

Matter of Manchanda v Weir-Reeves

2014 NY Slip Op 30800(U)

March 25, 2014

Sup Ct, 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: Madden
Justice

PART 11

Manchanda, Rabel

INDEX NO. 157929/13

- v -

MOTION DATE _____

Magistrate Weir-Reeves

MOTION SEQ. NO. 05

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for other

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

PAPERS NUMBERED

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 annexed Memorandum Decision & Order.

FILED

APR 01 2014

**NEW YORK
COUNTY CLERKS OFFICE**

Dated: March 25, 2014

[Signature]
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

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,
SHARIE MANON, NEW YORK CITY
CHILD SUPPORT ENFORCEMENT UNIT,
MERRICK BRODKY, LLOYD ROSEN,
JACQUELINE HAROUNIAN,

Respondents.

-----X
Joan A. Madden, J.

FILED

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NEW YORK
CITY CLERK'S OFFICE

Respondent Sharie Kruzic s/h/a Sharie Manon (Kruzic),¹ who is appearing *pro se*, moves to dismiss this proceeding against her. Petitioner, who is appearing *pro se*, opposes the motion.²

Petitioner and Kruzic were formerly married. This matter arises out of their 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 Kruzic dated March 23, 2012 (hereafter the "March 2012 Modification

¹Although named in this proceeding as Sharie Mannon, Kruzic asserts that her legal name is Sharie Kruzic.

²While petitioner's opposition papers were submitted *pro se*, he had a lawyer appear for him at oral argument. At oral argument, counsel for petitioner stated that petitioner was not served. However, Kruzic has submitted an affidavit of service showing that petitioner was served personally and by certified and overnight mail in accordance with the court's direction when it issued the order to show cause, and petitioner has not provided any proof to the contrary.

Agreement”), which states that:

Beginning Friday, March 23, 2012, the [petitioner] shall pay directly to [Kruzic] ...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.³ 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....

In this proceeding/action, petitioner seeks “(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.⁴” By decision and order dated November 26, 2013, the court denied the relief sought by petitioner and granted the separate cross motions to dismiss made by 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”).

In granting OSCE’s cross motion, the court noted 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 court found that the documentary evidence demonstrated that OSCE acted

³The prior modification agreement dated March 16, 2010 is not annexed to the papers.

⁴It 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.

lawfully in its enforcement of the underlying support order of \$743.42, payable weekly. In this connection. The court wrote that:

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, the court found that 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, and that Magistrate Weir-Reeves was entitled to absolute immunity to the extent petitioner seeks money damages.

Kruzic moves to dismiss, arguing that the issue raised by petitioner concerns non-payment of child support, and that the matter is currently pending in Family Court before Magistrate Weir-Reeves. She also argues that she is entitled to collect support pursuant to a current child support order, and that she has an order of protection in the Family Court.

In opposition, petitioner argues that he has been paying child support pursuant to the March 2012 Modification Agreement, that this action is to enforce the contract between petitioner and Kruzic, which the Family Court has refused to so-order “for reasons being investigated by different federal, state and local agencies,” and that this court and the Family Court have concurrent jurisdiction over this matter. Petitioner also seeks an order staying OSCE’s enforcement of the child support order, sanctioning Kruzic and awarding petitioner costs

and fees, and requests that the court so-order the March 2012 Modification Agreement.

While the Supreme Court and the Family Court have concurrent jurisdiction over matters concerning child support (Kagen v. Kagen, 21 NY2d 532 (1968)), exercise of such jurisdiction by this court under the circumstances here would be inappropriate as there is a prior action pending in the Family Court between petitioner and Kruzic concerning the same issues. See CPLR 3211(a)(4). The issues in this action, including whether the March 2012 Modification Agreement should be enforced, are before the Family Court in connection with its determination as to the proper amount of child support. As the court noted in its interim decision dated October 8, 2013, “to the extent petitioner claims that the Family Court failed to take into consideration [the March 2012 Modification Agreement] in issuing its order [regarding child support], it appears the relief sought is inextricably intertwined with the Family Court order.”

Moreover, those aspects of the proceeding/action relating to child support over which the Family Court would not have jurisdiction, that is the claims as against Magistrate Weir-Reeves and OCSE, have been dismissed. In any event, the claims against Kruzic relating to child support should be heard by the Family Court.

As for petitioners’ request for interim stay of enforcement of OSCE order, such request is denied as the claims against OSCE have been dismissed. The court also denies petitioner’s request to require the Family Court to so-order the March 2012 Modification Agreement as the issue is before the Family Court. Petitioner’s request for sanctions and attorneys’ fees is also denied.

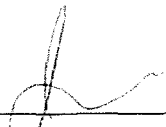
In view of the above, it is

ORDERED that the motion by respondent Sharie Kruzic s/h/a Sharie Manon to dismiss the claims against her is granted, and the claims against the remaining respondents are

severed; and it is further

ORDERED that the remainder of the action shall continue.

DATED: March 25 2014



J.S.C. *Index # 157929/13*

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