No. 07-2017

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.

JOHN S. WILLIAMSON, NANCY L. WILLIAMSON,
JOHN G. WILLIAMSON, DAVID A. WILLIAMSON,
GARRETT J. WILLIAMSON, and DEBORAH KRUHM,

Defendants-Appellants.

ORAL ARGUMENT NOT DESIRED

ON APPEAL FROM THE ORDERS AND JUDGMENT OF THE
UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW MEXICO
DISTRICT JUDGE BRUCE D. BLACK
UNPUBLISHED OPINIONS ATTACHED (HARD COPY ONLY)

BRIEF FOR THE APPELLEE

EILEEN J. O'CONNOR
Assistant Attorney General

ANDREA R. TEBBETS (202) 353-9703
GRETCHEN M. WOLFINGER (202) 616-7611
Attorneys
Tax Division, Department of Justice
Post Office Box 502
Washington, D.C. 20044

Of Counsel:
LARRY GOMEZ
United States Attorney

TABLE OF CONTENTS

Page

Statement of related cases vi
Statement of subject matter and appellate jurisdiction 1
Statement of the issues 4
Statement of the case 5
Statement of facts 6

A. The Williamsons' unpaid tax liabilities 6
B. The complaint and the answer and counterclaim 7
C. The District Court's orders and judgment 9

Summary of argument 15
Argument:

The District Court correctly reduced the Williamsons' unpaid federal tax assessments to judgment and allowed foreclosure of federal tax liens against their Ben Road and Dinah Road properties 17

Standard of review 17

A. The District Court correctly entered judgments in favor of the Government 18

B. This appeal is frivolous 23

Conclusion 26
Statement regarding oral argument 27
Certificate of compliance 28
Certificate of service 29

Page

Appendix

United States v. Dawes, 161 Fed. Appx. 742
(10th Cir. 2005) A-1

Williamson v. United States, 215 F.3d 1338 (table),
No. 99-2294, 2000 WL 676053 (10th Cir. May 24, 2000) A-8

TABLE OF AUTHORITIES

Page(s)

Federal Cases:

Anaya v. Commissioner, 983 F.2d 186 (10th Cir. 1993) 19
Edwards v. Commissioner, 84 T.C.M. (CCH) 24 (2002),
aff'd, 119 Fed. Appx. 293 (D.C. Cir. 2005) 25
G.M. Leasing Corp. v. United States, 514 F.2d 935
(10th Cir.1975), *aff'd in part and rev'd in part*,
429 U.S. 338 (1977) 19
Holdeman v. Devine, 474 F.3d 770 (10th Cir. 2007) 16
Holland v. United States, 209 F.2d 516 (10th Cir. 1954) 9
Jones v. Commissioner, 903 F.2d 1301 (10th Cir. 1990) 19
Long v. United States, , 972 F.2d 1174 (10th Cir. 1992) 19
Lonsdale v. United States, 919 F.2d 1440 (10th Cir. 1990) 24
Rohrbaugh v. Celotex Corp., 53 F.3d 1181 (10th Cir. 1995) 17
Ruidoso Racing Association v. Commissioner,
476 F.2d 502 (10th Cir. 1973) 19
Ryan v. Bilby, 764 F.2d 1325 (9th Cir. 1985) 25
Scott v. Hern, 216 F.3d 897 (10th Cir. 2000) 21
State Farm Fire & Casualty Co. v. Mhoon,
31 F.3d 979 (10th Cir. 1994) 11
Tax Analysts v. IRS, 214 F.3d 179 (D.C. Cir. 2000) 24
United States v. Chila, 871 F.2d 1015 (11th Cir. 1989) 19
United States v. Dawes, 161 Fed. Appx. 742
(10th Cir. 2005) 4
United States v. Gonzales, No. 91-1074,
1991 WL 270002 (10th Cir. Dec. 17, 1991) 9
United States v. Miller Brothers Construction Co.,
505 F.2d 1031 (10th Cir. 1974) 14, 22

Page(s)

Federal Cases (continued):

United States v. Simons, 86 Fed. Appx. 377
(10th Cir. 2004) 10
United States v. Webb, 595 F.2d 203 (4th Cir. 1979) 22
Williamson v. Commissioner, 43 T.C.M. (CCH) 141 (1981) 11
Williamson v. Commissioner, 53 T.C.M. (CCH) 287 (1987) 11
Williamson v. Sena, No. 03-570, 2006 WL 1308268
(D.N.M. Mar. 29, 2006), *appeal pending*,
10th Cir. No. 06-2103 12
Williamson v. United States, No. 99-2294,
2000 WL 676053 (10th Cir. May 24, 2000) 11, 23
Williamson v. United States, 84 F. Supp. 2d 1217
(D.N.M. 1999), *aff'd without published op.*, No. 99-2294,
2000 WL 676053 (10th Cir. May 24, 2000) 26
Worthington v. Anderson, 386 F.3d 1314 (10th Cir. 2004) 21

State Cases:

First National Bank in Albuquerque v. Abraham,
639 P.2d 575 (N.M. 1982) 21
Western Production Credit Association v. Kear,
723 P.2d 965 (N.M. 1986) 21

Page(s)

Statutes:

Internal Revenue Code (26 U.S.C.) :
§ 1 . . . . 17, 24
§ 6321 20
§ 6322 20
§ 6502 20
§ 7214 24
§ 7402 . . . . 2, 8, 23
§ 7403 . . . . 2, 8, 23
§ 7422 10
§ 7701 . . . . 16, 23
§ 7804 10

28 U.S.C.:
§ 1291 3
§ 1340 2
§ 1345 2
§ 1691 4
§ 2107 3

IRS Restructuring and Reform Act, Pub. L. No. 105-206, § 3707, 112 Stat. 778 25

Miscellaneous:

W. Elliott, *Federal Tax Collections, Liens, and Levies* (2d ed. 2003) 22
Fed. R. App. P. 4 3
Fed. R. App. P. 10 4

STATEMENT OF RELATED CASES

Counsel for the appellee respectfully state that they are aware of the following related appeal within the meaning of 10th Cir. Local R. 28.2(C)(1):

Williamson et al. v. Sena et al. (No. 06-2103).

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 07-2017

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.

JOHN S. WILLIAMSON, NANCY L. WILLIAMSON,
JOHN G. WILLIAMSON, DAVID A. WILLIAMSON,
GARRETT J. WILLIAMSON, and DEBORAH KRUHM,

Defendants-Appellants.

ON APPEAL FROM THE ORDERS AND JUDGMENT OF
THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO
DISTRICT JUDGE BRUCE D. BLACK

BRIEF FOR THE APPELLEE

STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

The Government brought this suit to reduce to judgment federal income tax assessments against appellants John S. Williamson and Nancy L. Williamson (collectively, the Williamsons) for various tax

years between 1985 and 1998 and to foreclose federal tax liens against real property located at 31 Ben Road and 24 Dinah Road in Edgewood, Bernalillo County, New Mexico (the Ben Road and Dinah Road properties, respectively). (Doc. 1.)[1] The District Court had jurisdiction under Sections 7402 and 7403 of the Internal Revenue Code (26 U.S.C.) (I.R.C.) and 28 U.S.C. §§ 1340 and 1345.

The District Court (Judge Bruce D. Black) dismissed the appellants' counterclaim and entered partial summary judgment in favor of the Government as to the unpaid assessments and foreclosure of the liens against the Ben Road property. (Docs. 67, 114.) On December 5, 2006, the court entered a judgment foreclosing the liens

---

[1] "Doc." references are to the documents constituting the original record, as numbered by the Clerk of the District Court. "Br." references are to the appellants' informal brief.

As is discussed further in the Statement of Facts, *infra*, the Williamsons' sons, appellants John G. Williamson, David A. Williamson, and Garrett J. Williamson, and John S. Williamson's sister, appellant Deborah Kruhm, were joined as defendants on the ground that they might claim an interest in the properties in issue. (Doc. 1 at 3-4, ¶¶ 9-12.) The New Mexico Department of Taxation and Revenue was joined as a defendant on the same ground (*id.* at 4, ¶ 13) but was dismissed (Doc. 139) and is not a party to this appeal.

against the Dinah Road property. (Doc. 150.) That judgment was final and appealable and disposed of all claims of all parties.

On December 11, 2006, the appellants timely filed a notice of appeal (Doc. 151) referencing the orders granting partial summary judgment for the Government as to the assessments and the Ben Road property; the December 5, 2006, judgment as to the Dinah Road property; the District Court's orders dated February 17, 2006 (Doc. 80) and May 3, 2006 (Doc. 89) imposing sanctions against the appellants; and its order dated October 12, 2006, denying their motion to dismiss the complaint and to reinstate their counterclaim (Doc. 125). *See* 28 U.S.C. § 2107(b) and Fed. R. App. P. 4(a)(1)(B). This Court has jurisdiction pursuant to 28 U.S.C. § 1291.[2]

---

[2] On April 5, 2007, the appellants filed a "First Amended Notice of Appeal," in which they also purport to challenge the District Court's January 19, 2007, order directing the sale of the Ben Road and Dinah Road properties (Doc. 153) and its post-judgment discovery order entered March 29, 2007 (Doc. 166; *see* Doc. 156). According to PACER, the amended notice had not been docketed as of the filing of this brief. For that reason, we will not address its jurisdictional effect, if any.

We note, in any event that the appellants' contention (Br. 12-13)

(continued...)

STATEMENT OF THE ISSUES

1. Whether the District Court correctly reduced to judgment the federal income tax assessments against the Williamsons.

2. Whether the District Court correctly permitted foreclosure of federal tax liens against the Ben Road property.

3. Whether the District Court correctly permitted foreclosure of the liens against the Dinah Road property after finding that transfers of

---

[2](...continued)

that the order of sale was "bogus," because it lacked the seal of the District Court and the signature of that court's clerk "as expressly required by 28 U.S.C. 1691," is squarely foreclosed by this Court's holding in *United States v. Dawes*, 161 Fed. Appx. 742, 745 (10th Cir. 2005) that 28 U.S.C. § 1691 "applies only to writs and process that issue from the district court, not orders and judgments." (Pursuant to 10th Cir. Local R. 32.1, a copy of the opinion in *Dawes* is reproduced in the Appendix, *infra*.) Further, the affidavit of John Gregory Williamson dated March 14, 2007, discussing service of the order of sale (Br., Ex. 1), should be stricken, because it is not part of the record on appeal. *See* Fed. R. App. P. 10(a). The "Notice and Demand" by Paul Andrew Mitchell dated March 15, 2007, and discussing the same affidavit (Br., Ex. 3), should also be stricken, if it has not been already, in accordance with the Court's order dated March 29, 2007, directing the Clerk to strike all documents submitted by Mr. Mitchell in this appeal other than his original notice of intervention and reply.

the property to the Williamsons' sons was fraudulent or, in the alternative, that the sons were the Williamsons' nominees.

STATEMENT OF THE CASE

This is a suit to reduce unpaid federal income tax assessments to judgment and to foreclose federal tax liens. (Doc. 1.) The District Court granted the Government's motions to dismiss the appellants' counterclaim and for partial summary judgment as to the assessments (Doc. 67; *see* Docs. 2, 6, 11, 32 37, 39, 52, 53, 55), and it imposed Rule 11 sanctions against the appellants (Docs. 80, 89; *see* Docs. 68, 70, 71, 72, 74, 75, 79, 82, 83, 85-88). The court also granted the Government's motion for partial summary judgment as to foreclosure of liens against the Ben Road property (Docs. 90, 91, 95, 96, 114), but it denied the Government's motion for partial summary judgment as to the Dinah Road property (Doc. 125; *see* Docs. 104, 105, 115, 117, 125). The court denied the appellants' motion to dismiss the complaint for fraud and reinstate their counterclaim (Docs. 98, 102, 110, 119,-122, 124, 125.)

After a bench trial (Doc. 146), the District Court entered judgment allowing foreclosure of the liens against the Dinah Road property (Doc. 150; *see* Doc. 149). This appeal followed. (Doc. 151.)

STATEMENT OF FACTS

A. The Williamsons' unpaid tax liabilities

On various dates between 1994 and 2003, a delegate of the Secretary of the Treasury made assessments of income tax, penalties, interest, and fees and collection costs against John S. Williamson for the tax years 1985, 1986, 1987, and 1993. (Doc. 1 at 5, ¶ 15, and Exs. 1-4.) Despite notice of the assessments and demand for payment, John S. Williamson failed fully to pay the assessments, which totaled $152,676.67 as of May 1, 2004. (*Id.* at 5, ¶ 16.) On various dates between 1994 and 2004, a delegate of the Secretary made such assessments against Nancy S. Williamson for the tax years 1994, 1995, 1996, 1997, and 1998. (*Id.* at 6, ¶ 18, and Exs. 5-9.) She too failed fully to pay the assessments after notice and demand, and her unpaid balance totaled $36,745.73 as of May 1, 2004. (*Id.* at 7, ¶ 19.) Notices of federal tax lien with respect to the unpaid assessments were filed

against each of the Williamsons in the real property records of Bernalillo County, New Mexico, on various dates between 1995 and 2003. (*Id.* at 10-11, ¶¶ 36-43, and Exs. 13-18.)

B. The complaint and the answer and counterclaim

In August 2004, the Government commenced this suit to reduce the unpaid assessments to judgment and to foreclose the federal tax liens against the Ben Road and Dinah Road properties. (Doc. 1 at 1-3, ¶¶ 1-5.) The Williamsons, who are husband and wife, resided at the Ben Road property at the time. (Doc. 1 at 3, ¶¶ 7, 8.)

Along with the Williamsons, their sons, John G. Williamson, David A. Williamson, and Garrett J. Williamson, and John S. Williamson's sister, Deborah Kruhm, were named as defendants on the ground that they might claim an interest in the properties. (*Id.* at 3-4, ¶¶ 9-12.) In Counts III and IV of the complaint, the Government asked the District Court to avoid fraudulent transfers of the Williamsons' interests in the Dinah Road property to their sons or, in the alternative, to declare that the sons held the Dinah Road property as the Williamsons' nominees. (*Id.* at 7-10, ¶¶ 20-34; *id.* at 12, ¶ c.) The

transfers took place in 1982, when the sons were no more than 6, 11, and 12 years old. (*Id.* at 7, ¶¶ 21-23; *see* Doc. 149 at 4, ¶ 21.)

In their answer, the appellants characterized the action as a "proceeding in admiralty," and they alleged that the District Court lacked jurisdiction under I.R.C. §§ 7402 and 7403. (Doc. 2 at 2, ¶ 2, and Att. Mem. at 1, ¶ 1.) The Williamsons denied that they were "taxpayers," that assessments were made against them in the amounts shown in the Certificates of Assessment and Payments (Forms 4340) submitted with the complaint, and that notice of assessment and demand for payment was given to them. (*Id.* at 3, ¶¶ 14-17.) By way of affirmative defenses, the appellants alleged, *inter alia*, that the Government could not "produce evidence" that "type of tax 1040," to which the notices of federal tax lien referred, was "a lawful legitimate tax." (*Id.* at 5, ¶ 24.) They asserted a counterclaim for "all of the money and property taken from them under the guise of 'type of tax 1040' from 1976 to the present," with interest, and punitive damages of $500

million. (*Id.* at 9-10.) They asked for "a jury of twelve **peers**."[3] (*Id.*; original emphasis.)

C. The District Court's orders and judgment

The District Court dismissed the counterclaim and granted the Government's motion for partial summary judgment reducing the assessments to judgment. (Doc. 67; *see* Doc. 52.) Citing *Holland v. United States*, 209 F.2d 516, 520-21 (10th Cir. 1954), and *United States v. Gonzales*, No. 91-1074, 1991 WL 270002 (10th Cir. Dec. 17, 1991), as well as cases from the Fifth, Sixth, and Eleventh Circuits, the court held that the Certificates of Assessments and Payments submitted by the Government, "signed by a government official and certifying the amounts owed by [the Williamsons]," were "admissible evidence and . . . prima facie proof of the amount of taxes owed." (Doc. 67 at 2.)

The court found that the so-called counterclaim did not request "affirmative relief" but contained "defenses" against the suit, and it noted that "most of the arguments made . . . in support of the

---

[3] The appellants' two amended answers and counterclaims (Docs. 11, 32) appear to be substantially identical to the original filing.

counterclaim are the same as those argued in opposition to [the] motion for summary judgment." (Doc. 67 at 1-2.) The court, however, rejected "[a]ll of these arguments . . . as . . . patently without merit." (*Id.* at 3.)

The court said that the appellants' jurisdictional argument was "contradicted by cases from the Tenth Circuit and other circuits, holding that a federal district court has jurisdiction over a lawsuit filed by the federal government to reduce tax assessments to judgment and to enforce federal tax liens." (*Id.*; citing *United States v. Simons*, 86 Fed. Appx. 377 (10th Cir. 2004)). The court explained (Doc. 67 at 3-4) that I.R.C. § 7804(b) did not entitle the appellants to a jury trial for several reasons: it no longer contained the language relied upon by the appellants (*see* Doc. 3 at 6 and Att. Mem. at 4); even under the old language, the right to a jury trial depended on full payment of assessed taxes and a suit for refund under § 7422; and summary judgment could be granted even if a jury trial were otherwise allowed.

The court observed that the Williamsons' "main argument [was] that, for a number of reasons, the federal income tax statutes do not apply to them and they therefore owe no . . . taxes." (Doc. 67 at 4.) All

of their contentions were "frivolous," the court said, and had been "rejected over and over again by court after court." (*Id.* at 4-5.) The court noted that the Williamsons "have been informed, several times, in several different cases, that their claim to be exempt from the federal income tax has no legal justification."[4] (*Id.* at 5.)

The District Court again rejected the argument that "there is no law creating a 'kind of tax 1040'" when it granted the Government's

---

[4] *See Williamson v. United States*, No. 99-2294, 2000 WL 676053 (10th Cir. May 24, 2000); *Williamson v. Commissioner*, 53 T.C.M. (CCH) 287 (1987); *Williamson v. Commissioner*, 43 T.C.M. (CCH) 141 (1981).

In this case, the District Court subsequently assessed Rule 11 sanctions against the appellants in the amount of $2,730.60, both for their filing of frivolous pleadings and for their "intentional and willful" failure to appear at a show-cause hearing to defend their actions in making such filings. (Doc. 80 at 2.) The court also ordered the appellants to pay travel costs for the Government's counsel in connection with a hearing on the appellants' motion to offset the sanctions by costs of their own, finding that the motion was "made for an improper purpose." (Doc. 89.)

Although the appellants specifically referenced these orders in their notice of appeal (Doc. 151), they have not mentioned the orders in their opening brief and, therefore, have waived any challenge to them on appeal. *See, e.g.*, *State Farm Fire & Casualty Co. v. Mhoon*, 31 F.3d 979, 984 n.7 (10th Cir. 1994). We are filing a separate motion for appellate sanctions concurrently with this brief.

motion for partial summary judgment allowing foreclosure of the federal tax liens against the Ben Road property. (Doc. 114.) Noting that the argument was the appellants' "only defense to the apparently legitimate tax lien," the court called it "specious." (*Id.* at 1.) The court further noted the argument had "very recently" been found to be "of doubtful validity" in another case involving the Williamsons. (*Id.* at 2; citing *Williamson v. Sena*, No. 03-570, 2006 WL 1308268 (D.N.M. Mar. 29, 2006), *appeal pending*, 10th Cir. No. 06-2103).

The court denied the appellants' two motions to dismiss the complaint and reinstate their counterclaim (Docs. 98, 119) on the ground that they were "simply reiterations" of the appellants' "kind of tax 1040" argument and their contention that they were not liable for payment of any income tax (Doc. 125 at 1-2). In the same order, the court denied the Government's motion for partial summary judgment as to foreclosure against the Dinah Road property, because it found "genuine issues of material fact as to whether the conveyance to the [Williamsons'] sons was a true transfer of ownership interest, or was

merely an effort to shield the property from creditors such as [the United States].” (Doc. 125 at 2-8.)

Following a bench trial (Doc. 146), the District Court issued findings of fact and conclusions of law in favor of the Government regarding the Dinah Road property. (Doc. 149.) The court explained that a transfer may be set aside as fraudulent “if it is made with the intent not only to deny payment but also to merely hinder or delay creditors.” (Doc. 149 at 9, ¶¶ 2, 3; *id.* at 10, ¶ 7.) The court held that there was “clear and convincing” evidence that the Williamsons’ 1982 transfers of the Dinah Road property to their then-minor sons “were made with actual intent to hinder, delay, or defraud the United States, as a creditor.” (*Id.* at 11, ¶ 11.)

The court noted that the transfers took place only two weeks before the IRS assessed the Williamsons’ income tax deficiency for 1976, pursuant to an adverse Tax Court decision that the Williamsons had not appealed, and at a time when the Williamsons had not filed returns for 1978, 1979, 1980, and 1981. (*Id.* at 4, ¶¶ 16-18; *id.* at 10-11, ¶¶ 9, 10.) The court found that the Williamsons continued to occupy the

Dinah Road property with their sons "both before and after the transfers" and paid the utility bills and property taxes "in the same fashion as before." (*Id.* at 5, ¶¶ 23, 24; *id.* at 9, ¶ 5.) The court further found that testimony "regarding the boys paying the ad valorem taxes our of their allowance was inherently incredible" (*id.* at 5, ¶ 24), and it rejected as "implausible" the Williamsons' claim that the transfers were "gifts . . . made to protect the minor Sons in the event their marriage did not survive" (*id.* at 11, ¶¶ 11, 13).

Based on the same evidence, the District Court concluded the sons held title to the Dinah Road property as nominees for the Williamsons and, therefore, that the federal tax liens filed against the Williamsons were "legally attached and impressed on this property." (*Id.* at 11-12, ¶¶ 14-16; citing *United States v. Miller Bros. Constr. Co.*, 505 F.2d 1031 (10th Cir. 1974).) The court accordingly entered a judgment allowing foreclosure of the liens against the Dinah Road property to proceed. (Doc. 150.)

SUMMARY OF ARGUMENT

1.a. The District Court correctly held on summary judgment that the Government was entitled to judgment for unpaid federal income tax assessments against the Williamsons and foreclosure of federal tax liens against their Ben Road property. As proof of the assessments, the Government submitted IRS Certificates of Assessment and Payments (Forms 4340), which this Court and others have repeatedly held to constitute *prima facie* proof of valid tax assessments. As evidence of valid liens for the unpaid assessments, the Government submitted Notices of Federal Tax Lien filed in the county where the Ben Road property is located. In opposing foreclosure, the Williamsons have never claimed that they paid the assessments, nor have they disputed that the property was theirs. Rather, they offered nothing but frivolous arguments to the effect that they were not subject to the jurisdiction of the District Court or the internal revenue laws.

1.b. The judgment of foreclosure against the Dinah Road property entered following a bench trial is equally sound. The District Court's factual findings fully support its legal conclusions that the 1982

transfers of that property to the Williamsons' then-minor sons were fraudulent or that the sons held the property as nominees. At the time of the transfers, the adverse decision of the Tax Court in the Williamsons' deficiency proceeding for 1976 was about to become final. The record does not reflect that the Williamsons received any consideration for the transfers; to the contrary, they continued to bear the expense of utilities and property taxes.

2. On appeal, the appellants do not contest the District Court's orders and judgment on any legitimate basis, but merely repeat the same frivolous arguments that earned them sanctions below. For example, the argument that the Williamsons are not "taxpayers," because they are "Citizens of New Mexico," was rejected by this Court in the Williamsons' prior appeal. The contention that no federal statute or regulation "authoriz[es] any 'kind of tax 1040'" is foreclosed by the plain language of the Internal Revenue Code.

The orders and judgment of the District Court are correct and should be affirmed.

ARGUMENT

The District Court correctly reduced the Williamsons' unpaid federal income tax assessments to judgment and allowed foreclosure of federal tax liens against their Ben Road and Dinah Road properties

Standard of review

This Court reviews a grant of summary judgment *de novo*. *Rohrbaugh v. Celotex Corp.*, 53 F.3d 1181, 1182 (10th Cir. 1995). In an appeal from a bench trial, this Court reviews the District Court's factual findings for clear error and its legal conclusions *de novo*. *Holdeman v. Devine,* 474 F.3d 770, 775 (10th Cir. 2007).

The Government raised the issues of judgments for the assessments and foreclosure of liens against the Ben Road and Dinah Road properties in its motions for partial summary judgment. (Docs. 52, 90, 91, 104, 105.) The District Court ruled on these issues in its orders granting partial summary judgment as to the assessments and foreclosure against the Ben Road property (Docs. 67, 114) and in its findings of fact and conclusions of law (Doc. 149) and its judgment (Doc. 150) allowing foreclosure against the Dinah Road property.

A. The District Court correctly entered judgments in favor of the Government

1. As should be apparent from the facts outlined above, the District Court correctly held on summary judgment that the Government was entitled to judgment for the unpaid federal income tax assessments against the Williamsons (Doc. 67) and foreclosure of federal tax liens against their Ben Road property (Doc. 114). As proof of the assessments, the Government submitted Certificates of Assessment and Payments (Forms 4340) for the Williamsons' tax years in issue along with its complaint. (Doc. 1, Exs. 1-9.) As evidence of valid liens for the unpaid assessments, the Government submitted Notices of Federal Tax Lien filed in Bernalillo County, where the Ben Road property is located. (*Id.*, Exs. 13-18.) These documents, unrebutted by the Williamsons, eliminated any genuine issue of material fact.

This Court and others have repeatedly held that the IRS's Certificates of Assessments and Payments (Forms 4340) constitute *prima facie* proof of valid tax assessments. *E.g.*, *Long v. United States*, 972 F.2d 1174, 1181 (10th Cir. 1992); *G.M. Leasing Corp. v. United States*, 514 F.2d 935, 941 (10th Cir.1975), *aff'd in part and rev'd in part*, 429 U.S. 338 (1977); *United States v. Chila*, 871 F.2d 1015, 1017-18 (11th Cir. 1989). In order to withstand summary judgment, therefore, the Williamsons were required to present evidence that the assessments were "arbitrary and erroneous." *See Jones v. Commissioner*, 903 F.2d 1301, 1303 (10th Cir. 1990); *Ruidoso Racing Ass'n v. Commissioner*, 476 F.2d 502, 507-08 (10th Cir. 1973); *accord Anaya v. Commissioner*, 983 F.2d 186, 188 (10th Cir. 1993) (noting that taxpayer bears the burden of proving an assessment incorrect). The Williamsons, however, offered nothing but frivolous arguments to the effect that they were not subject to the jurisdiction of the District Court or the internal revenue laws. (Doc. 53; *see* Doc. 67 at 3 -4.)

When the Williamsons failed to pay the assessments after notice and demand – something also established by the Forms 4340 (Doc. 1,

Exs. 1-9; *see id.* at 5, ¶ 16; *id.* at 7, ¶ 19) – liens upon their property and rights to property arose automatically under I.R.C. § 6321. A federal tax lien relates back to the date of assessment and remains valid until the tax is paid in full or becomes uncollectible due to the running of the statute of limitations. I.R.C. §§ 6321, 6322.

In opposing foreclosure against the Ben Road property, the Williamsons have never claimed that they paid the assessments, nor have they disputed that the property was theirs. (Docs. 3, 95.) The ten-year statute of limitations imposed by I.R.C. § 6502 had not expired when the Government filed this suit in August 2004 (Doc. 1), because the earliest of the assessments (against John W. Williamson) was not made until October 1994 (*id.* at 5, ¶ 15). The Williamsons' assertion that the IRS had no lien against the Ben Road property (Doc. 95 at 4) was as fruitless as the frivolous challenges to jurisdiction and liability on which they also relied (*id.* at 1-3).

2. The judgment of foreclosure against the Dinah Road property entered by the District Court following the bench trial (Doc. 150) is equally sound. Indeed, the appellants' failure to order a

transcript of the bench trial regarding the fraudulent transfer of the Dinah Road property arguably mandates affirmance of the judgment by depriving this Court of a basis for review. *See Scott v. Hern,* 216 F.3d 897, 912 (10th Cir. 2000) ("Where the record is insufficient to permit review we must affirm."); *accord Worthington v. Anderson,* 386 F.3d 1314, 1320 (10th Cir. 2004) (absent "an adequate and complete record" on an issue, Court "must accept the District Court's finding as correct").

In any event, the District Court's factual findings (Doc. 149 at 1-8) fully support the court's legal conclusions that the 1982 transfers of the Dinah Road property to the Williamsons' then-minor sons were fraudulent or that the sons held the property as the Williamsons' nominees (*id.* at 12). Under New Mexico law, the commonly accepted badges of fraud are lack of fair consideration, retention of the property by the grantor, a close relationship between the transferor and the transferee, and the threat or pendency of legal action. *Western Production Credit Ass'n v. Kear*, 723 P.2d 965 (N.M. 1986); *First National Bank in Albuquerque v. Abraham*, 639 P.2d 575 (N.M. 1982). The courts look to the same or similar factors (including, for example,

looming liabilities as well as suits) in deciding whether a third party holds legal title to property for the benefit of a taxpayer, so a federal tax lien against the taxpayer will continue to attach. *See United States v. Miller Bros. Constr. Co.*, 505 F.2d 1031 (10th Cir. 1974); *United States v. Webb*, 595 F.2d 203 (4th Cir. 1979); W. Elliott, *Federal Tax Collections, Liens, and Levies* ¶ 9.10[1] (2d ed. 2003).

Each of those elements was present here. The transferees were the Williamsons' young sons, and the family continued to occupy the Dinah Road property before and after the transfers were made. (*Id.* at 4-5, ¶¶ 19-23.) The record does not reflect that the Williamsons received any consideration for the transfers; to the contrary, they sought to characterize the transfers as "gifts" (*id.* at 11, ¶ 13), while they bore the expense of utilities and property taxes themselves (*id.* at 5, ¶ 24). Their deficiency proceeding in the Tax Court had yielded an adverse decision for 1976 that was about to become final when the transfers were made. (*Id.* at 4, ¶¶ 15-18; *id.* at 10-11, ¶¶ 9-10.) They had not yet filed returns for 1978 through 1981. (*Id.* at 4, ¶ 17.)

Again, the appellants had offered only frivolous objections to foreclosure of the liens against the Dinah Road property. (Doc. 115.) Having established their interest in the property at the bench trial, the District Court correctly entered judgment for the United States.

B. This appeal is frivolous

On appeal, the appellants do not contest the District Court's orders and judgment on any legitimate basis, but merely repeat the same frivolous arguments that earned them sanctions below.[5] Their opening contention that I.R.C. §§ 7402 and 7403 confer jurisdiction upon "the District Court of the United States ('DCUS'), NOT upon the United States District Court ('USDC')" (Br. 4) is absurd on its face.

In the same vein, the appellants argue that the Williamsons are not "taxpayers" as defined in I.R.C. § 7701(a)(14), because they are "Citizens of New Mexico State." (Br. 5.) This Court rejected that argument as "frivolous" in the Williamsons' prior appeal, *Williamson v.*

---

[5] In addition, the appellants have waived their challenge to the denial of their jury request by merely asserting, incorrectly and without argument, that the District Court "ignored" the request (Br. 3, ¶ 2(b)), and they have waived their challenge to the dismissal of their counterclaim by failing to mention it at all.

United States, 2000 WL 676053 at * 2; just as it did in *Lonsdale v. United States*, 919 F.2d 1440, 1447-48 (10th Cir. 1990). The appellants' contention that no federal statute or regulation "authoriz[es] any 'kind of tax 1040'" (Br. 6) is foreclosed by the plain language of the Internal Revenue Code. I.R.C. § 1.

The appellants further assert (Br. 7) that the Government "has not met all conditions precedent" for placing tax liens on the Williamsons' property and has not "produced any valid assessment certificates." The first contention rests on the facially frivolous premise that "IRS officers and employees are not 'officers or employees of the United States'" within the meaning of I.R.C. § 7214 (*id.*); a provision, moreover, that penalizes unlawful acts by revenue officers or agents and has nothing to do with this case. As was discussed above, the argument against the assessments is contradicted by the record (Doc. 1, Exs. 1-9) as well as by decisions of this and other Courts.

The appellants' contention that the Internal Revenue Code "has never been enacted into positive law" (Br. 9) is both erroneous and irrelevant. *See Tax Analysts v. IRS*, 214 F.3d 179, 182 n.1 (D.C. Cir.

2000) ("The I.R.C. has been enacted as a separate code and is therefore positive law."); *Ryan v. Bilby,* 764 F.2d 1325, 1327-28 (9th Cir. 1985) ("Congress's failure to enact a title into positive law has only evidentiary significance and does not render the underlying enactment invalid or unenforceable. . . . Like it or not, the Internal Revenue Code is the law . . . . ").

Finally, the appellants insist that they are not tax protestors. (Br. 10.) Their reliance in this context on the IRS Restructuring and Reform Act, Pub. L. No. 105-206, § 3707, 112 Stat. 778, is misplaced, because a prohibition against that designation in a taxpayer's IRS Individual Master File obviously does not prevent the courts from drawing their own conclusions. In this case, for example, the appellants' statement that the "IRS is NOT a *de jure* service, bureau, office or other subdivision of the United States Department of the Treasury" (Br. 8) is "tax protestor gibberish." *Edwards v. Commissioner*, 84 T.C.M. (CCH) 24, 38 (2002), *aff'd*, 119 Fed. Appx. 293 (D.C. Cir. 2005). Beyond that, their entire track record speaks for itself. *See Williamson v. United States*, 84 F. Supp. 2d 1217, 1218 (D.N.M. 1999) (noting that the

Williamsons "have been entangled with the Internal Revenue Service for approximately two decades"), *aff'd without published op.*, No. 99-2294, 2000 WL 676053 (10th Cir. May 24, 2000).

CONCLUSION

For the foregoing reasons, the orders and judgment of the District Court are correct and should be affirmed.

STATEMENT REGARDING ORAL ARGUMENT

Counsel for the appellee respectfully inform the Court that they do not believe that oral argument in this case is necessary or that it would be helpful to the Court.

Respectfully submitted,

EILEEN J. O'CONNOR
Assistant Attorney General

/s/ GRETCHEN M. WOLFINGER

ANDREA R. TEBBETS (202) 353-9703
GRETCHEN M. WOLFINGER (202) 616-7611
Gretchen.M.Wolfinger@usdoj.gov
D.C. Bar No. 384917
Attorneys
Tax Division, Department of Justice
Post Office Box 502
Washington, D.C. 20044

Of Counsel:

LARRY GOMEZ
United States Attorney

April 2007

Certificate of Compliance

Please complete one of the sections:

Section 1. Word count

As required by Fed. R. App. P. 32(a)(7)(C), I certify that this brief is proportionally spaced and contains __4,940__ words.

Complete one of the following:

__X__ I relied on my word processor to obtain the count and it is [name word processor software]: Corel Word Perfect 12.

_____ I counted five characters per word, counting all characters including citations and numerals.

Section 2. Line count

My brief was prepared in a monospaced typeface and contains ______ lines of text.

I certify that the information on this form is true and correct to the best of my knowledge and belief formed after a reasonable inquiry.

/s/ Gretchen M. Wolfinger

____
GRETCHEN M. WOLFINGER
Attorney

CERTIFICATE OF SERVICE

It is hereby certified that an original and seven copies of this brief were mailed to the Clerk by first-class mail on this 23rd day of April, 2007, and that service of this brief was made on appellants, who are appearing *pro se*, on this 23rd day of April, 2007, by sending them, via FedEx, for next-business day delivery, a CD containing a copy of the brief in PDF format and two paper copies of the brief, in an envelope properly addressed as follows:

John S. Williamson
Nancy L. Williamson
John G. Williamson
David A. Williamson
Garrett J. Williamson
Deborah Kruhm
1277 Historic Rte 66E
Tijeras, New Mexico 87059

It is further certified that this brief has been submitted in PDF format by e-mail to esubmission@ca10.uscourts.gov; that no privacy redactions were required; that the digital submission of this brief is an exact copy of the written document filed with the clerk; and that the digital submission has been scanned for viruses with the eTrust

Antivirus program (copyright 2003) and, according to the program, the document is free of viruses.

/s/ Gretchen M. Wolfinger

GRETCHEN M. WOLFINGER
Attorney

APPENDIX

TABLE OF CONTENTS

Page

United States v. Dawes, 161 Fed. Appx. 742
(10th Cir. 2005) A-1

Williamson v. United States, 215 F.3d 1338 (table),
No. 99-2294, 2000 WL 676053 (10th Cir. May 24, 2000) A-8