NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted June 30, 2023*
Decided July 11, 2023

Before

FRANK H. EASTERBROOK, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

Nos. 22-1130 & 22-2502

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

KEVIN CLINTON,
Defendant-Appellant.

Appeals from the United States District Court for the Northern District of Indiana, South Bend Division.

No. 3:18-CR-136-RLM-MGG

Michael G. Gotsch, Sr.
Magistrate Judge.

O R D E R

Kevin Clinton was convicted of mail fraud, sentenced to prison, and ordered to pay restitution to his former employer (the victim of his fraud). To satisfy part of the

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

restitution, the government petitioned the court to garnish two accounts that Clinton held at a bank. Clinton objected to the garnishment and requested that the magistrate judge, who had been presiding by consent, recuse himself. After the judge refused to recuse himself and ordered garnishment, Clinton unsuccessfully sought emergency relief, arguing that the bank wrongly responded to the garnishment order. Clinton appealed twice: First, he appealed the garnishment order; and second, he appealed the order denying emergency relief. We consolidated the two appeals and affirm the district court's orders in all respects.

Clinton was convicted of mail fraud, *see* 18 U.S.C. § 1341, and ordered to pay his former employer about $2.2 million, which the government sought via garnishment. It planned to garnish an Individual Retirement Account and a brokerage account Clinton had at Edward Jones. *See* 28 U.S.C. § 3205. The IRA, held by Clinton alone, had an estimated value over $165,000. The brokerage account was held by Clinton and his wife, Eva, as joint tenants. Its estimated market value was over $18,000.

The court received competing views about the garnishment. Clinton argued that the government could not obtain all the funds in his IRA because the funds were "earnings" subject to a 25% cap under the Consumer Credit Protection Act, 15 U.S.C. § 1673. He stated that his IRA included contributions from four employers and his family periodically withdrew payments from it. He also contended that the government could not garnish his joint brokerage account because his wife had no other significant income and depleting the account would impoverish her and their two children. The court also received filings showing that the family's monthly expenses were $5,500, Eva's monthly income was $1,400, and Eva had the potential to increase her income because of her enhanced job qualifications. The government argued that under the Mandatory Victims Restitution Act, *see* 18 U.S.C. § 3613, it was entitled to all the funds in both accounts, the IRA funds were not "earnings" subject to the 25% cap, and the family's financial hardship did not substantiate a defense to garnishment.

Clinton also sought other relief. First, he asked that the magistrate judge recuse himself because, according to Clinton's research, the judge and the owners of his former employer were affiliated through a Jewish community in South Bend and that tie would bias the judge. He also requested that the court appoint a guardian ad litem to represent his daughters' interest in the accounts. Lastly, he offered his own restitution plan by calculating state and federal taxes, applying the supposed 25% cap on withdrawals, and requesting that his wife control the accounts.

The judge rejected Clinton's arguments. First, the judge did not recuse himself or appoint representation for the daughters. He explained that he had no connection to Clinton's former employer nor a stake in the restitution, and he would, as statutorily required, consider the needs of Clinton's daughters in scheduling garnishment. Second, the court ordered garnishment. It explained that the 25% cap did not apply to Clinton's IRA because withdrawals from it did not follow any retirement program. Complying with 18 U.S.C. § 3664(f)(2), the court then evaluated Clinton's assets, his and his wife's projected earnings, and Clinton's financial obligations, including care for their two children and a large mortgage. The court ruled that, though the government was entitled to all funds in both accounts, Clinton's wife would receive $10,000 from the IRA and half of the property in the joint account for her expenses and to supplement the couple's income. With that adjustment, the court found that the record "does not support the dire [financial] situation" that Clinton described. Finally, it rejected Clinton's proposed restitution schedule and tax calculation, instructing Edward Jones to turn over the garnished funds "less the federal and state tax liability incurred upon liquidation of both accounts."

After Edward Jones withdrew the funds from Clinton's accounts, Clinton unsuccessfully sought emergency relief, arguing that the bank incorrectly calculated tax liability and left the wrong amount for his wife. In denying his motions, the court explained that Clinton could not assert claims on behalf of his wife and if the bank left the wrong amount for her, she could bring a separate civil action against the bank. It also explained that it deferred to Edward Jones's internal process for liquidating accounts and that Clinton provided no support to substantiate the alleged errors.

On appeal Clinton first maintains that the magistrate judge should have recused himself. In taking an independent (de novo) look at this matter, *see United States v. Barr*, 960 F.3d 906, 919–20 (7th Cir. 2020), we disagree. To require recusal under 28 U.S.C. § 455(a), Clinton had to supply evidence that would lead an objective observer to "entertain a significant doubt" about the judge's impartiality. *Barr*, 960 F.3d at 919 (citations omitted). Clinton repeats his view that the magistrate judge is allied to his former employer through a Jewish community in South Bend. But the record contains no evidence of any connection that would persuade an objective person of a disqualifying bias. He also argues that by delaying the case, "nitpicking" Clinton's filings, and advancing arguments not raised by the government, the judge showed bias against him. *See* 28 U.S.C. § 455(b). But a court's reasonable case-management decisions, criticisms of inadequate filings, and observations of flawed positions do not alone show a bias that requires recusal. *See Barr*, 960 F.3d at 920–21.

Second, Clinton argues that the garnishment order was wrong because the court did not treat the withdrawals from his IRA as "earnings" subject to a 25% cap and did not adequately consider his financial obligation to his dependents. To the extent that these arguments contest legal rulings, we review those rulings de novo, and insofar as they involve fact findings, we assess the rulings for clear error. *United States v. Sloan*, 505 F.3d 685, 694 (7th Cir. 2007).

The court properly ruled that the garnishment of Clinton's IRA was not subject to the 25% cap under the Consumer Credit Protection Act. We have previously rejected the view, implicit in Clinton's position, that "because his retirement funds derive directly from his earned wages, *i.e.*, his employer deposits a portion of his earned wages in his retirement account each paycheck, the funds should be considered earnings under the" Act. *United States v. Sayyed*, 862 F.3d 615, 619 (7th Cir. 2017). Instead, as we have explained, Congress provided that this cap applies only to outflows from a retirement account that are "periodic payments pursuant to a retirement program." *Id.*; 15 U.S.C. § 1672(a). That did not occur here. Clinton's own filings amply support the court's factual finding that he withdrew funds as needed rather than under a retirement program; thus, the funds are not "earnings" subject to the cap. *See id.* Because Clinton had control over the amount and timing of IRA withdrawals, the government could reach the full account for restitution. *See id.* at 619–20; 18 U.S.C. § 3613(c).

The court also adequately considered the needs of Clinton's family in the garnishment order. In accordance with 18 U.S.C. § 3664(f)(2), the court balanced Clinton's financial resources, Eva's projected income (which was, it is undisputed, likely to rise), and the family's recurring obligations. Based on that evidence, it reasonably found that, by allowing Eva to retain $10,000 of the IRA and half the brokerage account, the government could garnish the accounts—to which it was legally entitled in full—without devastating the family. Because Clinton does not offer a persuasive reason suggesting that this finding was clear error, we will not disturb it. *See, e.g.*, *United States v. Ghuman*, 966 F.3d 567, 581 (7th Cir. 2020) (no reversible error when court's schedule for restitution adequately took economic circumstances into account); *United States v. Hosking*, 567 F.3d 329, 336 (7th Cir. 2009) (no reversible error when the court's payment order reasonably recognized financial resources and obligations), *abrogated on other grounds by Lagos v. United States*, 138 S. Ct. 1684 (2018).

Finally, Clinton insists that the district court should have ruled that Edward Jones withdrew too much money from his account and miscalculated his taxes. But he does not tell us how much money was and should have been withdrawn, what the

correct tax calculation was, and why it was wrong for the court to delegate to Edward Jones the calculation of taxes. Thus, he has not developed an argument that Edward Jones violated the court's order or that the order was itself flawed or departed from the Mandatory Victims Restitution Act. *See* FED. R. APP. P. 28(a)(8); *Yasinskyy v. Holder*, 724 F.3d 983, 989 (7th Cir. 2013); *see also* 28 U.S.C. § 3205; 18 U.S.C. § 3664. In any event, any withdrawal or calculation error by Edward Jones would not allow Clinton to recover funds for himself or his wife in this garnishment case. *See* 18 U.S.C. § 3664(p).

AFFIRMED