

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	:	
	:	
v.	:	Criminal No.: 05-452 (PLF)
	:	
GERRY D. MATHEWS,	:	
	:	
Defendant.	:	
_____	:	

**MEMORANDUM IN OPPOSITION TO DEFENDANT’S
MOTION TO TRANSFER CASE**

The United States of America, by and through undersigned counsel, hereby opposes Defendant’s motion to transfer her case. As discussed below, Defendant’s residence has been at this same address in Maryland during her entire proceedings before this Court. *See* Presentence Investigation Report. More importantly, the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the District of Columbia (USAO-DC) has been actively pursuing collection of Defendant’s restitution in this case. Indeed, the USAO-DC recently deposed both Defendant and her husband with respect to their assets and financial affairs.¹ Thus, it would appear that Defendant’s request to transfer her case is merely to delay or frustrate the United States’ efforts to collect on her restitution judgment, especially in light of the fact that she did not request hearings or otherwise contest the United States applications for writs of garnishment.

¹ These depositions were held in the District of Columbia, and Defendant and her husband were represented by Richard McGill at these depositions.

Background

On January 30, 2006, Defendant, Gerry D. Mathews, entered a plea of guilty to a violation of 18 U.S.C. § 2314, Interstate Transportation of Money By Fraud. ECF Nos. 2-5. For over 12 years, she embezzled monies from her employer, the law firm of Fried, Frank, Harris, Shriver & Jacobson in Washington, D.C. See ECF No. 4. In one instance in 2004, Defendant diverted a check given to her by a partner of the law firm in the District of Columbia to her own bank account in the State of Maryland. *Id.* at 2. Defendant was sentenced to imprisonment of twelve months and one day and three years of supervised release. ECF No. 12. She was ordered by this Court to pay restitution in the amount of \$312,260.09 to her former employer. *Id.* However, the Court's order of restitution has not yet been satisfied. Thus, the United States is seeking to garnish Defendant's wages and to garnish funds which Defendant agreed to turn over toward her restitution debt.²

Transfer Requests Under The Federal Debt Collection Procedures Act

The instant action is a post-judgment garnishment to collect criminal restitution. The United States may use civil garnishment as a post-judgment remedy within an underlying criminal case. See *United States v. Meux*, 597 F.3d 835, 837 (7th Cir. 2010). The Federal Debt Collection Procedures Act ("FDCPA"), 28 U.S.C. §§ 3001-3307, provides civil procedures for the United States to use when it seeks to recover a judgment on a debt. The FDCPA provides that:

If the debtor so requests, within 20 days after receiving the notice described in section 3101 or 3202(b), the action or proceeding in which the writ, order or

² Defendant has consistently refused to sign the papers necessary for the law firm of Fried, Frank, Harris, Shriver & Jacobson, LLP to be paid these monies.

judgment was issued shall be transferred to the district court for the district in which debtor resides.

28 U.S.C. § 3004(b)(2).

Defendant received notice under 28 U.S.C. § 3202(b) and filed her transfer request pursuant to 28 U.S.C. § 3004(b)(2). At first blush, a transfer under this provision appears mandatory. However, federal courts interpreting this statute have decided that this right of transfer can be preempted by other statutes.

In an early unpublished case, a Wisconsin district court denied a transfer request after concluding that 28 U.S.C. § 3004 was preempted by other federal law pursuant to 28 U.S.C. § 3001(b). *See United States v. Tedder*, No. 02-CR-0105-C-01, 2004 WL 415270 (W.D. Wis. Feb. 26, 2004). In *Tedder*, the court further relied on 28 U.S.C. § 3003(b), which provides that the FDCPA “shall not be construed to curtail or limit the right of the United States under any other Federal law or any State law . . . to collect any fine, penalty, assessment, restitution, or forfeiture arising in a criminal case[.]” to hold that the transfer provision of 28 U.S.C. § 3004 would frustrate the objectives of the Mandatory Victims Restitution Act (“MVRA”).

United States v. Tedder, 2004 WL at *3; *see also United States v. Poulsen*, No. 2:06CR129, 2010 WL 1849294, at *5 (S.D. Oh. May 3, 2010) (agreeing with *Tedder* rationale).

In an unpublished decision, the Seventh Circuit Court of Appeals affirmed the district court’s denial of a criminal defendant’s request for transfer under § 3004(b)(2) on the basis that the sentencing court retains jurisdiction to enforce the criminal penalties which the Court imposes. *See United States v. Furkin*, 165 F.3d 33, 1998 WL 846873 (7th Cir. 1998); *see also United States v. Woods*, 2010 WL 2510083 (E.D.N.C. Apr. 9 2010) (finding that the sentencing

court was in the best position to make certain that its judgment was enforced in an efficient manner using all means under law); *United States v. Jeburk*, 2008 WL 4499982, at *1 (S.D. Ga. Oct. 6, 2008) (denying transfer under § 3004(b)(2) on the ground that the provisions of the MVRA take precedence over provisions of the FDCPA).

While some courts agree that the FDCPA's transfer provision is not mandatory, they have not followed the rationale of the court in *Tedder*. In *United States v. Gipson*, 714 F. Supp.2d 571 (E.D. Va. 2010), the district court rejected the government's argument that the transfer provision of the FDCPA was inconsistent with or would frustrate the statutory objectives of the MVRA. *Id.* at 575. However, the district court pointed out that despite the "shall be granted" language of § 3004(b)(2), the FDCPA vests courts with discretion to deny transfer where retaining jurisdiction would best effectuate the objectives of the MVRA. *Id.* at 576. Specifically, the court noted that the FDCPA grants district courts plenary authority to "make an order denying, limiting, conditioning, regulating, extending, or modifying the use of any enforcement procedure" under the statute. *Id.* (quoting 28 U.S.C. § 3013). The Court explained that this provision would allow a district court to deny a timely transfer for good cause, which exists when transfer is requested merely to delay or frustrate efforts to collect on restitution judgments. *Id.*

ARGUMENT

DEFENDANT'S CASE SHOULD NOT BE TRANSFERRED

According to her pre-sentence investigation, Defendant lives at the same address as she did when she committed her crimes. Thus, any suggestion that she lived elsewhere and "now" lives in Maryland as a basis for her transfer motion is without merit.

Moreover, Defendant did not object to coming to the District of Columbia to be deposed

for collection purposes. Nor has she requested hearings or asserted that the monies were not owed, in response to the United States' applications for writs of garnishment.

More importantly, although Defendant represented to the Court in her Memorandum In Aid of Sentencing that she had agreed to turn over the monies in a 401(k), her pension monies and accumulated vacation time at the law firm [ECF No. 9, p. 4] to be applied to her restitution debt, Defendant has consistently refused to sign the necessary papers to have these funds applied to her restitution.³ The United States submits, therefore, that it can establish good cause to deny Defendant's motion to transfer her case. Accordingly, Defendant's motion to transfer her case should be denied.

In any event, with respect to one of the United States' applications for a writ of garnishment, the garnishee has filed an answer. ECF No. 18. Because Defendant has not requested a hearing on the United States' application for this writ of garnishment, the United States requests that the Court issue a disposition order in this matter directing the garnishee to pay the monies owed to Defendant which it is holding to be applied toward her restitution debt.

Respectfully submitted,

RONALD C. MACHEN JR.
United States Attorney
For the District of Columbia
D.C. Bar No. 447889

³ It should be noted that at her status conference before the Court on April 28, 2010, Defendant again represented to the Court and to the United States that she would sign the papers, but claimed that her previous attorney had not provided them to her. Thereafter, the FLU spent considerable time obtaining new documents for Defendant to sign to turn over these funds, but she has consistently refused to sign the documents.

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ORDER

UPON CONSIDERATION OF Defendant’s motion to transfer case, the opposition by the United States and the entire record in this case, it is this ____ day of _____, 2011,

ORDERED that Defendant’s motion is **DENIED**.

UNITED STATES DISTRICT JUDGE

Copies to:

Counsel via ECF