

FILED
U.S. DISTRICT COURT
DISTRICT OF KANSAS

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RALPH L. DELDACH
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BY *mtm* DEFUTY

IN THE UNITED STATES DISTRICT COURT FOR ^{DB}
THE DISTRICT OF KANSAS

Daniel Phillips)
11912 W 66 Terr)
Shawnee, KS 66216)
Plaintiff)

vs.)

Case No. 2:06-cv-02442-KHV

Kimbra L. Martin)
8707 123rd Lane NE)
Kirkland, Washington 98033)
Defendant)

**1st AMENDED COMPLAINT FOR DECLARATORY RELIEF
AND PERMANENT INJUNCTION**

Plaintiff, Daniel D. Phillips alleges for his first claim for relief:

1. This is an action for declaratory relief under 28 USC § 2201.
2. Venue is proper in this district as the acts and occurrences which gave rise to the claim substantially occurred in the District.
3. On or about September 3, 2003 at the instigation of Defendant, Plaintiff was charged by the U.S Attorney in the United States District Court for the Western District of Washington (the District Court) with a single count of felony violation of 18 USC § 228 Failure to Pay Interstate Child Support in excess of \$60,000.

4. The information charged that Plaintiff had failed to pay accrued child support owed to Defendant, a Washington Resident under the terms of a Kansas divorce decree (hereafter the Kansas Support Order).
5. On January 2004 Plaintiff entered a plea to the District Court for a single count of misdemeanor violation of 18 USC § 228 for failure to pay the Kansas Support Order. By entering such plea agreement, Plaintiff waived substantial defenses to the charge and the amount owing under the Kansas Support Orders including among others payment, laches and statute of limitations.
6. On March 31, 2004 Plaintiff was sentenced to five years probation by the District Court. As part of Plaintiff's sentence, Plaintiff was required under § 228(d) to pay the Defendant Mandatory Restitution "in an amount equal to the total unpaid support obligation as it exists at the time of sentencing."
7. 228(d) required the District Court order restitution of all unpaid sums of any kind, if the right to payment arose from the Support Order.
8. The District Court found that \$36,090 was the total unpaid support obligation under the Kansas Support Order entered its restitution order for the same.
9. As the minor child had previously reached majority (the Kansas Support Order was non-accruing), the District Court's judgment establish all sums owing under the Kansas Support Order.
10. Defendant took no further action for review of the District Court's findings and order.
11. In June 2004, the Washington District Court transferred the case to this Court as United States v Daniel Phillips.

12. In February 2005 Plaintiff paid in full the Court ordered mandatory restitution in full. Defendant accepted such funds without objection or reservation.
13. On May 12, 2005 this Court entered an Order finding that Plaintiff had performed all terms of his probation including payment of the Mandatory Restitution.
14. The District Court's judgment establishing the all sums owing under the Kansas Support and this Court's Order finding Plaintiff had paid all such sums constitutes a Federal Judicial declaration that all sums owing under the Kansas Support Orders have been paid in full.
15. Defendant has subsequently asserted that Plaintiff owes additional sums under the Kansas Support Order for medical expenses, interest and attorneys fees.
16. Defendant has filed administrative and judicial proceedings under the Uniform Interstate Family Support Act (UIFSA) in the state of Washington to collect such additional sums. Such actions violate the terms of the District Court's order establishing the amount owing under the Kansas Support Order and this Court's order wherein Plaintiff was found to have paid all such sums. By her actions, Defendant is attempting to collaterally attack the findings of the District Court.
17. Defendant has asserted that the Mandatory Restitution of the "total unpaid support obligation" as required by § 228 and District Court's findings establishing the same, does not include the additional amounts Defendant is attempting to collect.

18. There exist a genuine controversy between the Plaintiff and the Defendant as to the meaning of the term “total unpaid support” contained in § 228 and its effect on Defendant’s collection activities under UIFSA.
19. This Court has jurisdiction under 28 USC §§’s 1331 and 1337 in that Plaintiff’s claims arise from and require interpretation of:
 - a. 18 U.S.C § 228, enacted by Congress as an exercise of its powers under the Commerce Clause Article I, § 8, of the Constitution of the United States (U.S. Const. Art. I § 8) and Congressional intent by use of the words “total unpaid support obligations” contained in 28 U.S.C. § 228 and the effect of a judicial finding thereunder upon Defendant’s continued acts to collect additional sums in interstate commerce through UIFSA, beyond those ordered by the federal District Court.
 - b. Congress grant of interstate enforcement procedure to the separate states under Congress power to regulate interstate commerce.
 - c. The interrelationship of 28 U.S.C. § 228 and 42 U.S.C § 666(f) which required the Uniform Interstate Family Support Act (UIFSA) to be adopted by the states and 28 USCS § 1738B and the Full Faith and Credit Clause of the United States Constitution which require that the District Court findings be recognize by all states attempting to enforce the Kansas Support Order in interstate commerce.
 - d. The Supremacy Clause of the United States Constitution, wherein the District Courts findings of the amount owing under the Kansas Support

Order preempt conflicting rulings in the state courts whose interstate commerce.

For his second claim for relief, Plaintiff incorporates the allegations contained in Paragraphs 1 through 19.

20. In addition to instituting such proceedings, the Defendant actively participated in the proceedings and entered her appearance in such case, filed a Victims Impact Statement and appeared and addressed the Court at Plaintiff's sentencing and requested additional sums.

21. The District Court by entry of its order of restitution without Defendant's additional sums, impliedly found that any such additional sums were not valid unpaid support obligations owing under the Kansas Support Order

22. Defendant is bound under the Federal common law of Res Judicata and Collateral Estoppel.

23. This Court has jurisdiction under 28 USC § 1331 as Plaintiff claims under federal common law of privity, Res Judicata and collateral estoppel that as Defendant instituted and actively participated in the District Court proceeding and by failing to exercise certain rights granted to her by 18 U.S.C. § 3664 (d)(5) and is bound by the findings of the District Court

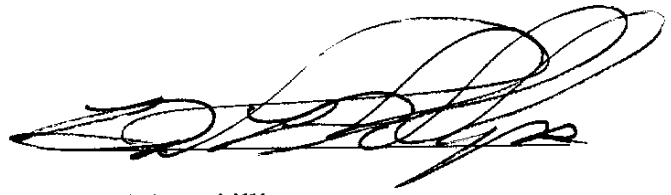
For his third claim for relief, Plaintiff incorporates the allegations contained in Paragraphs 1 through 23.

24. This Court has jurisdiction under 18 U.S.C. § 1651 to enforce and protect the integrity of the District Court's findings and judgment and this Court's order finding that such order had been fully complied with.

25. Defendant's has attempted to collect additional sums above those found by the District Court to be owing under the Support Order, in complete disregard for the District Courts findings and judgment.
26. Defendant's collateral attacks subvert the integrity of the District Court's rulings.
27. Defendant through the Washington State Support Agencies has attempted to garnish Plaintiff and has asserted to various federal agencies that Plaintiff is delinquent in payment of support when the District Court's findings and this Court's order have declared that all sums owing under the Kansas Support Orders have been paid in full.
28. Defendant's continued disregard of the District Court's judgment and her collateral attacks upon the same is irreparably harming Plaintiff in that such claims affect Plaintiff's credit, jeopardize Plaintiff's personal and business reputation and put at risk various licenses Plaintiff holds.

Wherefore, Plaintiff prays this Court enter judgment for the Plaintiff against the Defendant:

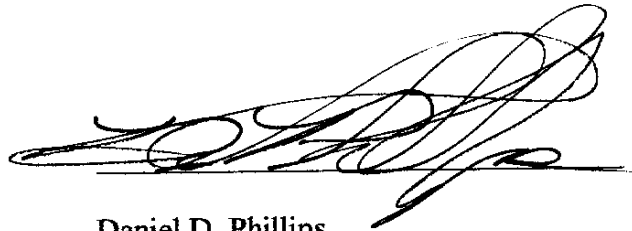
1. for an order declaring that Defendant is bound by the District Court's Judgment finding the amount owing under the Kansas Support Orders and that such sums have been paid in full.
2. Permanently enjoining Defendant from pursuing collection in interstate commerce of any additional amount under the Kansas Support Order and for such other and further relief as the Court deems appropriate.



Daniel D Phillips,
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DESIGNATION OF PLACE OF TRIAL

Plaintiff designates Kansas City, Kansas as the location for the trial in this matter.



Daniel D. Phillips

CERTIFICATE OF SERVICE

The undersigned certifies that on March 16, 2007, he mailed by First Class Mail postage prepaid a true copy of the Plaintiff's First Amended Complaint to the defendant at:

Kimbra L Martin
8707 123 rd Lane NE
Kirkland, Wa 98033

