

MAY 04 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

KENNETH J. MCKENNA,

Defendant - Appellant.

No. 07-17108

D.C. No. CV-05-00624-BES

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Brian E. Sandoval, District Judge, Presiding

Submitted April 17, 2009**
San Francisco, California

Before: T.G. NELSON and M. SMITH, Circuit Judges, and KING, *** District
Judge.

Kenneth J. McKenna appeals the grant of summary judgment in favor of the

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously finds this case suitable for decision without oral
argument. See Fed. R. App. P. 34(a)(2).

*** The Honorable Samuel P. King, Senior United States District Judge for
the District of Hawaii, sitting by designation.

United States in its action against McKenna, reducing unpaid tax assessments to judgment. We have jurisdiction pursuant to 28 U.S.C. § 1291. We vacate in part, affirm in part, and remand for entry of judgment.

The lack of an amount on the form of judgment does not deprive us of jurisdiction. The order granting the government's motion provides the necessary finality for purposes of appeal. See, e.g., Johnson v. Meltzer, 134 F.3d 1393, 1396 (9th Cir. 1998) (“a district court's discussion in the body of the order indicating its intent to make a final judgment suffices to create a final judgment.”).

The government now admits that it was time-barred from collecting for the 1992 tax year. The government also admits that the district court's order imported a typographical error regarding the amount of trust fund recovery penalties (the amount should have been \$57,135.69 rather than \$51,135.69). The judgment is vacated in those two respects.

We affirm in all other respects. The government met its initial burden to demonstrate that McKenna owed unpaid tax assessments and penalties for the other tax years at issue. McKenna failed to meet the corresponding requirement “to set out specific facts showing a genuine issue for trial” to avoid summary judgment. See, e.g., Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986) (applying Fed. R. Civ. P. 56(e)(2)). The cursory affidavits were speculative, vague and

unspecific.

Excluding the 1992 tax year, and correcting the amount of trust fund recovery penalties, the proper judgment amount is \$353,519.51 in outstanding income tax assessments and penalties, and \$57,135.69 in trust fund recovery penalties (or a total of \$410,655.20).

Costs on appeal are awarded to the Plaintiff-Appellee.

VACATED in part, AFFIRMED in part. REMANDED for entry of judgment of \$410,655.20 in favor of Plaintiff United States of America.