In the United States Court of Federal Claims

No. 10-451 C
(Filed: February 17, 2011)
NOT FOR PUBLICATION

SANDRA JOHNSON GARDNER, Plaintiff, v. THE UNITED STATES, Defendant.	Subject Matter Jurisdiction; Tucker Act: Allegation of Breach of Contract by the Government; Court of Federal Claims Lacks Jurisdiction Over Claimed Violation of Title VII of Civil Rights Act of 1964

Sandra Johnson Gardner, Birmingham, Alabama, plaintiff, *pro se*.

Jane C. Dempsey, Trial Attorney, Martin F. Hockey, Jr., Assistant Director, Jeanne E. Davidson, Director, Commercial Litigation Branch, Civil Division, Tony West, Assistant Attorney General, United States Department of Justice, Washington D.C., for defendant.

OPINION AND ORDER

GEORGE W. MILLER, Judge

Proceeding *pro se*,[1] Sandra Johnson Gardner has filed a complaint alleging that she suffered nineteen incidents of discrimination in violation of Title VII of the Civil Rights Act of

[1] Plaintiff has moved to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a)(1). Motion to Proceed *In Forma Pauperis* (docket entry 2, July 12, 2010). Section 1915(a)(1) states that any federal court may authorize a civil action to proceed without prepayment of fees "by a person who submits an affidavit that includes a statement of all assets *such prisoner possesses*" and attests "that the person is unable to pay such fees." (Emphasis added). Although this language appears on its face to limit § 1915(a)(1)'s application to prisoners, courts have held that § 1915(a)(1) allows both prisoner and non-prisoner litigants to proceed *in forma pauperis*. *Haynes v. Scott*, 116 F.3d 137, 139-40 (5th Cir. 1997) (holding that the statute applies to all applicants, including non-prisoners, but prisoners must meet the additional requirements of § 1915(a)(2)); *Floyd v. U.S. Postal Serv.*, 105 F.3d 274, 276 (6th Cir. 1997) (observing that the statute's use of the word "person"—not prisoner—indicates that all persons are permitted to seek leave to file *in forma pauperis*); *see also Moore v. United States*, 93 Fed. Cl. 411, 412 n.1

1964 (Title VII), 42 U.S.C. § 2000e, *et seq.*, as an employee at the Birmingham, Alabama Veterans Administration Medical Center. Plaintiff seeks $300,000 for each instance of discrimination, additional "non-pecuniary damages," and interest, for a total of $10.2 million. Compl. ¶ 16 (docket entry 1, July 12, 2010). She also seeks enforcement of a 2002 EEOC decision and VA final order. Pl.'s Opp'n Def.'s Mot. Dismiss 2-4. Defendant has filed a motion to dismiss pursuant to Rule 12(b)(1) of the Rules of the United States Court of Federal Claims (RCFC), arguing that the Court lacks subject matter jurisdiction over plaintiff's action (docket entry 7, Oct. 25, 2010). For the reasons described below, the Court agrees that it lacks jurisdiction over plaintiff's claims, and the Court therefore grants defendant's motion to dismiss.

I. Background

In 1997, plaintiff began serving as a licensed practical nurse for the United States Department of Veterans Affairs (VA) at its Birmingham VA Medical Center facility. *In the Matter of Sandra J. Gardner*, Equal Employment Opportunity Commission (EEOC) #130-A2-8032-X at 9 (May 8, 2002) (EEOC Dec.), *attached as* Ex. A to Def.'s Mot. Dismiss. In late 1999 or early 2000, plaintiff began filing with the VA complaints that alleged disability and sex-based harassment by her supervisors. EEOC Dec. 9. In 2000 and again in 2001, plaintiff filed formal EEOC complaints alleging unlawful workplace discrimination, which she claimed took place from 1999 until 2001. EEOC Dec. 9-11; Compl. 1. Plaintiff's 2000 EEOC complaint alleged unlawful harassment based on disability and in retaliation for her earlier complaints, as well as denial of equal pay based on sex. EEOC Dec. 3-4. Her 2001 EEOC complaint alleged unlawful harassment based on sex and in retaliation for her previous allegations of discrimination. EEOC Dec. 4-5.

An EEOC Administrative Law Judge (ALJ) consolidated the two complaints for hearing. The ALJ determined—and the parties agreed—that the 2001 complaint was substantively identical to an existing class action, *Hampton v. Department of Veterans Affairs*, 2:01-CV-01536 (N.D. Ala. Jan. 3, 2003), then proceeding in the U.S. District Court for the Northern District of Alabama, in which plaintiff was a member of the putative class. EEOC Dec. 8-9. The ALJ therefore dismissed the 2001 complaint and considered only the 2000 EEOC complaint. *See* EEOC Dec. 8-9.

After conducting a hearing on the 2000 complaint, the ALJ found that VA officials had not discriminated against plaintiff based on her sex or disability, EEOC Dec. 7, 31-32, but that they had unlawfully harassed her in retaliation for her earlier complaints. EEOC Dec. 32-45, 49. As a result, the ALJ recommended that the VA pay plaintiff: (1) $20,000; (2) twenty-four hours of overtime compensation; (3) five days of "Continuation of Pay"; and (4) prejudgment interest. EEOC Dec. 49-50. In June 2002, the VA issued a final order adopting the ALJ's recommendation in its entirety. VA Final Order 2, *attached as* Ex. B to Def.'s Mot. Dismiss. In a July 24, 2002 compliance document, the VA stated that it had fully complied with the order, VA Compliance Notice, *attached as* Ex. F to Def.'s Mot. Dismiss, and it notified plaintiff of its

(2010). The Court **GRANTS** plaintiff's Motion to Proceed *In Forma Pauperis* for the purpose of considering defendant's pending 12(b)(1) motion.

compliance in a November 5, 2002 letter.[2] Nov. 5, 2002 VA Letter to Gardner, *attached as* Ex. 4 to Compl. Plaintiff later filed an appeal of the ALJ decision and the VA's final order with the EEOC's Office of Federal Operations. EEOC Dismissal Appeal, *attached as* Ex. C to Def.'s Mot. Dismiss. That office dismissed plaintiff's appeal as untimely. *Id.*

In July 2010, plaintiff filed this action, which seeks $10.2 million in damages. Compl. ¶ 16. Plaintiff states that in the *Hampton* litigation, she and the other plaintiffs *pled* damages in the amount of $5.7 million, but that the Government failed to pay them.[3] In *Hampton*, the plaintiffs had alleged nineteen instances of discrimination and sought $300,000 in compensation for each. Compl. ¶ 16. Plaintiff also seeks enforcement of the 2002 EEOC decision and VA final order. Pl.'s Opp'n Def.'s Mot. Dismiss 2-4. Without conceding that it owes plaintiff anything, defendant has filed a RCFC 12(b)(1) motion to dismiss Ms. Gardner's suit for lack of subject matter jurisdiction.

II. The Court Lacks Subject Matter Jurisdiction Over Plaintiff's Claims

The sole issue presented by defendant's Rule 12(b)(1) motion is whether the court has subject matter jurisdiction over plaintiff's claims. *Pro se* plaintiffs, like plaintiff in this case, are entitled to liberal construction of their pleadings. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972). This leniency, however, does not permit the court to hear cases outside of its jurisdiction. *Kelley v. Sec'y, U.S. Dep't of Labor*, 812 F.2d 1378, 1380 (Fed. Cir. 1987); *Biddulph v. United States*, 74 Fed. Cl. 765, 767 (2006). As a result, plaintiff here must meet the jurisdictional requirements for the Court to hear her claims.

"Determination of jurisdiction starts with the complaint, which must be well-pleaded in that it must state the necessary elements of the plaintiff's claim, independent of any defense that

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[2] Plaintiff appears to claim that the VA never fully complied with the order, though VA internal memoranda state that after VA officials were unable to determine her current address, Ms. Gardner appeared personally at the Birmingham VA Medical Center's Agency Cashier Office and received her $20,000 check. VA Nov. 16, 2004 Memorandum; VA July 23, 2002 Memorandum 2, *both attached as* Ex. F to Def.'s Mot. Dismiss. Moreover, the VA's July 24, 2002 compliance document confirms that the VA paid all other compensation described in the VA Final Order. VA July 24, 2002 Mem., *attached as* Ex. F to Def.'s Mot. Dismiss.

[3] The Court notes that Gardner and the other *Hampton* plaintiffs did not prevail in that case. Rather, the district court granted the VA's motion for summary judgment and dismissed the plaintiffs' case, *Hampton*, 2:01-CV-01536, and the Eleventh Circuit later dismissed *sua sponte* the plaintiffs' appeal as frivolous, *Gardner v. Dep't of Veterans Affairs*, No. 05-12458 (11th Cir. Sept. 23, 2005). It is unclear, therefore, why plaintiff believes she is entitled to payment from the *Hampton* law suit, in which she and the other plaintiffs were entirely unsuccessful. Though plaintiff's claim in this court is arguably barred by the doctrine of *res judicata*, defendant has not raised the issue, and it is normally inappropriate for a court to do so *sua sponte*. *Stearn v. Dep't of Navy*, 280 F.3d 1376, 1381 (Fed. Cir. 2002) (holding that where "special circumstances" were not present, it was error for lower court to raise *res judicata* issue *sua sponte*).

may be interposed." *Holley v. United States*, 124 F.3d 1462, 1465 (Fed. Cir. 1997) (citing *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 9-10 (1983)). When considering a motion to dismiss for lack of subject matter jurisdiction, the Court assumes the truth of all undisputed facts as alleged in the complaint and draws all reasonable inferences in the non-movant's favor. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974); *United Pac. Ins. Co. v. United States*, 464 F.3d 1325, 1327-28 (Fed. Cir. 2006). When weighing a motion to dismiss, "[t]he issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 184 (2005) (quoting *Scheuer*, 416 U.S. at 236).

In this court, a plaintiff must establish both that the court has subject matter jurisdiction over the action and that the Government has waived its sovereign immunity and given its consent to be sued. *United States v. Shaw*, 309 U.S. 495, 500-01 (1940); *Jentoft v. United States*, 450 F.3d 1342, 1349 (Fed. Cir. 2006). Because the Court of Federal Claims, like other federal courts, is a court of limited subject matter jurisdiction, a plaintiff must show that her suit falls within that limited jurisdiction. *Jentoft*, 450 F.3d at 1349 (citing *United States v. King*, 395 U.S. 1, 3 (1969)). Moreover, principles of federal sovereign immunity dictate that "without specific statutory consent, no suit may be brought against the United States." *Shaw*, 309 U.S. 500-01; *accord Gray v. Bell*, 712 F.2d 490, 506 (D.C. Cir. 1983). Here, plaintiff identifies two authorities[4] that she implies provide both subject matter jurisdiction and specific statutory consent to be sued: (1) 28 U.S.C. § 2351 and (2) the Tucker Act.

A. Jurisdiction Under 28 U.S.C. § 2351

Plaintiff first appears to imply that 28 U.S.C. § 2351 allows a suit against the United States and gives this Court jurisdiction over her claims. Compl. ¶ 17. Section 2351 states: "The several district courts have jurisdiction specifically to enforce, and to enjoin and restrain any person from violating any order issued under section 193 of title 7." The referenced statute, 7 U.S.C. § 193, pertains specifically to the Department of Agriculture and provides that if the Secretary of Agriculture finds that a "*packer or swine contractor* has violated or is violating any provisions of this subchapter . . . he . . . shall issue and cause to be served on the packer or swine contractor an order requiring such packer or swine contractor to cease and desist from continuing such violation." 7 U.S.C. § 193(b) (emphasis added).

By its plain language, section 2351 does not confer jurisdiction on this court over claims like plaintiff's. First, the statue grants jurisdiction not to the Court of Federal Claims, but to "the several district courts." 28 U.S.C. § 2351. Second, the statute covers orders by the Secretary of Agriculture involving violations by "packer[s] or swine contractor[s]," not orders of the Department of Veterans Affairs involving workplace discrimination. *Id.* (citing 7 U.S.C. § 193). As a result, 28 U.S.C. § 2351 does not provide a basis for subject matter jurisdiction over plaintiff's claims.

[4] In her Opposition to Defendant's Motion to Dismiss, plaintiff also appears to rely on a third authority, RCFC 83, as a basis for subject matter jurisdiction. RCFC 83 ("Rules by Court of Federal Claims; Judge's Directives"), however, governs the court's own rule-making procedure; it is unrelated to the Court's jurisdiction.

B. Jurisdiction Under the Tucker Act

The Tucker Act, 28 U.S.C. § 1491, states:

> The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.

Id. § 1491(a)(1). The Tucker Act therefore partially waives the federal government's sovereign immunity and vests jurisdiction in the Court of Federal Claims over certain monetary claims against the United States: those (1) founded on an express or implied contract with the United States; (2) seeking a refund of a payment made to the Government; or (3) based on federal constitutional, statutory, or regulatory law mandating compensation by the federal government for damages sustained (i.e., a "money-mandating authority"). *Taylor v. United States*, 80 Fed. Cl. 376, 381 (2008) (citing *United States v. Testan*, 424 U.S. 392, 400 (1976)). Because the Tucker Act does not itself provide a substantive basis for money damages, plaintiffs seeking monetary relief in this Court must rely upon *both* the Tucker Act *and* one of the three substantive bases listed above. *Cottrell v. United States*, 42 Fed. Cl. 144, 152 (1998) ("[T]he specific authority granting money relief must be distinct from [the] Tucker Act itself."). Moreover, if Congress has vested exclusive jurisdiction over disputes involving the authority relied upon in another court, this Court will lack jurisdiction over the matter. *See Bunch v. United States*, 33 Fed. Cl. 337, 341 (1995).

Here, plaintiff properly refers, in general terms, to the Tucker Act as a jurisdictional basis for this action.[5] She must also, however, identify a substantive basis for the court's jurisdiction. Plaintiff's complaint and other papers indicate that for her substantive jurisdictional basis, she relies on: (1) a breach of contract theory and (2) Title VII. The Court considers these possible jurisdictional bases in turn.

[5] Defendant argues that plaintiff has failed to plead jurisdiction under the Tucker Act. Def.'s Reply in Support of Mot. Dismiss 2 (docket entry 9, Dec. 9, 2010). As defendant notes, plaintiff failed to identify 28 U.S.C. § 1491 in her complaint, mentioning the Act for the first time in her Opposition to Defendant's Motion to Dismiss. However, some courts have held that the principle mandating liberal construction of *pro se* plaintiffs' pleadings, *Haines*, 404 U.S. at 520-21, requires a court to consider the content of *all* the pleadings—not just the complaint—in weighing a motion to dismiss against a *pro se* plaintiff. *E.g., Richardson v. United States*, 193 F.3d 545, 549 (D.C. Cir. 1999) (holding that district court was required to construe *pro se* plaintiff's reply to defendant's motion to dismiss as an amendment to his complaint); *Pearson v. Gatto*, 933 F.2d 521, 527 (7th Cir. 1991) (holding that district court should have construed a *pro se* plaintiff's letter to the court as an amended complaint); *Cooper v. Sheriff, Lubbock County, Tex.*, 929 F.2d 1078, 1081 (5th Cir. 1991) (holding that magistrate judge should have considered a *pro se* plaintiff's reply to the defendant's answer as a motion to amend the complaint). Therefore, for the purpose of considering defendant's motion to dismiss, the Court will follow the holdings of *Richardson*, *Pearson*, and *Cooper*, and construe plaintiff's mention of the Tucker Act in her Opposition to Defendant's Motion to Dismiss as an amendment to her complaint.

1. Jurisdiction Based on an Alleged Breach of a Contract

Plaintiff argues in her Opposition to Defendant's Motion to Dismiss that when the VA issued its final order in 2002 awarding her $20,000, overtime pay, and other relief, a contract arose between her and the VA. *See* Pl.'s Opp'n Def.'s Mot. Dismiss 2-4. Such a contract, she properly implies, would be a "contract with the United States," *Testan*, 424 U.S. at 397 (quoting 28 U.S.C. § 1491). Plaintiff alleges that the purported contract is both express and implied. Pl.'s Opp'n Def.'s Mot. Dismiss 2. Plaintiff further contends that her allegations regarding the Government's breach constitute a sufficient substantive basis for the court's subject matter jurisdiction. However, her allegations are insufficient to establish jurisdiction based on either an express or implied-in-fact contract.

Plaintiff's contract theory[6] is insufficient to confer subject matter jurisdiction because plaintiff has failed to allege any facts indicating that a contract exists, and because an examination of her pleadings reveals plaintiff's allegation of breach of contract to be frivolous. "[O]nce the . . . court's subject matter jurisdiction [is] put in question it [is] incumbent upon [the plaintiff] to come forward with evidence establishing the court's jurisdiction." *Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 748 (Fed. Cir. 1988). The plaintiff "bears the burden of establishing subject matter jurisdiction by a preponderance of the evidence." *George Family Trust ex rel. George v. United States*, 91 Fed. Cl. 177, 189 (2009) (quoting *Reynolds*, 846 F.2d at 748). Although a complaint that "presents a *non*-frivolous allegation of the existence of an implied-in-fact contract . . . is sufficient to confer jurisdiction," *Hanlin v. United* States, 214 F.3d 1319, 1321 (Fed. Cir. 2000) (emphasis added), plaintiff's complaint fails even to present a non-frivolous allegation of the existence of a contract.[7] Her allegations are therefore insufficient to invoke the court's jurisdiction.

An implied-in-fact contract with the Government requires "(1) mutuality of intent, (2) consideration, (3) an unambiguous offer and acceptance, and (4) 'actual authority' on the part of the government's representative to bind the government in contract." *Hanlin v. United States*, 316 F.3d 1325, 1328 (Fed. Cir. 2003) (quoting *City of Cincinnati v. United States*, 153 F.3d 1375, 1377 (Fed. Cir. 1998)). An implied-in-fact contract "is inferred, as a fact, from conduct of the parties showing, in the light of the surrounding circumstances, their tacit understanding." *Balt. & Ohio R.R. v. United States*, 261 U.S. 592, 597 (1923).

This Court is unaware of any authority—binding or persuasive—suggesting that a federal administrative order, such as that involved here, constitutes a contract between the complainant and the Government. Plaintiff herself cites no such authority. Of equal importance, plaintiff

[6] For the reasons discussed in footnote 5, *supra*, the Court treats plaintiff's breach-of-contract theory, advanced for the first time in her Opposition to Defendant's Motion to Dismiss, as an amendment to her complaint.

[7] A claim is frivolous when it "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). No basis in law or fact exists if a complaint "embraces . . . inarguable legal conclusions" or "fanciful factual allegations." *Id.*

does not allege any of the four elements required for an implied-in-fact contract, and it is clear from the pleadings that at least the first, second, and fourth of the elements are absent.[8] As to the first element, plaintiff does not allege that either she or the VA intended to enter into an enforceable contract. Regarding the second element, plaintiff identifies no consideration that she provided the VA in exchange for its purported promise to pay her; indeed, her pleadings strongly indicate that there was no such consideration. And regarding the fourth and final element, the Court is aware of no statutory or regulatory authority—and plaintiff cites none—that would give the VA authority to enter into a contract with plaintiff under the circumstances of this case.[9] Given that at least all but one of the elements of an implied-in-fact contract are plainly absent, plaintiff has failed to demonstrate subject matter jurisdiction in this case by "com[ing] forward with evidence," *Reynolds*, 846 F.2d at 748, showing, by a preponderance of the evidence, the existence of an implied or express contract with the Government. *Cf. Ex rel. George*, 91 Fed. Cl. at 189.[10]

2. Jurisdiction Under Title VII

Finally, plaintiff's complaint implies that Title VII is a source of subject matter jurisdiction over her claims. Indeed, Title VII authorizes a court to award money damages against the United States where one of its agencies violates the statute. *Rochon*, 438 F.3d at 1216 (citing 42 U.S.C. § 2000e-16(a)). The Federal Circuit, however, has made clear that where Congress has provided "a specific and comprehensive scheme for administrative and judicial

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[8] The third element of an implied-in-fact contract—"unambiguous . . . acceptance" of an offer to pay, *Hanlin*, 316 F.3d at 1328—is also likely absent, though plaintiff's actions in receiving the payment from the VA could conceivably be construed as sufficient to satisfy the requirement of acceptance.

[9] Because a settlement agreement is a contract, had plaintiff entered into such an agreement with the VA resolving her Title VII claims, jurisdiction over a claim that defendant breached the settlement agreement would properly lie with this court. *See Rochon v. Gonzales*, 438 F.3d 1211, 1214 (D.C. Cir. 2006) ("'[A] claim for breach of a Title VII settlement agreement is a contract claim within the meaning of the Tucker Act' and, therefore, for claims exceeding $10,000 jurisdiction belongs with the Court of Federal Claims." (quoting *Hansson v. Norton*, 411 F.3d 231, 232 (D.C. Cir. 2005))); *Speed v. United States*, --- Fed. Cl. ---, 2011 WL 286245, at *5-8 (Jan. 28, 2011) (holding that breach of contract claims brought under the Tucker Act satisfy the Court's jurisdictional requirements without the need to invoke a money-mandating authority); *Greenhill v. United States*, 81 Fed. Cl. 786, 790 (2008) ("[M]oney damages are the default remedy for breach of contract . . . .").

[10] Given that at least three of the required elements for an implied-in-fact contract are absent, it follows *a fortiori* that plaintiff's allegation of an *express* contract is also wholly lacking in support. The requirements for an express contract are the same as those for an implied-in-fact contract: they differ only in that an implied-in-fact contract is inferred from the parties' conduct, while an express contract requires statements by the parties of their intent to be bound. *Hanlin*, 316 F.3d at 1328. Here, the complaint is devoid of any indication that either party expressed intent to be bound.

review" of a given class of claims, that scheme preempts the Tucker Act and deprives this Court of subject matter jurisdiction over that class of claims. *Wilson ex rel. Estate of Wilson v. United States*, 405 F.3d 1002, 1009 (Fed. Cir. 2005); *St. Vincent's Med. Ctr. v. United States*, 32 F.3d 548, 550 (Fed. Cir. 1994).

Title VII claims constitute such a preempted class: Title VII "is the comprehensive, exclusive and pre-emptive remedy for federal employees alleging discrimination." *Lee v. United States*, 33 Fed. Cl. 374, 378 (1995) (citing *Brown v. Gen. Servs. Admin.*, 425 U.S. 820, 829 (1976)). As such, "[w]ith Title VII, Congress established administrative and judicial avenues of relief for federal employees to pursue discrimination claims, *but not in th[e] [C]ourt [of Federal Claims]*." *Taylor*, 80 Fed. Cl. at 381 (emphasis added) (citing *Lee*, 33 Fed. Cl. at 378) ("Congress never intended for the United States Court of Federal Claims to have jurisdiction over claims brought under Title VII, and it is well settled that this court lacks jurisdiction to entertain actions brought under the statute."); *accord* 28 U.S.C. 1343(a)(4) ("The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person . . . [t]o recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights . . . ."); *Bunch*, 33 Fed. Cl. at 341 ("[A] claim premised on a violation of Title VII must be brought in district court, not in the Court of Federal Claims."). Title VII, therefore, does not confer subject matter jurisdiction on this Court to entertain plaintiff's claims.

CONCLUSION

Because plaintiff has failed to allege a non-frivolous claim of the existence of a contract—express or implied—with the Government, and because Title VII claims are the exclusive province of the district courts within the federal judicial system, this Court lacks subject matter jurisdiction over plaintiff's action.[11] For these and the other reasons set forth above, defendant's motion to dismiss pursuant to RCFC 12(b)(1) is **GRANTED**, and the Clerk is directed to enter judgment dismissing plaintiff's action without prejudice.

IT IS SO ORDERED.

George W. Miller

GEORGE W. MILLER
Judge

[11] The Court has considered whether plaintiff's action should be transferred to a federal district court. *See* 28 U.S.C. § 1631 ("Whenever a civil action is filed in a court . . . and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court in which the action or appeal could have been brought at the time it was filed or noticed . . . ."). The procedural history and outcome of plaintiff's similar action in the Northern District of Alabama and plaintiff's appeal to the Eleventh Circuit, *see supra* n.3, as well as the frivolous character of plaintiff's claims in this litigation, show that the interest of justice would not be served by transferring this case to the Northern District of Alabama or any other district court.