

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

NEAL KENNETH ALLEN,

Defendant.

OPINION AND ORDER

04-cr-23-bbc-01

Pursuant to the Federal Debt Collection Procedure Act, 28 U.S.C. §§ 3001-3308, the court issued a writ of garnishment on October 22, 2010, against defendant Neal Kenneth Allen's savings account at Park Bank, which is alleged to contain \$5,449.23. The government sought the writ as part of its efforts to enforce defendant's obligation to pay restitution in the amount of \$309,707 to the victims of his crime, the Lac du Flambeau Band of Lake Superior Chippewa Indians (\$238,362) and Aerotech Laboratories (\$71,345).

Defendant was charged with six counts of mail fraud arising out of his scheme to provide alleged scientific and technical services for remediation of toxic mold in homes located on the Lac du Flambeau reservation in northern Wisconsin. He pleaded guilty to one count of the indictment and was sentenced on October 5, 2006 to a term of 26 months

and ordered to make restitution in the amount of \$363, 038.47, of which \$71,345.00 was to go to Aerotech Laboratories. In addition, he was directed to make minimum monthly payments of \$100 toward his restitution obligation. On appeal, the Court of Appeals for the Seventh Circuit affirmed defendant's sentence but remanded the case to this court to determine whether any of the work defendant had done had any value to the tribe. After an evidentiary hearing on the matter, I found that defendant's restitution obligation to the tribe should be reduced to \$238,362 because his work had some minimal value.

The case is before the court on defendant's motion under 28 U.S.C. § 3004(b)(2) to transfer any actions and proceedings relating to the garnishment to the District Court for the Western District of Tennessee. Section 3004(b)(2) permits persons sued under the Federal Debt Collection Act to request a transfer of the proceedings to the district in which they reside within 20 days after receiving notice that the government intends to take their property. Although 28 U.S.C. § 3004(2) seems to grant 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. 28 U.S.C. § 3001(b) provides that "[t]o 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.". 28 U.S.C. § 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.”

Granting defendant’s motion for transfer would be inconsistent with the procedures set out in 18 U.S.C. §§ 3611-15 and would risk curtailing or limiting the government’s right to collect the restitution defendant is obligated to pay as a consequence of his conviction. 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 the 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”).

Even if this statute did not bar defendant from obtaining a transfer, he has not shown that he resides in the Western District of Tennessee, so the point is moot. (It appears from defendant’s correspondence with the court that he is currently living in the Dominican Republic. Dkt. #112 at 3.) In later filings, defendant has explained that his actual request is to have a hearing by telephone, because he lacks the funds to return to Madison. However, before he could have any kind of hearing, whether in person or by telephone, defendant would have to show that a hearing is required in his situation. He has not made

this showing. As the party objecting to the garnishment, it is his burden to allege facts sufficient to raise a question of the validity of the garnishment order or whether his situation qualifies as an exemption to garnishment under 18 U.S.C. § 3613, but he has not alleged anything of the sort. Defendant's claim that he needs the money for other purposes, including his living expenses, does not raise such a question because a debtor's financial hardship is not a recognized exemption to enforcement under § 3613. The fact that defendant has been making his court-ordered monthly payments of \$100 is irrelevant because these payments do not affect the government's right to garnish other assets. Vitek, 521 F.3d at 795; see also 18 U.S.C. §§ 3663a, 3664.

Finally, defendant argues that his bank account should be exempt from garnishment because the money in that account represents money from wages, which are exempt under 15 U.S.C. § 1673 up to 75%. This argument is a non-starter. As the government points out, if Congress had exempted from garnishment any assets derived from wages, most assets would be exempt. Congress did not enact such an exemption. Actual wages may be partially exempt from garnishment, but wages converted to an asset are not exempt, simply because the asset was purchased with money earned in the form of wages or made up of money from wages.

ORDER

IT IS ORDERED that defendant Neal Kenneth Allen's requests for a hearing and for a transfer of this matter to another district are DENIED.

Entered this 1st day of December, 2010.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge