

Hosni v Hansell

2011 NY Slip Op 30989(U)

April 12, 2011

Supreme Court, New York County

Docket Number: 400618/11

Judge: Manuel J. Mendez

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

PRESENT: MANUEL J. MENDEZ *Justice* PART 13

NABIL HOSNI INDEX NO. 400618 /11

MOTION DATE 04-06-2011

- v -

MOTION SEQ. NO. 001

DAVID A. HANSELL IN HIS CAPACITY AS COMMISSIONER OF NYS OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE AND ROBERT DOAR, IN HIS CAPACITY AS COMMISSIONER OF NYC HUMAN RESOURCES ADMINISTRATION

MOTION CAL. NO. _____

The following papers, numbered 1 to 4 were read on this motion to determine a charging lien.

	<u>PAPERS NUMBERED</u>
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	<u>1-2</u>
Answering Affidavits — Exhibits _____	<u>3-4</u>
Replying Affidavits _____	

Cross-Motion: X Yes No

Upon the foregoing papers, It is ordered that this Motion and Cross-motion is decided in accordance with the memorandum decision filed herewith.

Accordingly, it is ORDERED and ADJUDGED that the petition is denied and the proceeding is dismissed.

This constitutes the decision and judgment of this court.

MANUEL J. MENDEZ
J.S.C.

Dated: April 12, 2011

Manuel J. Mendez
J.S.C.

Check one: X FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 13

-----X

In the Matter of the Application of NABIL HOSNI,
Petitioner,

-against-

Index No.: 400618/11

DAVID A. HANSELL, In his Capacity As Commissioner
of NYS Office of Temporary And Disability
Assistance; ROBERT DOAR, In His Capacity As
Commissioner of NYC Human Resources
Administration,

Respondents .

-----X

MANUEL J. MENDEZ, J.S.C.

Petitioner brings this petition under CPLR Article 78 for declaratory and injunctive relief. Petitioner seeks (A) a declaration that Respondent's failure to provide notice of the seizures violates the Due process Clause under the 14th Amendment to the U.S. Constitution, and the Due Process Clause under Article 1 Section 6 of the New York State Constitution; (B) a Declaration that Respondent's practice of seizing Petitioner's Social Security Check without regards to finding that he lives below the self-support reserve violates 18 N.Y.C.R.R. 347.9(e)(2) and New York Family Court Act 413(1)(a) and (d); [C]an Injunction requiring Respondents to implement procedures to ensure that petitioner receives notice of his rights to seek release of his benefits when he lives below the self-support reserve, and (D) an Injunction allowing Respondents to issue a Restraining notice against petitioner's Social Security Benefits only after Respondents have first obtained new evidence suggesting that petitioner no longer lives below the self-support reserve.

Petitioner is in arrears in his child support obligations in the amount of \$45,621.97, and was to repay the same at the rate of \$10.00 per week. On January 17, 2011 he was notified that \$819.70 would be withheld every month from his Social Security benefits to pay his child support obligations. Petitioner inquired with the Support Collection Unit about a hardship due to his insufficient income. He claims

that he was verbally informed that the hardship would be granted but instead his Social Security wages were garnished [see Petition Exhibits B, C, D & E].

On March 7, 2011 notice was mailed to petitioner that his request to reduce the amount on the "Income Withholding for Support" was denied due to "insufficient documentation provided to determine the validity of the request." Upon receipt of the denial petitioner brings this Article 78 proceeding.

Respondent Hansell makes a Cross-motion to dismiss the petition alleging that it fails to state a cause of action against the State Respondent and this court does not have any personal jurisdiction over the Respondent, as it was not served with the papers in this matter. Petitioner served the moving papers on the Attorney General but not on the Office of Temporary and Disability Assistance.

Petitioner has failed to obtain personal jurisdiction over the State Respondent. Service of Process upon the prospective counsel for a party to an action does not confer jurisdiction upon the court (Cohen v. State Tax Commission, 51 A.D. 2d 79, 378 N.Y.S. 2d 507 [3rd. Dept. 1976]; Quogue Associates v. New York State Dept. Of Environmental Conservation, 112 A.D. 2d 999, 492 N.Y.S. 2d 808 [2nd. Dept. 1985]). Petitioner has failed to acquire personal jurisdiction over the State Respondent requiring dismissal of the proceeding as against this party (Kelly v. Scully, 152 A.D. 2d 698 [2nd. Dept. 1989]). Furthermore, the State Respondent is not a proper party as it is the local Support Collection Unit, not the state, which is in charge of enforcing the child support order (Forbes v. Nixon, 36 A.D. 3d 702 [2nd. Dept. 2007]). Accordingly for the above stated reasons the cross motion is granted and as to this Respondent the petition is denied.

The Petition against Respondent Doar is likewise denied. Petitioner received notice from the Support Collection Unit that his Social Security Benefits would be reduced in the amount of \$819.70. Petitioner filed a request to reduce the withholding amount. On February 16, 2011 petitioner was informed that his request was delayed due to his failure to submit documentary proof in the form of his 2009 filed State and Federal tax returns; W-2 statements, copy of current pay stubs and proof of any benefits received. Petitioner failed to submit the requested documentation or give an explanation as to why the documentation is not available. On March 7, 2011 his request was denied due to insufficient documentation to determine the validity of the request. [see Support Collection Unit Determination,

Child Support Account Resolution Notice and Computer print-out].

In accordance with 18 NYCRR §347.9 (a)(2)(k)(ii) Respondent is authorized to deduct up to 65 percent of the debtor's disposable earnings when the debtor is not currently supporting a spouse or dependent child and if the deduction is being applied to the reduction of arrears which have accrued more than 12 weeks prior to the beginning of the week for which such earnings are payable. The amount being deducted from Petitioner's Social Security benefits is in accordance with this regulation.

In accordance with 18 N.Y.C.R.R. § 347.9(e)(2) "where the debtor provides documentary proof to the SCU that the imposition of the additional amount would reduce the debtor's remaining income below the self-support reserve, the SCU must eliminate or reduce the amount of the additional deduction as appropriate to ensure that the debtor's remaining income does not fall below the self-support reserve."

Petitioner did not provide documentary proof to the SCU that the imposition of the additional amount would reduce his remaining income below the self-support reserve.

Petitioner was given notice in accordance with the statute (see CPLR § 5241), he filed a request to reduce the withholding amount which was originally delayed to allow petitioner to submit additional documentation. Upon his failure to submit the requested documentation his request was properly denied. An administrative determination **may not be set aside if it has a rational basis and is not arbitrary and capricious (Matter of Mid-state Management Corp., v. New York City Conciliation and Appeals Board, 112A.D. 2d 72 [1st. Dept. 1985]; Matter of Sullivan County Harness Racing Association, Inc., v. Robert A. Glasser, 30 N.Y. 2d 269).**


Given the failure of Petitioner to provide the local SCU with the requested information its determination to deny his request to reduce the withholding amount was proper.

Accordingly it is ORDERED and ADJUDGED that the petition is denied the cross-motion is granted and the proceeding is dismissed

This constitutes the decision and Judgment of this court.

ENTER:

DATED: April 12, 2011

MANUEL J. MENDEZ
J.S.C.


Manuel J. Mendez
J.S.C.

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).