

**In the United States Court of Federal Claims**

No. 10-618C

(Filed: September 30, 2010)

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PATRICK DEVINE, \*

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Plaintiff, \*

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v. \*

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THE UNITED STATES, \*

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Defendant. \*

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**ORDER OF DISMISSAL**

Plaintiff, appearing pro se, filed the above-captioned case on September 14, 2010, seeking to “Record three Acknowledged Title Deeds as Claims under a Top Priority Foreign Judgment.” His complaint consists of a variety of documents, including a letter to the Clerk of Court describing his suit; three cover sheets, each containing a description of the nature of his suit as it relates to one of the three “Acknowledged Title Deeds”; the three “Acknowledged Title Deeds” (his birth certificate, his social security card, and his record of military service), each bearing a declaration from plaintiff on its reverse side; a list of government officials who, according to plaintiff, should be provided notice of this suit; a fingerprint card; and an application to proceed in forma pauperis.<sup>1</sup> The court dismisses plaintiff’s complaint for lack of jurisdiction and finds plaintiff’s application to proceed in forma pauperis to be moot.

Whether the court has jurisdiction to decide the merits of a case is a threshold matter. See Steel Co. v. Citizens for a Better Env’t, 523 U.S. 83, 94-95 (1998). “Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause.” Ex parte McCardle, 74 U.S. (7 Wall.) 506, 514 (1868). The parties or the court sua sponte may challenge the existence of subject matter jurisdiction at any time. Folden v. United States, 379 F.3d 1344, 1354 (Fed. Cir. 2004).

When considering whether to dismiss a complaint for lack of jurisdiction, a court assumes that the allegations in the complaint are true and construes those allegations in plaintiff’s favor. Henke v. United States, 60 F.3d 795, 797 (Fed. Cir. 1995). A pro se plaintiff’s complaint,

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<sup>1</sup> Because the documents submitted by plaintiff contain personal identifiers, such as his birth date, social security number, and fingerprints, the court filed them under seal for his protection.

“‘however inartfully pleaded,’ must be held to ‘less stringent standards than formal pleadings drafted by lawyers’ . . . .” Hughes v. Rowe, 449 U.S. 5, 10 n.7 (1980) (quoting Haines v. Kerner, 404 U.S. 519, 520-21 (1972)). However, a pro se plaintiff is not excused from meeting basic jurisdictional requirements. See Henke, 60 F.3d at 799 (“The fact that [the plaintiff] acted pro se in the drafting of his complaint may explain its ambiguities, but it does not excuse its failures, if such there be.”). In other words, a pro se plaintiff is not excused from his or her burden of proving, by a preponderance of the evidence, that the court possesses jurisdiction. See McNutt v. Gen. Motors Acceptance Corp., 298 U.S. 178, 189 (1936); Reynolds v. Army & Air Force Exch. Serv., 846 F.2d 746, 748 (Fed. Cir. 1988). Moreover, the court has no duty to create a claim where a pro se plaintiff’s complaint is so vague or confusing that one cannot be determined. Minehan v. United States, 75 Fed. Cl. 249, 253 (2007); Scogin v. United States, 33 Fed. Cl. 285, 293 (1995). A duty is not created because an overly confusing or incoherent complaint “‘makes it difficult for the defendant to file a responsive pleading and makes it difficult for the trial court to conduct orderly litigation.’” Scogin, 33 Fed. Cl. at 293 (quoting Vicom, Inc. v. Harbridge Merch. Servs., Inc., 20 F.3d 771, 775-76 (7th Cir. 1994)).

The ability of the United States Court of Federal Claims (“Court of Federal Claims”) to entertain suits against the United States is limited. “The United States, as sovereign, is immune from suit save as it consents to be sued.” United States v. Sherwood, 312 U.S. 584, 586 (1941). The waiver of immunity “cannot be implied but must be unequivocally expressed.” United States v. King, 395 U.S. 1, 4 (1969). The Tucker Act, the principal statute governing the jurisdiction of this court, waives sovereign immunity for claims against the United States, not sounding in tort, that are founded upon the United States Constitution, a federal statute or regulation, or an express or implied contract with the United States. 28 U.S.C. § 1491(a)(1) (2006). However, the Tucker Act is merely a jurisdictional statute and “does not create any substantive right enforceable against the United States for money damages.” United States v. Testan, 424 U.S. 392, 398 (1976). Instead, the substantive right must appear in another source of law, such as a “money-mandating constitutional provision, statute or regulation that has been violated, or an express or implied contract with the United States.” Loveladies Harbor, Inc. v. United States, 27 F.3d 1545, 1554 (Fed. Cir. 1994) (en banc).

Although the documents prepared by plaintiff are largely incoherent and therefore difficult to decipher, the court discerns that plaintiff requests that the court “record” his birth certificate, social security card, and record of military service, which, according to plaintiff, would force the United States and the State of Iowa to “release” and “return” to plaintiff certain, unspecified property and assets held in trust for his benefit.<sup>2</sup> However, plaintiff has not cited any

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<sup>2</sup> To the extent that plaintiff is asserting a claim against the State of Iowa or any of its officers or employees, that claim must be dismissed. The United States is the only proper defendant in the Court of Federal Claims. See 28 U.S.C. § 1498(a)(1) (providing that the Court of Federal Claims has jurisdiction over claims against the United States); RCFC 10(a) (requiring that the United States be designated as the defendant in the Court of Federal Claims); Sherwood, 312 U.S. at 588 (concluding that jurisdiction in the Court of Federal Claims “is confined to the

substantive source of law that permits the Court of Federal Claims to record birth certificates, social security cards, or records of military service. Without such legal authority, the court lacks jurisdiction to grant the relief requested by plaintiff.

Plaintiff's complaint fails even if the court construes it as a claim for a tax refund. Although Congress has explicitly waived sovereign immunity for tax refund suits, 26 U.S.C. § 7422 (2006); 28 U.S.C. § 1346(a)(1); Chi. Milwaukee Corp. v. United States, 40 F.3d 373, 374 (Fed. Cir. 1994), the jurisdiction of the Court of Federal Claims to entertain tax refund suits is limited to those situations where the taxpayer has complied with the provisions of the Internal Revenue Code, see 26 U.S.C. § 7422(a); United States v. Clintwood Elkhorn Mining Co., 553 U.S. 1, 4 (2008); Chi. Milwaukee Corp., 40 F.3d at 374. Plaintiff has not alleged that he complied with the relevant provisions of the Internal Revenue Code to obtain a tax refund. Thus, if plaintiff is asserting a claim for a tax refund, the court would be required to dismiss it for lack of jurisdiction.

Plaintiff's complaint also fails if the court construes it as a claim for military pay. It is well established that 37 U.S.C. § 204(a)(1) (2006), which entitles military service members to basic pay while on active duty, is a money-mandating source of jurisdiction in the Court of Federal Claims. Metz v. United States, 466 F.3d 991, 998 (Fed. Cir. 2006) (citing In re United States, 463 F.3d 1328, 1334 (Fed. Cir. 2006); James v. Caldera, 159 F.3d 573, 581 (Fed. Cir. 1998)). To take advantage of this statute, however, a plaintiff must establish that his separation from the military was involuntary. Id. at 998. Here, plaintiff has not alleged that he was wrongfully discharged from the military. Accordingly, if plaintiff is asserting a claim for military pay, the court would be required to dismiss it for failure to state a claim upon which it could grant relief.

The court lacks jurisdiction to entertain plaintiff's complaint for an additional reason: plaintiff's suit falls outside of the six-year limitations period applicable to suits brought in the Court of Federal Claims. See 28 U.S.C. § 2501 ("Every claim of which the United States Court of Federal Claims has jurisdiction shall be barred unless the petition thereon is filed within six years after such claim first accrues."). In John R. Sand & Gravel Co. v. United States, the United States Supreme Court ("Supreme Court") held that 28 U.S.C. § 2501 is a "special statute of limitations" for claims against the United States that provides an "absolute" limit on the ability of the Court of Federal Claims to reach the merits of a case.<sup>3</sup> 552 U.S. 130, 132-35 (2008). Here,

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rendition of money judgments in suits brought for that relief against the United States, and if the relief sought is against others than the United States the suit as to them must be ignored as beyond the jurisdiction of the court" (citations omitted)).

<sup>3</sup> Indeed, the Supreme Court contrasted the "special statute of limitations governing the Court of Federal Claims" with most other statutes of limitations, which are not jurisdictional, noting that "the law typically treats a limitations defense as an affirmative defense that the

plaintiff alleges, with respect to his birth certificate, that the government has withheld property and assets that should have been released when he reached the age of eighteen. He further alleges, with respect to his social security card, that the government has withheld property and assets that should have been released when was assigned a social security number. He finally alleges, with respect to his military service record, that the government has withheld property and assets that should have been released when he reached the age of twenty-five or was separated from the military. Plaintiff was born in 1949, reached the age of eighteen in 1967, reached the age of twenty-five in 1974, was separated from the military in 1978, and, as reflected on his military separation record, obtained a social security number no later than 1978. Thus, even if the court had jurisdiction over the subject matter of plaintiff's suit, his claim accrued no later than 1978, well beyond the six-year period described in 28 U.S.C. § 2501. Thus, the court lacks jurisdiction over plaintiff's complaint on statute of limitations grounds.

Because plaintiff has not described a claim within the jurisdiction of the Court of Federal Claims, the court **DISMISSES** his complaint **WITHOUT PREJUDICE** for lack of jurisdiction. Plaintiff's application to proceed in forma pauperis is accordingly rendered moot.<sup>4</sup> The Clerk of Court shall enter judgment accordingly.

**IT IS SO ORDERED.**

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MARGARET M. SWEENEY  
Judge

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defendant must raise at the pleadings stage and that is subject to rules of forfeiture and waiver.” John R. Sand & Gravel Co., 552 U.S. at 133.

<sup>4</sup> Because the court finds plaintiff's application to proceed in forma pauperis to be moot, it need not address in detail the blatant deficiencies of the application, such as plaintiff's failure to include a statement of all of his assets. See 28 U.S.C. § 1915(a)(1); Hayes v. United States, 71 Fed. Cl. 366, 366-67 (2006) (concluding that section 1915(a)(1) applies to both prisoners and nonprisoners alike).