

May 26, 2004

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 03-21001  
Summary Calendar

---

KELLY LEWIS, JR.,  
Plaintiff-Appellant,  
  
versus

THE ATTORNEY GENERAL OF THE STATE OF TEXAS,  
  
Defendant-Appellee.

-----  
Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. H-03-CV-586  
-----

Before BARKSDALE, EMILIO M. GARZA, and DENNIS, Circuit Judges.

PER CURIAM:\*

Kelly Lewis, Jr., appeals from the district court's grant of summary judgment in favor of the Texas Attorney General (AG). Lewis had filed a 42 U.S.C. § 1983 civil rights complaint seeking declaratory and injunctive relief. Lewis argues that the Texas statutory scheme for collecting child support arrearages violates his procedural due process rights. We review the district court's

---

\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

order granting summary judgment de novo. Melton v. Teachers Ins. & Annuity Ass'n of America, 114 F.3d 557, 559 (5th Cir. 1997).

Lewis contends that the Texas statutory scheme is unconstitutionally vague. Lewis abandoned the issue when he did not renew it in his amended complaint. See Boelens v. Redman Homes, Inc., 759 F.2d 504, 508 (5th Cir. 1985). He may not raise the issue for the first time on appeal. See Leverette v. Louisville Ladder Co., 183 F.3d 339, 342 (5th Cir. 1999).

Lewis also argues that the AG induced him into an illusory agreement which failed to impose a mutual obligation on the AG. Lewis's reliance on contract principles is misplaced. There is no language in the statute to indicate that a contractual obligation was created by the child support review orders. Rather, the Texas Family Code provides that the child support review orders constitute enforceable court orders. TEX. FAM. CODE ANN. § 233.001(b)(Vernon 2002). Lewis also argues that the AG failed to inform him that he was not required to sign the child support review orders, that he was entitled to a hearing, and that other alternatives existed to signing the orders. Lewis's argument is unavailing in light of the statutory warnings provided in the child support review orders and corresponding waiver forms which he signed. See TEX. FAM. CODE ANN. § 233.018.

Finally, Lewis argues that he was deprived of his property without due process because the notice given by the state was

insufficient under Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950).

The Texas statutory scheme is comparable to postjudgment garnishment proceedings. See Brown v. Liberty Loan Corp. of Duval, 539 F.2d 1355, 1357 (5th Cir. 1976). Similar to the enforcement of an existing judgment, the child support review orders were a court-ordered collection of arrearages on existing child support orders. See id. at 1366. Thus, Mullane is inapposite, where as here, Lewis had prior notice via an existing court order that he was obliged to pay child support payments. Cf., Mullane, 339 U.S. at 309, 319 (publication in newspaper as the sole form of notice of levy on trust account inadequate notice). Moreover, the Texas Family Code contains various comprehensive mechanisms whereby Lewis can avoid execution on the levy. TEX. FAM. CODE ANN. § 157.328 (Vernon 2002); see Brown, 539 F.2d at 1365. Lewis has not shown any error by the district court. Accordingly, the judgment of the district court is AFFIRMED.