

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

LAWRENCE ROBINSON, : 3:01CV1397 (WWE)
Plaintiff, :
 :
v. :
 :
CYNTHIA PABON, :
Defendant :

RULING ON DEFENDANT'S MOTION TO REMAND

The plaintiff, Lawrence Robinson, brought this action pursuant to The Uniform Interstate Family Support Act ("UIFSA");¹ the Parental Kidnaping Prevention Act, 28 U.S.C. 1738A ("PKPA"); and the Uniform Child Custody Jurisdiction Act ("UCCJA"), 9 U.L.A. 1-27. Specifically, Robinson brings this action against the defendant, Cynthia Pabon, for violation of a court order and contempt of a court order of the State of New York; for violation of his civil and liberty rights as a father; and for the alienation and deprivation of the child

¹The Uniform Interstate Family Support Act is not a federal statute. Instead, it is a model statute drafted by the National Conference of Commissioners on Uniform State Laws. Nunnery v. Florida, 102 F.Supp.2d 772,774 (E.D.Mich. 2000). UIFSA has been adopted by the legislatures of all fifty states, as a requirement of the Welfare Reform Act of 1996. Kansas v. United States, 214 F.3d 1196 (10th Cir. 2000).

from the care, custody, and control of a parent.

Pending before the Court is a motion to remove this action to federal court from the state courts in New York, North Carolina, and Connecticut, where actions are pending against the plaintiff Robinson for child support collection. Also pending are motions by the defendant Pabon to remand, and to dismiss. For the reasons stated below, the plaintiff's motion to remove will be construed as a notice to remove. Pabon's motion to remand will be granted, and her motion to dismiss will be denied as moot.

According to the pleadings, Robinson is the defendant in three separate state court proceedings for failure to comply with orders of support. He has been declared in contempt of the orders in New York and North Carolina, and has been ordered by the state of Connecticut to pay on its current order or be declared in contempt. Robinson has filed a motion for removal to this Court.

A defendant or defendants desiring to remove any civil action or criminal prosecution from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement

of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.

28 U.S.C.A. § 1446

Pursuant to the procedural requirements set forth above, this Court construes the motion to remove as a notice of removal and will proceed accordingly.

FACTS

The following facts are taken from the pleadings. Lawrence Robinson is the defendant of multiple orders of support for one minor child, Dominique Lawren Robinson, born October 1, 1985. The order of support originated in New York State in 1986, where Robinson was ordered to pay \$40 per week for the support and maintenance of his child, Dominique.

An order of joint custody was entered on January 13, 1989, whereby the mother was to have custodial care of Dominique, and the father was to have reasonable visitation. The order also stated that neither party was to remove the child from New York State.

On or about July of 1992, Pabon moved with Dominique to North Carolina, and established an order of support in that state. The State of North Carolina sought to enforce and

incorporate its order of support in New York, under the Uniform Interstate Family Support Act.

In July of 1997, Robinson moved from New York to Connecticut, where he has resided in the Town of Hartford until the present. He subsequently received notice of intent to enforce an order of support from Support Enforcement in Connecticut, with whom Robinson had voluntarily registered, in an attempt to enforce the order from North Carolina.

Robinson is currently in contempt of the New York and North Carolina orders of support, and has been ordered by the State of Connecticut to pay on its current order or be held in contempt and possibly incarcerated. Robinson seeks to have this Court exercise its authority under diversity to remove jurisdiction from the state courts of New York, North Carolina, and Connecticut, and to address the issues of overpayment by vacating or modifying the orders from these state courts.

DISCUSSION

As stated above, 28 U.S.C.A. § 1446 requires that a copy of all process, pleadings, and orders served upon such defendant or defendants be attached to a short and plain

statement of the grounds for removal in a removal action. Robinson, the defendant in the state court proceedings, plaintiff in this action, has failed to do so. He has attached three New York family court short orders, and one document issued from each of the three state courts, two of which are notices to withhold income for child support. This is a far cry from the "all process, pleadings, and orders" required. It is impossible for this Court to determine what court actions are pending, or if one state court has relinquished jurisdiction to another, based on the documentation presented. For this reason alone, the Court may remand this action back to the state court of the State of Connecticut. However, the Court has additional reasons to remand to the Connecticut Superior Court.

The domain of family has historically been a matter for the individual states. "Family law has long been singled out by the U.S. Supreme Court as the one area into which the federal government may not intrude, either by legislation, regulation, or assertion of federal jurisdiction." Laura W. Morgan, "A Federal Hand in Child Support," 23-SPG Fam.Advoc. 10, 2001. Marriage, divorce, child custody, support, and

alimony have all been managed in the state court systems. These issues entered the realm of the federal government by Congress' desire to facilitate the collection of child support in a highly mobile society by passing various child support and custodial legislation over the years. The Child Support Recovery Act of 1992 ("CSRA"), 18 U.S.C.A. § 228, makes willful failure to support a child in another state a federal crime. Prosecution is available for arrearages exceeding \$5000, or remaining unpaid for longer than one year. Congress also sought to prevent the non-custodial parent from removing a child across state lines to avoid custodial orders, and enacted the Parental Kidnaping Prevention Act, 28 U.S.C.A. 1738A. Specifically, the PKPA was enacted to prevent jurisdictional conflicts in competition over child custody and, in particular, to deter parents from abducting children for the purpose of obtaining custody awards. Rees v. Reyes, 602 A.2d 1137, 1140 (D.C. App. 1992). The PKPA also protects the right of a decree state to exercise continuing jurisdiction over child custody and manifests a strong congressional intent to channel custody litigation into the court having continuing jurisdiction. Mark L. v. Jennifer S.,

506 N.Y.S. 2d 1020, 1023 (1986). Full faith and credit between appropriate authorities in every state in child custody determinations was mandated by Congress under 28 U.S.C.A. § 1738A. While these Acts establish national standards under which state courts can determine their jurisdiction to decide interstate custody disputes, and to facilitate the collection of child support from parents who leave the home state to avoid the payment of child support, it was not Congress' intent to burden the federal court system with these family law matters. The plain language of the statutes explicitly delegates the matter of custody or child support to the state or the court of the state.

In the present case, which Robinson brings under UIFSA, PKPA, and UCCJA, Robinson seeks to enforce a custody order of the New York family court, initially ordered November 6, 1986, and reaffirmed January 13, 1989, which stated that neither party was to remove the child from New York State. There is no evidence in the record that Robinson has attempted to enforce this order under PKPA in the nine and a half years since Pabon removed the child to North Carolina.

In his request for relief, Robinson seeks compensatory

relief in the amount of \$65,000; punitive relief of \$125,000; a remedy to reinstate his relationship with his child; governing authority by the State of Connecticut to oversee all matters of support of his minor child; all attorneys' fees and costs; incarceration of his child's mother for failure to comply with a court order; and any other relief the court deems necessary and appropriate.

This Court does not find a violation of PKPA of the type that Congress intended the statute to address. The custodial parent removed the child to North Carolina, in violation of the family court order that was in effect. There was no abduction of a child by a non-custodial parent to obtain an award of custody. Robinson's remedy would have been, in 1992, to bring the removal to the family court's attention, such court having jurisdiction over the matter. To bring an action under PKPA at this late date, and to request compensation, punitive damages, and the incarceration of the custodial parent of his child smacks of pretext, in order to delay the state child support proceedings and negate or delay the fact that he is tens of thousands of dollars in arrears in child support, a federal crime under the CSRA.

This Court remands this action to the state court of Connecticut, with the following observations concerning the Uniform Child Custody Jurisdiction and Enforcement Act § 112, relevant to the issue of the custodial court order. That section allows the State of Connecticut to request the appropriate court of another state, in this case, the family court in New York who initially ordered that Dominique not be removed out of New York State, to (1) hold an evidentiary hearing; (2) order a person to produce or give evidence pursuant to procedures of that State; (3) order that an evaluation be made with respect to the custody of the child involved in a pending proceeding; (4) forward to the court of this state a certified copy of the transcript of the record of the hearing, the evidence otherwise presented any evaluation prepared in compliance with the request; and (5) order a party to a child-custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

The procedures are in effect for the state courts to untangle these custodial and child support issues, facilitated by the federal legislation passed for this purpose. For these

reasons, this Court will remand this case back to the Connecticut state court currently handling Robinson's child support arrearages and obligations.

CONCLUSION

For the reasons set forth above, the defendant Pabon's motion to remand (Doc.# 9) is GRANTED. Pabon's motion to dismiss (Doc. # 12) is DENIED as moot. Robinson's motion for removal (Doc. #4) is DENIED as moot. The Clerk is ORDERED to remand this case to the State of Connecticut Superior Court, Family Support Magistrate Division, Hartford, Connecticut.

SO ORDERED this 2nd day of January, 2002, at Bridgeport, Connecticut.

_____/s/_____
WARREN W. EGINTON, Senior U.S. District
Judge