

Matter of Manchanda v Weir-Reeves

2013 NY Slip Op 33169(U)

November 20, 2013

Supreme Court, New York County

Docket Number: 157929/13

Judge: Joan A. Madden

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: Hon. Joan A. Miller
Justice

PART 11

Rahul Manchanda

INDEX NO. 157929/13

MOTION DATE _____

MOTION SEQ. NO. 02

MOTION CAL. NO. _____

- v -

Magistrate Cheryl Weir-Reeves

The following papers, numbered 1 to _____ were read on this motion to/for Art. 75 relief
+ case motion to
dismiss.

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 is decided in accordance
with the attached Memorandum Decision + Order.

FILED

DEC 16 2013

NEW YORK
COUNTY CLERK'S OFFICE

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

Dated: November 26, 2013

[Signature]
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

-----X

In the matter of RAHUL MANCHANDA,
Petitioner

Index No: 157929/13

-against-

MAGISTRATE CHERYL WEIR-REEVES,
SHAREIS MANON, NEW YORK CITY
CHILD SUPPORT ENFORCEMENT UNIT,
MERRICK BRODKY, LLOYD ROSEN,
JACQUELINE HAROUNIAN,

Respondents.

-----X

Joan A. Madden, J.

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Petitioner, who is appearing *pro se*, moves for an order pursuant to Article 78, directing “(a) the enforcement of bona fide contact child support downward modification settlement agreement ... of March 2012, (b) a declaration of a complete and total stay and permanent final injunction against [respondent New York City Child Support Enforcement Unit] from enforcing the illegal and superceded Child Support Order from March 2010, ...with actual and punitive damages to be determined at trial.” Respondent Magistrate Cheryl Weir-Reeves (“Magistrate Weir-Reeves”) and respondent Office of Child Support Enforcement s/h/a New York City Child Support Enforcement Unit (“OCSE”), separately cross move to dismiss the petition and complaint.¹ For the reasons below, the relief sought in the order to show cause is denied,² and

¹It appears that petitioner commenced a special proceeding and plenary action under the same index number. The cross motions are addressed to both the special proceeding and the complaint.

²The court denied petitioner’s application for a stay on the record at oral argument held on October 17, 2013.

the cross motions to dismiss³ are granted.

This matter arises out of a divorce proceeding before this court under Index No. 350018/08 and subsequent petitions filed in the New York Family Court currently pending under docket number F-32483-09. In connection with the divorce proceeding in this court, Judge Saralee Evans signed a Judgment of Divorce on July 7, 2008, awarding child support in the amount of \$743.42 per week based on a stipulation of the parties executed on April 22, 2008. A revised modification agreement was entered into between petitioner and his former wife dated March 23, 2012 (hereafter the "March 2012 Modification Agreement"), which states that:

Beginning Friday, March 23, 2012, the [petitioner] shall pay directed to [his former wife] ...as and for child care reimbursement for the Children, the sum of \$300.00 weekly, which amount constitutes an agreed upon reduction from \$400.00 weekly set forth in the Modification Agreement.⁴ This weekly amount shall continue for 3 consecutive months, at which time the parties agree to revisit the issue of the amount of child support reimbursement and either continue the \$300.00 weekly amount, restore the old amount of \$400.00 weekly, or establish a new weekly amount...

For the reasons below, the petition must be denied, and the petition and complaint dismissed as against OSCE and Magistrate Weir-Reeves. As for the allegations against OSCE, the court notes that OSCE is a statutorily created agency authorized under the Social Services Law (SSL) §§ 111-b, 111-g and 111-h to collect, account for, and disburse amounts due under child support orders and to administratively enforce such orders. The documentary evidence demonstrates that OSCE acted lawfully in its enforcement of the underlying support order of

³Respondent Merrick Brodsky cross moved to dismiss, which cross motion was returnable on October 31, 2013. Respondent Sharie Manon appeared at oral argument and contested jurisdiction on the grounds that she had not been served.

⁴The prior modification agreement dated March 16, 2010 is not annexed to the papers.

\$743.42, payable weekly. Moreover, while petitioner alleges that OSCE should have abided by the March 2012 Modification Agreement, such an agreement is not a court order enforceable by OSCE. See Catera v. Suffolk County Support Collection Unit, 155 AD2d 663,663 (2d Dept 1989)(holding that since, under Social Services Law § 111-h(1), the support collection unit is entitled to collect amounts due “pursuant to any order of child support” and, as the judgment of divorce neither incorporates by reference nor contains the financial provisions of the separation agreement entered into by the former spouses, respondent Support Collection Unit was not required to take those provisions into consideration when calculating arrears).

As for the claims against Magistrate Weir-Reeves, it appears that petitioner is seeking a writ of mandamus to enforce the March 2012 Modification Agreement. “Mandamus lies to compel the performance of a purely ministerial act where there is a clear legal right to the relief sought” Legal Aid Society of Sullivan County v. Scheinman, 53 NY2d 12, 16 (1981). Moreover, “[w]hile a mandamus is an appropriate remedy to enforce the performance of a ministerial duty, it is well settled that it will not be awarded to compel an act in respect to which the officer may exercise judgment or discretion” Klostermann v. Cuomo, 61 NY2d 525, 539 (1984) (quoting Gimprich v. Board of Educ., 306 NY 401, 406 (1954)). Here, the issue of whether the March 2012 Modification Agreement was in the best interest of the children is a matter of judicial discretion that is not subject to mandamus. See Young v. Cocomo, 291 AD2d 767 (3d Dept 2002).

Next, insofar as petitioner seeks money damages, Magistrate Weir-Reeves is entitled to absolute immunity. See Murph v. New York, 98 Misc2d 324, 326 (Ct. Claims 1979), reargument denied, 105 Misc2d 684 (Ct Cl 1980)(judicial acts are shielded from suit by judicial

immunity and cannot give rise to state liability); Tarter v. State, 68 NY2d 511, 517-518 (1986).

Accordingly, the petition and complaint must be dismissed as to Magistrate Weir-Reeves.

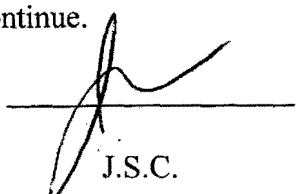
In view of the above, it is

ORDERED the relief sought in the order to show cause is denied; and it is further

ORDERED that the cross motions by respondents Magistrate Cheryl Weir-Reeves and respondent Office of Child Support Enforcement s/h/a New York City Child Support Enforcement Unit are granted, and the claims in the petition and complaint filed against these respondents (both under Index No. 157929/13) are dismissed and the claims against the remaining respondents are severed; and it is further

ORDERED that the remainder of the action shall continue.

DATED: November 20, 2013



J.S.C.

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