In the United States Court of Federal Claims

No. 04-90C
Filed: June 22, 2006

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*
JOHN DOE, *
*
Plaintiff, *
v. *
*
THE UNITED STATES, *
*
Defendant. *
*
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ORDER

On March 9, 2005, the court assigned *pro bono* counsel to assist Plaintiff. On April 25, 2005, Plaintiff notified the court that he had terminated *pro bono* counsel's representation. The court, however, apparently failed to inform the office of the Clerk of the Court of this change. On June 30, 2005, the court issued a Memorandum Opinion and Final Order correctly indicating Plaintiff's *pro se* status. As a result, Plaintiff did not receive notice of the Memorandum Opinion and Final Order, as required by RCFC 77(d). Instead, the office of the Clerk of the Court provided notice to Plaintiff's terminated *pro bono* counsel.

On March 23, 2006, Plaintiff contacted the office of the Clerk of the Court to advise the court that he received a letter from the United States Air Force regarding his potential recall. At that time, he first learned of the June 30, 2005 Memorandum Opinion and Final Order.

On March 28, 2006 Plaintiff filed a Motion for Relief from Judgment, pursuant to RCFC 60(a), (b)(1), and (b)(6), requesting that the court reissue the judgment entered on June 20, 2005, to allow Plaintiff to file a timely Notice of Appeal. *See* FRAP 4(a)(1)(B) ("When the United States or its officer or agency is a party, the notice of appeal may be filed by any party within 60 days after the judgment or order appealed from is entered."). On April 17, 2006, Plaintiff filed an Addendum to Motion for Relief from Judgment seeking an extension of time to file a Notice of Appeal, pursuant to FRAP Rule 4(a)(5).

Plaintiff's request for relief is based solely on the fact that he did not receive notice of the June 30, 2005 Memorandum Opinion and Final Order until March 23, 2006. Plaintiff's reliance on RCFC 60, however, is misplaced, because RCFC 60 may not be used to circumvent the restrictions of RCFC 77(d) or FRAP 4. *See* RCFC 77(d) ("Lack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 4(a) of the Federal Rules of Appellate Procedure.");

FRAP 4 (imposing 180-day cap on extensions of time to file a notice of appeal); *see also Vencor Hospitals, Inc.* v. *Standard Life and Accident Insurance Co,* 279 F.3d 1306, 1310-11 (11th Cir. 2002) (same regarding FRCP 60).

In relevant part, however, RCFC 61 provides, "No error . . . in anything done or *omitted* by the court . . . is ground for . . . for vacating, modifying, or otherwise disturbing a judgment . . . *unless refusal to take such action appears to the court inconsistent with substantial justice*." RCFC 61 (emphasis added). Considering Plaintiff's *pro se* status and underlying health issues, refusal to correct the situation would be inconsistent with substantial justice.

Accordingly, Plaintiff's March 28, 2006 Motion for Relief from Judgment is, hereby, **GRANTED**. The Clerk of the Court shall vacate the June 30, 2005 Entry of Judgment. *See* Docket No. 52. The Clerk of the Court is further directed to enter judgment consistent with the court's June 30, 2005 Memorandum Opinion and Final Order to be dated June 23, 2005, to afford Plaintiff the opportunity to file a timely Notice of Appeal.

IT IS SO ORDERED.

SUSAN G. BRADEN
Judge