

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

January 8, 2014

Lyle W. Cayce
Clerk

No. 13-10363
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff–Appellee,

versus

MIGUEL UBBEN,

Defendant–Appellant,

NAVIDAD A. UBBEN,

Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:12-CV-649

Before JOLLY, SMITH, and CLEMENT, Circuit Judges.

PER CURIAM:*

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 13-10363

In this civil action, the appellants challenge the garnishment of property by the United States in partial satisfaction of restitution imposed on an underlying criminal conviction. Appellant Navidad Ubben claims the property was her separate property under Texas law and that the district court failed to follow state law by refusing to hold a hearing, thus denying procedural due process.

The district court issued a short but sufficiently explanatory order, dated January 24, 2013, noting that the Ubbens had the burden “to prove by clear and convincing evidence that the garnished accounts contain separate property, which usually requires tracing of the funds” (citing *United States v. Ingram*, No. 4:04-CV-868-A, 2005 U.S. Dist. LEXIS 2102, at *13-14 (N.D. Tex. Feb. 14, 2005)). The court concluded that “[b]ecause [the Ubbens] have not made even the slightest attempt at showing that the accounts contain separate property and have not disputed any facts raised by the government, a hearing is not necessary and the . . . exemption [from garnishment] does not apply.”

There is no error, and the judgment, being based on the Final Order of Garnishment, is AFFIRMED.