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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon Joan A. Madden PART 11

Justice

Index Number : 116546/2007

MCCALL, VINCENT D.

VS.

CHILD SUPPORT ENFORCEMENT UNIT

SEQUENCE NUMBER : 001

ARTICLE 78

INDEX NO. _____

MOTION DATE 2-14-07

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

his ~~motion~~ to/for petition Article 78

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, it is ordered that this ~~motion~~ petition is decided in accordance with the annexed Memorandum Decision, Order & Judgment.

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: July 3, 2007

J.S.C.

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate ☐ DO NOT POST ☐ REFERENCE

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 11

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VINCENT McCALL,

Index No.: 07116546/07

Petitioner,

- against -

CHILD SUPPORT ENFORCEMENT UNIT,

Respondent.

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JOAN A. MADDEN, J.:

In this Article 78 proceeding, petitioner, appearing pro se, challenges respondent's denial of his request that his child support arrears be held in abeyance so that he can be issued a passport, have the liens removed on certain bank accounts, and no longer have his tax refunds taken to pay child support. Respondent, the New York City Child Support Unit ("NYC SCU"), opposes the petition, which is denied for the reasons below.

Background

On September 15, 2006, the Family Court of New York County issued a modified order requiring petitioner to pay $143.14 biweekly to the custodial parent of his son born December 10, 1997. The order directed the payments to be made through the NYC SCU, which is legislative mandated to take enforcement actions to collect on child support arrears. The Family Court previously reduced these outstanding child support arrears to money judgments in two orders rendered after two violation proceedings were held against petitioner in December 2004 and September 2006.

On August 2, 2007, petitioner entered into a payment plan with NYC SCU in which he

confessed judgment to $34,973.34 in arrears, presumably to avoid suspension of his driver's license. As of February 5, 2008, petitioner was in arrears of his child support payments in the amount of $27,312.48 (Verified Answer, Ex. F).

Previously, after various enforcement actions were taken by NYC SCU against petitioner, the matter was first referred to the New York State Department of Taxation of Finance (DTAF) on November 7, 1998. Petitioner did not challenge this referral. DTAF subsequently obtained a tax warrant judgment against petitioner pursuant to New York Tax Law (NYTL) §171-i (4), and executed two levies on petitioner's bank account.

DTAF also sent petitioner a notification in August, 2007, informing him that his name and outstanding child support arrears would be certified by NYC SCU and forwarded to DTAF and the United States Treasury Department for interception of petitioner's Federal and State tax refunds to satisfy the accumulated arrears.

Petitioner submitted a challenge to the certification of his arrears for tax interception on October 4, 2007, indicating on the pre-printed form "that a court order of support included a finding of arrears and that the court taken into account anticipated tax refunds in determining the amount of periodic payment towards those arrears, and provides that such arrears are not to be certified for the offset process..." On November 7, 2007, the NYC SCU denied this challenge on the ground that petitioner's arrearage amount was reviewed and correctly calculated.

On November 7, 2007, petitioner filed a petition in Family Court to have the arrears held in abeyance and to permit him to be issued a passport. The custodial parent opposed the petition, which was denied on December 7, 2007.

Petitioner, acting pro se, then commenced this Article 78 proceeding challenging

respondent's November 7, 2007 determination denying his application to end the offsetting of his child support arrears with his State and Federal tax refunds, as well as its enforcement actions resulting to the placement of liens on his bank accounts, and the denial of his application for a passport, which he asserts violates his constitutional right to travel.

NY SCU opposes the petition, asserting its denial of petitioner's request to end the offsetting of his child support arrears with tax refunds was rational, since petitioner owes arrears and that contrary to petitioner's statement in his administrative challenge, there is no court order stating that these arrears are not to be offset using petitioner's tax refunds. In addition, NY SCU asserts that the other enforcement actions are mandated by law, and that in any event, the petition should be dismissed based on petitioner's failure to join the custodial parent and DTAF which are necessary parties.

Discussion

It is well established that judicial review pursuant to CPLR article 78 is limited to determining whether the administrative determination is supported in law and is rationally based in the administrative record; if so, the determination should not be disturbed. Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of the Towns of Scarsdale & Mamaroneck, Westchester County, 34 NY2d 222 (1974); see CPLR 7803 [3]. Moreover, the function of the court is to determine that the administrative action is supported on any reasonable basis, not to conduct a de novo review of the facts. Clancy-Cullen Storage, Inc. v. Board of Education of the City of New York, 98 A.D.2d 635 (1st Dept. 1983).

Petitioner argues that NYC SCU acted irrationally in refusing to hold his arrears in abeyance since he has been paying the maximum amount directed by modified order of the

Family Court with respect to payments. However, as petitioner does no deny that he owes child support arrears, it cannot be said that there is no rational or legal basis for the enforcement actions challenged by petitioner.

Moreover, pursuant to New York Tax Law ("NYTL") §171-1 (4), DTAF has the authority to issue warrants for the enforcement of child support payment arrears. Once the warrant has been issued and filed, NYTL § 692(d) provides for a lien on all of the property of the delinquent parent. Petitioner does not deny that warrants have been issued. Therefore, the liens are legally permitted under the Tax Law. Further, under the mandates of the federal child welfare laws, DTAF is permitted to enforce child support arrears by means of offsetting those arrears with the delinquent parent's State and Federal tax refunds. See 42 U.S.C § 664 (3) (A); 42 U.S.C § 664 (A) (1). Furthermore, petitioner no evidence to support his claim that the court order of support provided that anticipated tax refunds were taken into account in determining the amount of periodic payment he made towards arrears, or that the arrears were not to be offset with petitioner's tax refunds.

Next, once child support arrears exceeding $2,500 are certified to the federal government for tax refund offsets, the United States Department of State is mandated to deny or revoke a passport of the defaulting obligor, with certain narrow exceptions, such as to seek life-saving medical treatment, which do not apply in the instant matter. See 42 U.S.C § 652 (k) (1), (2).

Furthermore, contrary to petitioner's argument, it has been held that federal statute mandating the denial of a passport to a parent owing child support arrears does not violate a constitutional right to travel. See Weinstein v. Albright, 2000 U.S. Dist Lexis 11604 (SDNY 2000), affd 261 F3d 127 (2d Cir 2001)(upholding the constitutionality of 42 U.S.C § 652 (k)

based on a finding that the freedom to travel internationally is not a fundamental right equivalent to the right to inter-state travel and that the denial of a passport to delinquent child support obligors was rationally related to the legitimate governmental interest in promoting the payment of child support).

Based on the foregoing, the court determines that the agency action was supported by the facts and law and was neither arbitrary nor capricious.

The petition is also subject to dismissal based on the petitioner's failure to join the custodial parent and DTAF, the agency that placed the lien on petitioner's bank account and offset the arrears with his tax refunds, as necessary parties. See CPLR 1001 (a) (stating that all parties who might be inequitably affected by a judgment must be joined as necessary parties to an action); Llana v. Town of Pittston, 245 A.D.2d 968 (3d Dept 1997).

Accordingly, the petition must be denied and dismissed, and the court need not reach the remaining arguments raised by NYC SCU in opposition to the petition.

Conclusion

In view of the above, it is

ORDERED and ADJUDGED that the petition is denied and dismissed.

Dated: July 3 2008

J.S.C.