced a suit in federal court, pursuing claims for federal benefits based on his purported marriage. *See McConnell v. Nooner*, Civ. No. 4-75-355 (D. Minn. Apr. 19, 1976), *aff’d*, 547 F.2d 54 (8th Cir. 1976) (per curiam).<sup>2</sup> Based on the Minnesota Supreme Court’s holding in *Baker*, this Court dismissed McConnell’s action. *McConnell*, Civ. No. 4-75-355, at 5.

On December 8, 2003, McConnell filed a Form 1040X with the Internal Revenue Service (IRS), seeking a refund for the tax year 2000 and to alter his marital status on his 2000 form from “unmarried individual” to “married filing jointly.” The IRS denied McConnell’s requests on the basis that the “Federal Government does not recognize same-sex marriages.” In response, McConnell initiated this action. The Government moved to dismiss the Complaint for failure to state a claim, and the matter was referred pursuant to 28 U.S.C. § 636(b)(1) (2000) and D. Minn. L.R. 72.1 to the Honorable Jonathan G. Lebedoff, Chief United States Magistrate Judge, for a Report and Recommendation. Chief Magistrate Judge Lebedoff issued a Report and Recommendation on November 2, 2004, recommending that the Government’s motion be granted on the basis of claim and issue preclusion. McConnell filed objections to the Report and Recommendation, and the Government filed a response to the objections.

## II. DISCUSSION

McConnell raises four objections with respect to the Report and Recommendation. A

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<sup>2</sup> A copy of the district court opinion is found in Docket No. 16.

district court “shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which an objection is made.” *See* 28 U.S.C. § 636(b)(1). A court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” *Id.* The Court considers each objection in turn.

**A. Characterization of *Baker v. Nelson* and *McConnell v. Noonan***

McConnell objects to the Report and Recommendation’s characterization of the holding in *Baker* on two bases. He first objects to Magistrate Judge Lebedoff’s statement that “in an en banc opinion, the Minnesota Supreme Court held that Minnesota does not recognize or permit same-sex marriages.” Report and Recommendation at 5. Because the phrase “does not recognize” does not appear in *Baker* and because the opinion was handed down after McConnell received the marriage license from Blue Earth County and participated in the marriage ceremony, McConnell argues that some of his Blue Earth County rights remained after the Minnesota Supreme Court issued its decision. In essence, he contends that the Minnesota Supreme Court’s decision addressed only his request to compel Hennepin County to issue a marriage license and that it is therefore inaccurate to say that Minnesota does not recognize same-sex marriage. The Minnesota Supreme Court was explicit in its interpretation of Minnesota’s marriage statute: “We hold, therefore, that Minn. St. c. 517 does not authorize marriage between persons of the same sex and that such marriages are accordingly prohibited.” *Baker*, 191 N.W.2d at 186. Given this statement, the Report and Recommendation’s characterization of the opinion as holding that Minnesota does not recognize or permit same-sex marriages is fair.

McConnell also claims that the Report and Recommendation mischaracterizes the United States Supreme Court's dismissal of the appeal of *Baker*. He quotes the Report and Recommendation at page seven: "The 'U.S. Supreme Court's dismissal of [the] appeal for want of substantial federal question was an adjudication on the merits binding on the lower courts, establishing a precedent that prohibition of same-sex marriage does not violation (sic) the U.S. Constitution.'" McConnell's Obj. at 3. In fact, it is McConnell who mischaracterizes the Report and Recommendation. The passage on page seven of the Report and Recommendation actually begins: "Additionally, the [Eighth Circuit] found that the U.S. Supreme Court's dismissal of McConnell and Baker's appeal for want of substantial federal question was an adjudication on the merits binding on the lower courts, establishing a precedent that prohibition of same-sex marriage does not violat[e] the U.S. Constitution." Report and Recommendation at 7 (citing *McConnell*, 547 F.2d at 56). Clearly, the quoted passage refers not to the United States Supreme Court's dismissal but rather to a description of that dismissal by the Eighth Circuit Court of Appeals. *See McConnell*, 547 F.2d at 56. As such, the quoted passage is not a separate comment in the Report and Recommendation on the United State Supreme Court's dismissal of *Baker*. The Court has reviewed the Eighth Circuit's decision in *McConnell* and concludes that the description of that opinion in the Report and Recommendation is accurate.

## **B. Claim Preclusion**

Next, McConnell objects to the Report and Recommendation's conclusion that this Court's decision in *McConnell* was an adjudication on the merits with respect to the IRS and that therefore, the doctrine of claim preclusion bars his present suit. Instead, McConnell asserts that *McConnell* involved a final adjudication only with respect to the Veteran's Administration (VA). McConnell focuses his objection on the fact that the IRS was never *served* with the second

amended complaint in *McConnell*. Therefore, he asserts that the Court's decision in *McConnell* is dicta because it was "not final" and "was not appealed."

In *McConnell*, the Court granted McConnell and Baker leave to file a second amended complaint, in which they sought "injunctive relief against the IRS permitting plaintiffs to file joint income tax returns." *McConnell*, Civ. No. 4-75-355 at 2. The Court stated that the McConnell and Baker's claims against the VA and IRS presented "identical" questions, which the Court decided: (1) "Is the marriage of the plaintiffs valid under Minnesota law as alleged in the Complaint?" and (2) "If not, does Minnesota law denying the validity of the marriage deprive the plaintiffs of any constitutional rights?" *Id.* at 2-3. The Court also noted that "plaintiffs have had their 'day in court' on the issue of their right to marry under Minnesota law and under the United States Constitution" and that the law does not permit plaintiffs to file repetitious lawsuits raising identical issues which turn on marital status. *Id.* at 4-5.

In *McConnell*, the Government did not oppose plaintiffs' motion to file the second amended complaint, and the Court addressed the claims in the second amended complaint as if it had been filed. The fact that the second amended complaint was not served does not bar the application of claim preclusion. In federal court, an action is commenced by filing a complaint with the court, Fed. R. Civ. P. 3, in contrast to Minnesota State Court, where an action is commenced by service of a complaint, Minn. R. Civ. P. 3.01. Therefore, the service of the second amended complaint on the IRS is irrelevant. The fact that plaintiffs did not appeal the Court's dismissal of the IRS claims contained in the second amended complaint is of no importance. The doctrine of claim preclusion applies to claims that "were or could have been raised in the prior action." *Lundquist v. Rice Mem'l Hosp.*, 238 F.3d 975, 977 (8th Cir. 2001). Here, the claims are barred because in *McConnell*, McConnell and Baker were allowed to file

their second amended complaint to allege claims against the IRS that were the same or similar to the claims raised in this lawsuit, the Court reached a decision on those claims, and McConnell and Baker abandoned those claims by not appealing them to the Eighth Circuit. *See Wilford Banks v. Int'l Union Electronic Workers*, -- F.3d --, 2004 WL 2754689, No. 03-3982, at \* 2-3 (8th Cir. Dec. 3, 2004). Therefore, claim preclusion bars McConnell from relitigating claims against the IRS related to facts that were in existence at the time *McConnell* was filed. *Id.* Accordingly, the Report and Recommendation's conclusion with respect to claim preclusion is accurate.

### **C. Issue Preclusion**

McConnell asserts that he “does not dispute that as to the VA the statutory issues surrounding his ‘marriage were determined by more than one valid and final judgment,” but he objects to “the conclusion that those judgments also determined all constitutional issues surrounding the IRS.” McConnell's Obj. at 7. Specifically, McConnell states that the present action “raises a different issue from all prior litigation: whether any court . . . declared the [marriage] license invalid or terminated the fully executed contract. If not, then plaintiff contends that a license lawfully-issued gives rise to a special relationship, which makes a joint filing appropriate.” *Id.* at 8.

Because the Court has determined that McConnell's claims are barred by claim preclusion, it need not address McConnell's arguments with respect to issue preclusion. *See Sondel v. Northwest Airlines, Inc.*, 56 F.3d 934, 937 n.6 (8th Cir. 1995).

### **D. Determination that the Complaint Does Not State a Cause of Action**

Finally, McConnell objects “generally” to the determination “that the Complaint does not state a legally supportable cause of action.” To survive a motion to dismiss, a plaintiff needs to

state a claim upon which relief may be granted. *See* Fed. R. Civ. P. 12(b)(6). A claim cannot survive a motion to dismiss if it is barred by claim preclusion. *See e.g., Gubernik v. McCormick & Co.*, 894 F.2d 320, 321 (8th Cir. 1990 ) (affirming district court’s dismissal of an action that was barred by the doctrine of res judicata). As stated above, McConnell’s Complaint is barred by claim preclusion. Accordingly, it does not state a claim upon which relief may be granted. Therefore, McConnell’s fourth objection is without merit.

### III. CONCLUSION

Based on a de novo review of the record, the Court adopts the November 2, 2004 Report and Recommendation [Docket No. 29]. Therefore, IT IS ORDERED THAT:

1. Government’s Motion to Dismiss For Failure to State a Claim [Docket No. 8] is GRANTED.
2. McConnell’s Complaint [Docket No. 1] is DISMISSED WITH PREJUDICE.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: January 3, 2005

S/ Joan N. Ericksen  
JOAN N. ERICKSEN  
United States District Judge