

2005 WL 1242171

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United States District Court,  
W.D. Oklahoma.

Michal Saidon SCHWARTZ, Plaintiff,

v.

Steven Shea SCHWARTZ, Defendant.

No. CIV-04-770-M.

|

May 10, 2005.

**Attorneys and Law Firms**[R. Mark Solano](#), R. Mark Solano PLLC, Tulsa, OK, for Plaintiff.[David L. Sobel](#), David L. Sobel PC, Tulsa, OK, for Defendant.**ORDER**[MILESLAGRANGE](#), J.

\*1 Before the Court is defendant's Motion to Dismiss, filed December 9, 2004. On January 11, 2005, plaintiff filed her response. Based upon the parties' submissions, the Court makes its determination.

**I. Introduction**

Plaintiff is a permanent resident alien of the United States of America and is defendant's ex-wife. On or about January 29, 2001, defendant filed on behalf of plaintiff, his then wife, an Affidavit of Support with the Immigration and Naturalization Service. On June 24, 2004, plaintiff filed the instant action alleging that defendant failed to comply with his obligations under the Affidavit of Support and seeking specific performance of the Affidavit of Support and damages in the amount of the past due support.

**II. Discussion**

Defendant, pursuant to [Federal Rule of Civil Procedure 12\(b\)\(6\)](#), has moved to dismiss this action for failure to state a claim upon which relief can be granted. Specifically, defendant asserts that this action should be dismissed on

the following grounds: (1) plaintiff has not received any means-tested public benefits and, therefore, cannot bring the instant action; (2) the Affidavit of Support is not a legally binding contract; and (3) the parties' divorce decree ended support alimony obligations as of June 1, 2004.

When reviewing a motion to dismiss for failure to state a claim under [Rule 12\(b\)\(6\)](#), a court accepts "as true all well-pleaded facts, as distinguished from conclusory allegations, and view[s] those facts in the light most favorable to the nonmoving party." [Maher v. Durango Metals, Inc.](#), 144 F.3d 1302, 1304 (10<sup>th</sup> Cir.1998). "A complaint may be dismissed pursuant to [Fed.R.Civ.P. 12\(b\)\(6\)](#) only if the plaintiff can prove no set of facts to support a claim for relief." [David v. City and County of Denver](#), 101 F.3d 1344, 1352 (10<sup>th</sup> Cir.1996) (internal quotations and citations omitted).

The Immigration and Nationality Act provides that an Affidavit of Support is a contract legally enforceable "against the sponsor by the sponsored alien...." [8 U.S.C. § 1183a\(a\)\(1\)\(B\)](#). The Act further provides that an action to enforce an Affidavit of Support "may be brought against the sponsor in any appropriate court-(1) by a sponsored alien, with respect to financial support...." [8 U.S.C. § 1183a\(e\)](#).

Additionally, the regulations promulgated pursuant to the Act provide, in pertinent part:

Legal effect of affidavit of support. Execution of a Form I-864 under this section *creates a contract* between the sponsor and the U.S. Government *for the benefit of the sponsored immigrant*, and of any Federal, State, or local governmental agency or private entity that administers any means-tested public benefits program. *The sponsored immigrant*, or any Federal, State, or local governmental agency or private entity that provides any means-tested public benefit to the sponsored immigrant after the sponsored immigrant acquires permanent resident status, *may seek enforcement of the sponsor's*

*obligations through an appropriate civil action.*

**\*2 8 C.F.R. § 213a.2(d) (2005)** (emphasis added).

The Affidavit of Support itself also provides, in pertinent part: “I understand that the sponsored immigrants ... are entitled to sue me if I fail to meet my obligations under this affidavit of support as defined by section 213A and INS regulations.” Affidavit of Support at 5, attached as Exhibit B to plaintiff's response. The Affidavit of Support further provides:

I acknowledge that section 213A(a)(1)(B) of the Act grants the sponsored immigrant(s) ... standing to sue me for failing to meet my obligations under this affidavit of support. I agree to submit to the personal jurisdiction of any court of the United States or of any State, territory, or possession of the United States if the court has subject matter jurisdiction of a civil lawsuit to enforce this affidavit of support.

Affidavit of Support at 6.

Finally, the instructions for the Affidavit of Support provide, in pertinent part:

#### Sponsor's obligation

The person completing this affidavit is the sponsor. A sponsor's obligation continues until the sponsored immigrant becomes a U.S. citizen, can be credited with

40 qualifying quarters of work, departs the United States permanently, or dies. *Divorce does not terminate the obligation.* By signing this form, you, the sponsor, agree to support the intending immigrant and any spouse and/or children immigrating with him or her and to reimburse any government agency or private entity that provides these sponsored immigrants with Federal, State, or local means-tested public benefits.

Instructions at 1, attached as Exhibit B to plaintiff's response.

Having carefully reviewed the Complaint, the parties' submissions, and the applicable statutes and regulations, the Court finds that plaintiff has stated a claim upon which relief can be granted. Specifically, the Court finds that plaintiff, a sponsored immigrant, can maintain an action against defendant, a sponsor, to enforce defendant's obligations under the Affidavit of Support regardless of whether means-tested public benefits have been provided. The Court further finds that an Affidavit of Support is a legally enforceable contract. Finally, the Court finds that a sponsor and sponsored immigrant's divorce does not automatically terminate the sponsor's obligations under the Affidavit of Support. The Court, therefore, finds that this action should not be dismissed.

#### *III. Conclusion*

For the reasons set forth above, the Court DENIES defendant's Motion to Dismiss [docket nos. 8, 10, and 12].

IT IS SO ORDERED.

#### **All Citations**

Not Reported in F.Supp.2d, 2005 WL 1242171