

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID HAMPTON TEDDER,

Defendant.

OPINION AND ORDER

02-CR-0105-C-01

Pursuant to the Federal Debt Collection Procedures Act, 28 U.S.C. §§ 3001-3308, the government served notices of writs of execution on property it believes is owned by defendant David Hampton Tedder and his wife, Rebecca Tedder. The government sought the writs to enforce criminal penalties imposed on defendant following a jury verdict of guilty and judgment on four counts of conspiracy to violate the wire wagering act, conspiracy to launder money and money laundering in this court. Relying on the provisions of § 3004(b)(2) of the act, defendant and his wife have moved to transfer any actions and proceedings relating to the writs of execution to the district court for the federal district in which they reside. (Under § 3004(b)(2), persons sued under the Federal Debt Collection Act may request a transfer of the proceedings within 20 days after

receiving notice that the government intends to take their property.) The government opposes the motions for transfer of the proceedings.

I conclude that the motions must be denied. Rebecca Tedder has no right to a hearing in any court pursuant to 28 U.S.C. § 3202(d), let alone a right to a transfer of proceedings pursuant to 28 U.S.C. § 3004(2). The statutory rights to a hearing and to a transfer are limited to debtors and she is not a debtor with respect to the claims against her husband.

Viewed in isolation, § 3004(2) appears to grant defendant David Tedder a right to a transfer, a closer look at the entire act shows that this right can be overridden if granting it would be inconsistent with other federal laws. See § 3001(b) (“To the extent that another Federal law specifies procedures for recovering on a claim or a judgment for a debt arising under such law, those procedures shall apply to such claim or judgment to the extent those procedures are inconsistent with this chapter.”). Section § 3003(b) directs courts not to construe the act “to curtail or limit the right of the United States under any other Federal law . . . to collect any fine, penalty, assessment, restitution, or forfeiture arising in a criminal case.” I conclude that granting defendant a transfer would be inconsistent with the procedures set out in 18 U.S.C. §§ 3611-15 and would pose a real risk of curtailing or limiting the government’s right to collect the fine and forfeiture

imposed on defendant as a consequence of his conviction.

From the record, I make the following findings of fact for the sole purpose of deciding the pending motions.

FACTS

Defendant was charged in a six-count indictment with conspiracy to defraud the United States, money laundering and engaging in monetary transactions in criminally derived property. The indictment included an additional count of forfeiture. The jury found defendant guilty on four of the substantive counts and found that he should forfeit \$7,288,090.49. After a hearing before the court, the forfeiture amount was reduced to \$2,765,052, of which \$1,050,990 represented a personal money judgment against defendant, for which the government could pursue defendant's substitute assets. At sentencing on August 22, 2003, defendant was ordered to pay a fine of \$1,060,140.32, due and payable immediately, and a criminal forfeiture of \$2,765,052.00. To date, defendant has paid \$25.00 toward his debt.

On August 29, 2003, defendant filed a notice of appeal from his conviction and sentence. On January 7, 2004, he filed a motion for stay of financial penalties pending appeal. The Court of Appeals for the Seventh Circuit denied this request on February 4,

2004.

The government posted notices of execution on property allegedly owned by defendant in Claremont, California, on or about January 12, 2004, on property in Winter Park, Florida, on or about January 20, 2004, and on property in Newport Beach, California, on February 3, 2004. The notices advised defendant that he could request a hearing within 20 days after receiving the notices and that he could request that the hearing be held in the district in which he resides, if it is not the district in which the court issuing the notices is located. Defendant filed his motions for transfer with respect to the Claremont, California property on January 22, 2004, with respect to the Florida property on February 9, 2004, and with respect to the Newport Beach, California property on February 20, 2004.

OPINION

In pursuing recovery of the money owed by defendant, the government has utilized the procedures of the Federal Debt Collection Procedure Act, 28 U.S.C. §§ 3001-3308. The government proceeded under § 3202 to seek notices from the clerk of court for posting on defendant's Florida and California properties. As required by § 3202, the

notices advised defendant of his right to seek a hearing and a transfer of proceedings to the district in which he resides. Defendant took advantage of that notification to make the requests that are before the court. According to 28 U.S.C. § 3004(b)(2), upon the court's receipt of such a request, "the action or proceeding in which the writ, order, or judgment was issued *shall* be transferred to the district court for the district in which the debtor resides." (Emphasis added.)

Although § 3004(b) speaks in mandatory terms, it must be read in the context of the entire act. As § 3001(b) makes clear, the procedures of other federal laws take precedence over the provisions of the debt collection act if they are inconsistent with the act, to the extent that the other laws specify procedures for recovering on a claim or a judgment for a debt arising under such laws. United States v. Vitek, 151 F.3d 580, 585 (7th Cir. 1998) (explaining that Federal Debt Collection Procedures Act, 28 U.S.C. §§ 3001-3308, "indeed has exclusivity language, 28 U.S.C. § 3001(a)," but "the next subparagraph declares if 'another federal law supplies procedures for recovering on a claim or a judgment for a debt arising under such law, those procedures shall apply'" and noting that § 3003(b)(2) of act adds that "[t]his chapter shall not be construed to curtail or limit the right of the United States ... to collect any fine, penalty, assessment, restitution, or forfeiture arising in a criminal case").

Sections 3611-15 of Title 18 set out procedures for the collection of unpaid fines and restitution imposed as part of a criminal judgment. Sections 3613A, 3614 and 3615 provide sentencing courts with an armada of options they may utilize upon a finding that a defendant is in default on a payment of a fine or restitution. These include revocation of probation or a term of supervised, resentencing, holding the defendant in contempt and ordering the sale of the defendant's property.

In giving sentencing courts continuing jurisdiction over defendants they have sentenced, Congress anticipated that the courts would supervise compliance with the judgments to which defendants are subject and take action at the government's request if a defendant is in default. Allowing transfer of any part of the enforcement proceedings would be inconsistent with the government's and the court's obligation to insure that the defendant complies with his court-ordered obligations. The sentencing court would be hampered in its evaluation of a defendant's alleged default if a court in another district had held the proceedings relating to that default. It would lack the first hand information about defendant's financial situation, his efforts or lack of efforts in complying and the value of the assets at stake that it needs to make an informed decision. At the same time, the judge in the other district who is required to hear the collection action would lack the detailed knowledge the sentencing judge has of the defendant's underlying criminal

activities and his efforts to evade discovery of his assets.

Moreover, there is no telling how long it might take a court in another district to set the matter for hearing. In the meantime, the defendant could continue to flout the obligations of his sentence and the government would be handicapped in its efforts to enforce the fine and forfeiture. Allowing a defendant to transfer hearings and draw out the time in which he must comply with his sentencing obligations is inconsistent with the congressional scheme to equip sentencing courts with a variety of measures for enforcing prompt payment of criminal penalties.

Arguing for a different interpretation of the applicability of § 3004(a)(2), defendant relies on United States v. Nash, 175 F.3d 440 (6th Cir. 1999), in which the court held that transfer is mandatory upon request. The government had requested a writ of garnishment against the defendant, whose sentence included provisions for restitution and a fine. The writ was filed in the Eastern District of Michigan, where the defendant had been convicted; the defendant asked that it be transferred to the Western District of Oklahoma. The district court denied the request, held a hearing at which the defendant was present and concluded that the defendant had no ground on which to contest the garnishment. The court of appeals held that it was error for the district court to have denied the request for a transfer of the hearing but that the error was harmless because the

defendant had no valid ground for objecting to the garnishment and the United States Marshals had transported him to the hearing from the institution in which he was serving his federal sentence.

With respect, I do not find Nash persuasive, since it does not appear that the court had occasion to consider the significance of § 3003(b). So far as the opinion discloses, the government never raised the possibility that transfer might conflict with any ongoing enforcement efforts in the Eastern District of Michigan or with the sentencing court's ability to enforce its judgment against the defendant.

Defendant points out correctly that the cases the government cites in support of its position are distinguishable from his situation. United States v. Lampien, 89 F.3d 1316 (7th Cir. 1996), concerns the construction of the Victim and Witness Protection Act of 1982, 18 U.S.C. §§ 3663-3664, and not the Federal Debt Collections Procedures Act. However, the case does stand for the principle that the sentencing court retains the authority to enforce compliance with its sentencing orders, including monetary penalties, and that among the enforcement mechanisms available to the court are civil contempt and resentencing. Id. at 1320. United States v. Lippitt, 180 F.3d 873 (7th Cir. 1999), is an example of such enforcement authority. In Lippitt, the defendant was resentenced pursuant to 18 U.S.C. § 3614, after the defendant had remained in custody two years for

civil contempt without purging his contempt, which consisted of refusal to make payments on the fine assessed against him at the time of sentencing. Although neither of these cases is directly on point, they do not undermine my understanding of the interplay between the federal criminal laws and the provisions of the Federal Debt Collection Act.

I conclude that there is an inconsistency between the provisions of the Federal Debt Collection Procedures Act that allow a debtor to transfer a hearing on a writ of execution to another district and the provisions of the federal criminal law that make sentencing courts responsible for insuring that criminal judgments are enforced. When inconsistencies exist, the act's procedures must give way. 28 U.S.C. § 3001(b). Moreover, the act must not be construed to curtail or limit the United States' right to collect criminal penalties. Therefore, defendant's motions to transfer will be denied. This conclusion protects the litigants, the witnesses, the judiciary and the public from the inconvenience and unnecessary expense of holding separate proceedings in two different courts. In this instance, defendant will suffer no significant inconvenience; he will be transported to any hearings in this court at government expense. His lawyer works in Madison; it will be much simpler and less expensive for him to appear in this district than in the Central District of California.

Any hearings that are held will be held in this district. There will be none unless

defendant can show that he has at least a colorable claim that a federal exemption applies to the property at issue or that the government failed to comply with any statutory requirement for the issuance of the writ. See 28 U.S.C. § 3202(d) (“The issues at such hearing shall be limited — (1) to the probable validity of any claim of exemption by the judgment debtor; (2) to compliance with any statutory requirement for the issuance of the postjudgment remedy granted; . . .”). The government asks the court to deny defendant’s request for a hearing on the ground that he has made no showing that he has any issues to contest and the time has passed for filing a request. I decline to do so. Nothing in the statutes seems to require that a debtor make such a showing at the time he files the initial request. I will give defendant Tedder an opportunity to amend his original request to include the necessary showing.

As to the motions filed by Rebecca Tedder, she has failed to show that she has any right to request a hearing or to request that the hearing be held in another district. 28 U.S.C. §§ 3004 and 3202(d) limit that right to debtors; Rebecca Tedder has not shown that she is a debtor with respect to the fine and forfeiture obligations of her husband.

Rebecca Tedder argues that even if the statutes do not authorize her to request a transfer as an interested party, the notice she received told her that she could make such a request and this notice should bind the government, which posted the notice. Hers is

not a very compelling argument. Obviously, the notice was intended for her husband, who is the debtor and entitled to request a transfer under certain circumstances. She cites a case in support of her assertion that the government is bound by its statements, but it is inapposite. In King v. United States, 152 F.3d 1200 (9th Cir. 1998), the court held that the IRS had waived its right to insist on exhaustion of administrative remedies because it had reached the merits of the claimants' claim for a refund, disallowed it on the merits and told the claimants that they were entitled to contest the issue further by suing in federal district. Id. at 1201. Rebecca Tedder is not contesting the exhaustion of her administrative remedies; she is making an entirely different argument that she should be treated as a "debtor" under the law because she read a notice that applied to debtors that was posted on property in which she may have an interest.

Rebecca Tedder maintains that she is entitled to a hearing, even if her request for transfer is denied. Only a debtor is entitled to a hearing. 28 U.S.C. § 3202(d). Interested persons may move for an order denying, limiting, conditioning, regulating, extending or modifying the use of any enforcement procedure under 28 U.S.C. § 3013. To date, she has not filed such a motion. If she wants to challenge the forfeiture of the subject properties, she must bear the burden of showing that she has an ownership interest in one or both of them.

ORDER

IT IS ORDERED that defendant David Hampton Tedder's requests for a transfer of the proceedings in which the writs of execution were issued relating to property at 2227 La Paz, Claremont, California, at 660 Osceola Avenue, Winter Park, Florida, described as Unit 2, Bldg. 1, Perle du Lac Condo OR 5843/4848, Parcel ID Number 08-22-30-6845-01-020, and 2406 Sierra Vista, Newport Beach, California, described as Lot 11, City of Newport Beach, Tract Number 1801, Recorder's Map Reference MP53 PG7, Parcel No. 426-101-22, to the United States District Court for the Central District of California are DENIED; a ruling on his requests for a hearing on the writs in this court is reserved pending amendment of the requests. Defendant may amend his requests for a hearing by filing and serving amendments no later than March 8, 2004, setting out the issues he would raise in such a hearing. If defendant submits such a renewed request, the government will have until March 15, 2004, in which to file and serve any objections it may have to a hearing.

FURTHER, IT IS ORDERED that Rebecca Tedder's requests for a hearing on the proceedings in which the writs of execution were issued relating to property at 2227 La Paz, Claremont, California, at 660 Osceola Avenue, Winter Park, Florida, described as Unit 2, Bldg. 1, Perle du Lac Condo OR 5843/4848, Parcel ID Number 08-22-30-6845-

01-020, and 2406 Sierra Vista, Newport Beach, California, described as Lot 11, City of Newport Beach, Tract Number 1801, Recorder's Map Reference MP53 PG7, Parcel No. 426-101-22, and for a transfer of the proceedings to the United States District Court for the Central District of California are DENIED.

Entered this 26th day of February, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge