

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

ANTHONY E. OWENS

PLAINTIFF

v.

Civil No. 09-2011

ANITA ELAINE WELCH; JIMMY WELCH;
SEBASTIAN COUNTY OFFICE OF CHILD
SUPPORT ENFORCEMENT; STATE OF
ARKANSAS OFFICE OF CHILD SUPPORT
ENFORCEMENT; and SEBASTIAN COUNTY
DETENTION CENTER

DEFENDANTS

O R D E R

Now on this 1st day of May, 2009, come on for consideration the **Report And Recommendation Of The Magistrate Judge** ("R&R") (document #8); plaintiff's **Motion For Rehearing** (document #9), which has been docketed as Objections to the R&R; and a document from plaintiff with the heading "**Statement of Claim**" (document #10), which has been docketed as a Motion To Amend Complaint, and the Court, being well and sufficiently advised, finds and orders as follows:

1. Plaintiff's Complaint arises out of state court proceedings to enforce child support from him to defendant Anita Welch. These proceedings apparently led to plaintiff's incarceration. The Magistrate Judge reported that neither Anita Welch nor Jimmy Welch is alleged to be a state actor, and recommended dismissal of these defendants as no **§1983** action will lie where there is no state action. Plaintiff does not object to this aspect of the R&R, and it will be adopted.

2. The Magistrate Judge further reported that Owens' claims against the Sebastian County Office of Child Support Enforcement and the State of Arkansas Office of Child Support Enforcement are not cognizable under **§1983**, because United States District Courts have no jurisdiction to review the decisions of state courts. He recommended dismissal of these claims.

Plaintiff objects that he was given the wrong legal forms by the Sebastian County Detention Center when he asked for forms to file this suit, and what he seeks is "extraordinary relief pursuant to habeas corpus emergency powers." He claims that he could not appeal his state court proceedings because the case against him was "filed, heard, and decided adversely in two separate state courts, simultaneously."

Plaintiff does not explain, nor is it readily apparent to the Court, how the fact -- if it is a fact -- that he was subjected to proceedings in two different jurisdictions prevented him from appealing the decision in either. Under **28 U.S.C. § 2254**, a District Court may entertain a habeas corpus proceeding in behalf of a person in state custody only where the applicant has exhausted state court remedies, or there is no state court remedy, or circumstances demonstrate that the state court remedy would be ineffective to protect the prisoner's rights. No showing of any of these factors has been made. This objection will be overruled, and the R&R will be adopted as to these defendants.

3. The R&R does not make any recommendation specifically referencing Sebastian County Detention Center ("SCDC"), but the Court has reviewed the Complaint and finds that it fails to state a claim against SCDC. Plaintiff's Complaint as against this defendant will, therefore, be dismissed.

4. Plaintiff appears to desire to amend his Complaint, but the Court is not able to relate the allegations in Document #10 to the allegations of the Complaint. They appear to deal with entirely different circumstances. The Complaint references case numbers 235415659; DR-2002-707; and CR-2009-11. The Motion To Amend references case numbers CR 04-1471 and CR 04-379/1471/07-79B. The Court finds no basis for plaintiff to interject an entirely new set of unrelated allegations into this case, and the Motion To Amend will be denied, although this denial is without prejudice to plaintiff's right to file a separate suit on the allegations of the Motion To Amend, should he so desire.

IT IS THEREFORE ORDERED that the **Report And Recommendation Of The Magistrate Judge** (document #8) is **adopted**.

IT IS FURTHER ORDERED that plaintiff's **Motion For Rehearing** (document #9), which has been treated as his Objections to the R&R, is **denied**.

IT IS FURTHER ORDERED that plaintiff's **"Statement of Claim"** (document #10), which has been treated as a Motion To Amend, is **denied**.

IT IS FURTHER ORDERED that the Complaint of the plaintiff is
dismissed.

IT IS SO ORDERED.

/s/Jimm Larry Hendren
JIMM LARRY HENDREN
UNITED STATES DISTRICT JUDGE