

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

IN RE:)	BK 81-836
)	
DOUGLAS LEE TAYLOR,)	
)	
Debtor.)	
)	
UNITED STATES OF AMERICA,)	CV 84-0-05
)	
Plaintiff,)	
)	
vs.)	
)	
DOUGLAS LEE TAYLOR,)	
)	
Defendant.)	

FILED
DISTRICT OF NEBRASKA
SEP 20 1984
ORDER
William L. Olson, Clerk
Deputy

This matter is before the Court on appeal from an order of the Bankruptcy Court for the District of Nebraska sustaining a summons in garnishment issued by the United States, appellee, and thereby overruling a motion by Douglas Lee Taylor, appellant, seeking release of the attached funds. Previously appellant and appellee had entered into a stipulated settlement of appellee's tax claim. On the basis of the stipulation, the Bankruptcy Court issued an Order embodying the terms of the parties' settlement agreement and denying appellant a discharge on the tax claim, stating that:

Judgment can be entered in favor of the plaintiff [appellee] and against the defendant [appellant] in the amount of \$293,238.05 with interest thereon from the date of judgment at the rate set by law and that said judgment is not discharged.

The Order further stated that appellee would both accept a lesser amount in satisfaction of the tax obligation and would not seek execution upon its judgment if appellant fulfilled

certain conditions. When appellant subsequently failed to comply with these conditions, appellee issued the summons in garnishment to which appellant has taken exception.

Appellant first argues that the Court's Order stating that "Judgment can be entered . . ." but authorizing a lesser settlement amount upon certain conditions was not a final order of judgment upon which post-judgment garnishment proceedings in aid of execution could issue. The Court has reviewed the Order and finds that by its terms it was clearly intended to operate as a final judgment. This interpretation of the document read as a whole is consistent with the Bankruptcy Judge's subsequent conduct enforcing the post-judgment garnishment. The Judge expressly rejected appellant's assertion that the Order was not a final judgment.

Appellant also urges that appellee failed to fulfill the procedures for post-judgment garnishment required by Neb. Rev. Stat. § 25-1056 (1979). Fed. R. Civ. P. 69(a) incorporates procedures available under state law for use in aid of execution of federal court judgments, with the following proviso: "except that any statute of the United States governs to the extent that it is applicable."

Neb. Rev. Stat. § 25-1056 requires a judgment creditor initiating a garnishment in aid of execution to "file an affidavit setting forth the amount due on the judgment, interest, and cost in the office of the clerk of the court where the judgment has been entered . . ." (Emphasis added.) Appellee, the United States,

filed an unsworn "declaration in garnishment in aid of execution" instead of the affidavit contemplated by section 25-1056. Appellee's declaration was submitted in accordance with 28 U.S.C. § 1746, which states:

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person (Emphasis added.)

The Court finds that 28 U.S.C. § 1746 is a statute of the United States "applicable" within the meaning of the proviso to Fed. R. Civ. P. 69(a). The formalities for post-judgment garnishment contemplated by Neb. Rev. Stat. § 25-1056 and incorporated by Fed. R. Civ. P. 69(a) (a "law of the United States or . . . rule . . . made pursuant to law") are therefore modified by 28 U.S.C. § 1746 under the circumstances of this case.

IT IS THEREFORE ORDERED that the Order of the Bankruptcy Court is affirmed.

IT IS FURTHER ORDERED that appellant shall bear the costs of appeal to this Court, but each party shall pay his or its own attorney fees.

DATED this 28th day of September, 1984.

BY THE COURT:



C. ARLEN BEAM
UNITED STATES DISTRICT JUDGE