

In the United States Court of Federal Claims

No. 04-463C

Filed: November 30, 2004

NOT TO BE PUBLISHED

CHARMANE SMITH,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

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Ancillary Equitable Relief;
Pro Se;
RCFC 12(b)(1);
Seventh Amendment to the
United States Constitution;
Subject Matter Jurisdiction;
Tucker Act; 28 U.S.C. §§ 1491(a)(1)
and (a)(2).

Charmane Smith, *pro se*, plaintiff.

Carolyn J. Craig, Esquire, Washington, D.C., for defendant, United States Department of Justice.

MEMORANDUM OPINION AND ORDER

BRADEN, *Judge*

RELEVANT FACTS AND PROCEDURAL BACKGROUND¹

Pro se plaintiff Charmane Smith is incarcerated at the Carswell Federal Medical Center in Fort Worth, Texas. *See* Compl. ¶ 1. On March 22, 2004, plaintiff filed a complaint in the United States Court of Federal Claims. *Id.* The defendants named were: the United States; the Honorable Samuel H. Mays, Jr., the United States District Court for the Western District of Tennessee; the Honorable Bernice B. Donald, the United States District Court for the Western District of Tennessee; the Honorable Diane K. Vescovo, the United States District Court for the Western District of Tennessee; and Anthony Johnson, Clerk of the United States District Court for the Western District of Tennessee. *Id.*

¹ The relevant facts recited herein were derived from: plaintiff’s March 22, 2004 Complaint (“Compl.”); defendant’s July 21, 2004 Motion to Dismiss (“Gov’t Mot. to Dismiss”); and Appendix to defendant’s July 21, 2004 Motion to Dismiss (“Gov’t App.”). Plaintiff failed to respond to the July 21, 2004 Government’s Motion to Dismiss.

The complaint catalogs eight claims arising from alleged violations related to the right to a jury trial guaranteed by the Seventh Amendment to the United States Constitution. *See Smith v. Tennessee Dept. of Safety*, Case No. 03-cv-2856 (W.D. Tenn, filed on November 18, 2003); *Smith v. Summit Group Prod.*, Case No. 03-cv-2857 (W.D. Tenn., filed on November 18, 2003):

1. unlawful delay and obstruction of service of two summonses; *see* Compl. ¶ 1(a);
2. unlawful failure to record a monetary demand; *see* Compl. ¶ 1(b);
3. unlawful dismissal of the actions; *see* Compl. ¶ 1(c);
4. unlawful certifications that appeals were not taken in good faith; *see* Compl. ¶ 1(d);
5. unlawful denial of copies of original complaints and judgments; *see* Compl. ¶ 1(e);
6. conspiracy to violate plaintiff's civil and constitutional rights; *see* Compl. ¶ 1(f);
7. official misconduct with intent to unlawfully and unconstitutionally obstruct litigation for purposes of bias, and to conceal corruption that would have been exposed during a jury trial; *see* Compl. ¶ 1(g); and
8. lack of immunity of defendants due to a conspiracy to violate plaintiff's civil and constitutional rights. *See* Compl. ¶ 1(h).

In addition, the complaint seeks a cash award of \$61 billion, plus treble damages. *See* Compl. ¶ 2.

DISCUSSION

A. Jurisdiction.

The United States Court of Federal Claims is authorized, under the Tucker Act, 28 U.S.C. § 1491(a)(1), to render judgment and money damages on any claim against the United States based on the United States Constitution, an Act of Congress, a regulation of an executive department, or an express or implied contract with the United States. *See United States v. Testan*, 424 U.S. 392, 397-98 (1976). The United States Supreme Court, however, emphasized that the Tucker Act does not create any substantive right for monetary damages in *United States v. Mitchell*, 445 U.S. 535, 538 (1980). Instead, a plaintiff must identify and plead an independent contractual relationship, constitutional provision, federal statute, and/or executive agency regulation that provides a

substantive right to money damages in order for the court to have jurisdiction. *See Khan v. United States*, 201 F.3d 1375, 1377 (Fed. Cir. 2000).

In *United States v. Mitchell*, 463 U.S. 206 (1983) (“*Mitchell II*”), the United States Supreme Court held that, for jurisdictional purposes, a statute or regulation is money-mandating only if it “can fairly be interpreted as mandating compensation for damages sustained as a result of the of the breach of the duties it imposed.” *Id.* at 217. Last term, the United States Supreme Court revisited *Mitchell II*’s “fair interpretation” rule in *United States v. White Mountain Apache Tribe*, 537 U.S. 465 (2003), wherein the Court clarified:

This “fair interpretation” rule demands a showing demonstrably lower than the standard for the initial waiver of sovereign immunity. . . . It is enough, then, that a statute creating a Tucker Act right be reasonably amenable to the reading that it mandates a right of recovery in damages. While the premise to a Tucker Act claim will not be “lightly inferred,” a fair inference will do.

Id. at 472-73 (internal citations omitted).

And, this past year, the United States Court of Appeals for the Federal Circuit held in *Fisher v. United States*, 364 F.3d 1372 (Fed. Cir. 2004) that *White Mountain* revised *Mitchell II*’s “fair interpretation” rule and summarized the now applicable rule as follows:

[U]nder *White Mountain*, when a Tucker Act plaintiff makes a non-frivolous allegation that a particular statute is reasonably amenable, with fair inferences drawn, to a reading that it mandates money damages, a basis for jurisdiction is stated.

Fisher, 364 F.3d at 1377.

Our appellate court further held in *Fisher* that:

[T]he process by which a plaintiff undertakes the required jurisdictional showing ordinarily will occur in the context of the initial pleading, a well-pleaded, non-frivolous complaint. . . . [I]f the trial court adjudges that plaintiff does not have a money-mandating source that meets even the new low-threshold jurisdictional test, a dismissal under Rule 12(b)(1) for lack of jurisdiction is appropriate, and that is the end of the matter[.]

Id. at 1378.

B. The Pleading Requirements for *Pro Se* Plaintiff.

Traditionally, a *pro se* plaintiff’s pleadings have been held to a less stringent standard than a litigant represented by counsel. *See Hughes v. Rowe*, 449 U.S. 5, 9 (1980). Indeed, it has long

been the traditional role of this court to examine the record “to see if [a *pro se*] plaintiff has a cause of action somewhere displayed.” *Ruderer v. United States*, 188 Ct. Cl. 456, 468 (1969).

C. Standard Of Review.

Rule 12(b)(1) of the Rules of the United States Court of Federal Claims governs dismissal of a claim for lack of subject matter jurisdiction. *See* RCFC 12(b)(1). In ruling on a motion to dismiss, the court is generally “obligated to assume all factual allegations to be true and to draw all reasonable inferences in plaintiff’s favor.” *See Henke v. United States*, 60 F.3d 795, 797 (Fed. Cir. 1995) (citing *Scheuer v. Rhodes*, 416 U.S. 232, 236-37 (1974)). Plaintiff, as the non-moving party, however, bears the burden of establishing jurisdiction by a preponderance of the evidence. *See Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 748 (Fed. Cir. 1988) (“[O]nce the [trial] court’s subject matter jurisdiction was put in question it [is] incumbent upon [plaintiff] to come forward with evidence establishing the court’s jurisdiction.”).

D. The United States Court Of Federal Claims Does Not Have Jurisdiction To Adjudicate Plaintiff’s Claims In This Case.

The complaint asserts that jurisdiction in this court is proper under the Tucker Act, despite the fact that all claims asserted are based on alleged constitutional violations by the named individuals, for which the remedy is equitable. *See* Compl. ¶ 1.

1. The United States Court Of Federal Claims Does Not Have Subject Matter Jurisdiction To Adjudicate Seventh Amendment Or Related Claims.

The Seventh Amendment to the United States Constitution guarantees a litigant’s right to a trial by jury:

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of a trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

U.S. CONST. amend. VII. This Amendment, however, does not mandate the payment of money damages to redress a violation. *Id.* As the United States Supreme Court explained in *Baltimore & Carolina Line, Inc. v. Redman*, 295 U.S. 654 (1935):

[t]he aim of the [Seventh] [A]mendment . . . is to preserve the substance of the common-law right of trial by jury, as distinguished from mere matters of form or procedure, and particularly to retain the common-law distinction between the province of the court and that of the jury, whereby . . . issues of law are to be resolved by the court and issues of fact are to be determined by the jury under appropriate instructions by the court.

Id. at 657.

Even granting plaintiff leniency, given the precise language of the Seventh Amendment, the court does not have jurisdiction over the related claims asserted in the March 22, 2004 complaint.

2. The United States Court Of Federal Claims Also Does Not Have Subject Matter Jurisdiction To Adjudicate Allegations Against Government Officials In Their Individual Capacities.

The complaint names two United States District Court judges, a United States Magistrate judge, and a United States District Court Clerk as defendants in their individual capacities. *See* Compl. ¶ 1. The Tucker Act, however, grants the United States Court of Federal Claims jurisdiction to consider only “suits against the United States, not against individual federal officials.” *Brown v. United States*, 105 F.3d 621, 624 (Fed. Cir. 1997); *see also* 28 U.S.C. § 1491(a)(2). Moreover, as the United States Supreme Court held in *Pierson v. Ray*, 386 U.S. 547 (1967):

Few doctrines [are] more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiction This immunity applies even when the judge is accused of acting maliciously and corruptly His errors may be corrected on appeal, but he should never have to fear that unsatisfied litigants may hound him with litigation charging malice or corruption. Imposing such a burden on judges would contribute not to principled and fearless decisionmaking but to intimidation.

Id. at 553-54.

In *Mireles v. Waco*, 502 U.S. 9 (1991), the United States Supreme Court defined the scope of judicial immunity:

Like other forms of official immunity, judicial immunity is an immunity from suit, not just from ultimate assessment of damages [J]udicial immunity is not overcome by allegations of bad faith or malice, the existence of which ordinarily cannot be resolved without engaging in discovery and eventual trial Rather, our cases make clear that immunity is overcome in only two sets of circumstances. First, a judge is not immune from liability for nonjudicial actions, *i.e.* actions not taken in the judge’s official capacity. Second, a judge is not immune for actions, although judicial in nature, taken in the complete absence of all jurisdiction.

Id. at 11-12 (citations omitted). Accordingly, the court lacks jurisdiction to adjudicate plaintiff’s claims against the defendants for actions taken within their official capacities.

3. The United States Court of Federal Claims Lacks Subject Matter Jurisdiction to Grant Equitable Relief In This Case.

The claims asserted in the March 22, 2004 Complaint arise from two civil actions filed in 2003 in the United States District Court for the Western District of Tennessee for which corrective action is sought: an unlawful delay and obstruction of service of two summonses set forth in paragraph 1(a) of the complaint could be cured by properly serving those summonses. If the defendants unlawfully failed to record a monetary demand, as alleged in paragraph 1(b) of the complaint, the demand could be properly recorded. If plaintiff's cases were unlawfully dismissed, as stated in paragraph 1(c) of the complaint, the proper corrective action would be to reinstate them, making an appeal the appropriate remedy. Had defendants unlawfully denied to plaintiff copies of the complaints and judgments, as claimed in paragraph 1(e) of the complaint, providing her with the required copies would correct this problem. Such corrective actions, however, are equitable in nature and do not involve the payment of money damages to the claimant. *See* Compl. ¶¶ 1(a) - (h); *Cf. Lytle v. Household Mfg., Inc.*, 494 U.S. 545, 552-53 (1990) (holding that it is well-settled that the proper remedy for "denial of a [party's] right to a jury trial . . . [is to] "revers[e] and reman[d] [the] case in its entirety for a trial before a jury."). Compl. ¶ 1(a); *see also* Gov't Mot. to Dismiss at 6 (Case No. 03-cv-2856 was dismissed by the Honorable Samuel H. Mays on May 10, 2004); Def. App. at 2, 4 (Case No. 03-cv-2857 was dismissed by the Honorable Bernice B. Donald on February 18, 2004). *Id.*

Although the Tucker Act "permit[s] the [United States] Court of Federal Claims to grant equitable relief [, it must be] ancillary to claims for monetary relief over which it has jurisdiction." *National Air Traffic Controllers Ass'n, v. United States*, 160 F.3d 714, 716 (Fed. Cir. 1998); *see also* 28 U.S.C. §§ 1491(a)(2), (b)(2). As discussed above, however, the asserted claims are equitable in nature, not based on any money-mandating statute. Therefore, such claims are not ancillary to a claim for money damages against the United States. For this additional reason, this court lacks jurisdiction to adjudicate the claims asserted in the March 22, 2004 complaint.

Although the dismissal orders stated that any appeal of the 2003 judgments in the United States District Court actions would not be taken in "good faith," the complaint does not state whether plaintiff timely exhausted appeal rights. *Id.* Nevertheless, the plaintiff should be able to consult with court-appointed counsel to ascertain whether appeal of these judgments is still warranted and still an option under the rules of the United States Court of Appeals for the Sixth Circuit.

CONCLUSION

In this case, the United States Court of Federal Claims has no jurisdiction to adjudicate the claims asserted in the March 22, 2004 complaint. Therefore, the Government's July 21, 2004 motion to dismiss is granted and the Clerk is ordered to dismiss the March 22, 2004 complaint.

IT IS SO ORDERED.

Susan G. Braden
Judge