

In the United States Court of Federal Claims

No. 10-571C

(Filed: January 21, 2011)

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*
LILLIE R. STEPHENS, *
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Plaintiff, *
*
v. *
*
THE UNITED STATES, *
*
Defendant. *
***** *

OPINION AND ORDER

Plaintiff, Lillie R. Stephens, filed a 115-page complaint on August 23, 2010, together with a motion to proceed *in forma pauperis*. The Court granted Plaintiff's motion to proceed *in forma pauperis* on August 25, 2010. Since that time, Ms. Stephens has submitted several other filings to the Court. On September 21, 2010, the Court received a letter from Ms. Stephens requesting that the complaint reflect a demand for a jury trial. The following day, on September 22, 2010, Ms. Stephens filed a "motion to require dental exam" in which she requested that the Court require her to submit to a dental examination. On January 4, 2011, Ms. Stephens filed a motion for extra time to amend the complaint and on January 11, 2011, Ms. Stephens filed two form CJA 21s, authorizations for expert and other services, seeking authorization to purchase a \$5,400 Westlaw subscription and a \$2,500 computer system from Best Buy.

On October 6, 2010, Defendant filed a motion to dismiss for lack of subject matter jurisdiction. Ms. Stephens filed her response on November 5, 2010, and Defendant filed its reply on November 17, 2010. The issue is now fully briefed and ready for decision. Plaintiff's complaint asserts many allegations against various entities and persons, including the United States, President George W. Bush, the Central Intelligence Agency ("CIA"), Secretary of Defense Robert M. Gates, the State of Texas, North Central Texas Council of Government, Reel Em In Restaurant, Federal Communications Commission ("FCC"), Alliance Communications Network, Time Warner Cable, Eyemasters, Davis Dental, and "others to be provided."

Despite the lengthy complaint and the many allegations therein, Ms. Stephens fails to state a claim that is within this Court’s jurisdiction. Most of the entities named in Ms. Stephens’ complaint are entities other than the United States that do not fall under the jurisdiction of this Court. Furthermore, to the extent Ms. Stephens’ claims are against entities within this Court’s purview, Ms. Stephens seeks damages for allegedly tortious conduct that is beyond the scope of this Court’s jurisdiction, or presents her claims under constitutional and statutory provisions that are not money-mandating and therefore cannot support jurisdiction in this Court. Because Ms. Stephens’ complaint fails to state a claim for which this Court may exercise jurisdiction, Defendant’s motion to dismiss must be granted.

STANDARD OF REVIEW

Rule 8(a)(1) of the Court’s Rules requires that a claim for relief contain “a short and plain statement of the grounds for the court’s jurisdiction” A motion to dismiss will be granted where the plaintiff fails to establish by a preponderance of the evidence that the Court has subject matter jurisdiction. See Vandesande v. United States, 94 Fed. Cl. 624, 629 (2010). “While a *pro se* plaintiff is held to a less stringent standard than that of a plaintiff represented by an attorney, the *pro se* plaintiff, nevertheless, bears the burden of establishing the Court’s jurisdiction by a preponderance of the evidence.” Riles v United States, 93 Fed. Cl. 163, 165 (2010) (citing Hughes v. Rowe, 449 U.S. 5, 9 (1980) and Taylor v. United States, 303 F.3d 1357, 1359 (Fed. Cir. 2002)).

In evaluating a motion to dismiss, the Court will construe the allegations in the complaint in the light most favorable to the pleader and draw all reasonable inferences in the complainant’s favor. See Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), *overruled on other grounds by Harlow v. Fitzgerald*, 457 U.S. 800, 814-15 (1982). However, “[c]onclusory allegations of law and unwarranted inferences of fact do not suffice to support a claim.” Bradley v. Chiron Corp., 136 F.3d 1317, 1322 (Fed. Cir. 1998). As the Supreme Court has noted, Rule 8 “does not require ‘detailed factual allegations,’ but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” Ashcroft v. Iqbal, ___ U.S. ___, 129 S. Ct. 1937, 1949 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Therefore, a pleading that merely offers “a formulaic recitation of the elements of a cause of action” or consists of “naked assertion[s]” devoid of “further factual enhancement” cannot survive a motion to dismiss. Twombly, 550 U.S. at 555-57 (2007).

DISCUSSION

Plaintiff’s complaint is divided into 35 “issues.” Issue one is labeled “Constitutional” and Issue two is labeled “Statutory.” Issues 3-35 contain various tortious allegations against the Defendants. The Tucker Act, which confers jurisdiction

on this Court, provides that 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.” 28 U.S.C. § 1491(a)(1). The Tucker Act only provides this Court with jurisdiction for claims against the United States, not its officers, or any other individual. Miller v. United States, 67 Fed. Cl. 195, 197 (2005). Nor does this Court have jurisdiction over any suit brought against private parties. United States v. Sherwood, 312 U.S. 584, 588 (1941). Therefore, despite the many named Defendants, this Court can only exercise jurisdiction over the claims made against the United States, and all other claims must be dismissed.

A. Issues 1 and 2 – Constitutional and Statutory

Ms. Stephens asserts, with little or no factual allegations to provide context, violations of the First, Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments. Ms. Stephens also alleges violations of 42 U.S.C. § 1981, 42 U.S.C. § 1982, 42 U.S.C. § 1983, 42 U.S.C. § 1985, and 42 U.S.C. § 1986. As discussed below, none of the constitutional or statutory issues asserted by Ms. Stephens present a cognizable claim in this Court.

As sovereign, the United States is immune from suit except to the extent it consents otherwise. See Collins v. United States, 35 Fed. Cl. 620, 624 (1996). The Tucker Act provides for a waiver of sovereign immunity and defines the jurisdiction of this Court. 28 U.S.C. § 1491(a)(1). 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). Therefore, to demonstrate jurisdiction in this Court, Plaintiff must also show that her claim arises from a statute or constitutional provision that “can fairly be interpreted as mandating compensation by the Federal Government for the damage sustained.” Id. at 400 (quotations omitted).

It is well established in case law that the First, Fourth, Sixth, Eighth, and Fourteenth Amendments are not money mandating provisions of the Constitution and therefore cannot support jurisdiction in this Court. See, e.g., Hernandez v. United States, 93 Fed. Cl. 193, 198 (2010). While this Court routinely exercises its jurisdiction under the Fifth Amendment for takings cases, the Federal Circuit has directed that this Court lacks jurisdiction over Fifth Amendment cases based on the due process clause because it is not a money-mandating provision. See Crocker v. United States, 125 F.3d 1475, 1476 (Fed. Cir. 1997) (“The Court of Federal Claims correctly concluded that it does not have jurisdiction to hear [plaintiff’s] due process . . . claims under the Fifth Amendment to the United States Constitution.”). Plaintiff states that “Defendants deprived Plaintiff of rights secured by Amendment 5 (Grand Jury, Double Jeopardy, Self-Incrimination, Due

Process) as a result of privacy violations.” (Compl. at 2, ¶5.) These provisions of the Fifth Amendment are not money-mandating and therefore cannot be used to support jurisdiction in this Court.

Ms. Stephens also alleges that “Defendants deprived Plaintiff of property in violation of the United States Constitutional Amendments 1, 4, 5, 6, 8 and 14.” (Compl. at 18, ¶ 35.) While this allegation could loosely be construed as a takings claim under the Fifth Amendment, Ms. Stephens has provided no factual support for her allegations. She fails to identify which of the many named Defendants deprived her of the property, what property she was deprived of, or how the “Defendants” deprived her of this property. As discussed above, conclusory legal allegations without any supporting factual assertions cannot survive a motion to dismiss. Therefore, to the extent Ms. Stephens may have alleged a Fifth Amendment taking under the Constitution, she has not provided sufficient factual support for her allegation, and the Court does not have jurisdiction on her claim.

The United States Code sections which Ms. Stephens alleges were violated by Defendants all pertain to civil rights and are not money mandating statutes over which this Court has jurisdiction. 42 U.S.C. § 1981 provides for equal rights under the law. 42 U.S.C. § 1982 provides for property rights of all citizens of the United States. 42 U.S.C. § 1983 creates a civil action for deprivation of rights. 42 U.S.C. § 1985 pertains to conspiracies to interfere with civil rights, and 42 U.S.C. § 1986 provides an action for neglect. Jurisdiction for violations of these statutes is exclusively vested in the district courts. 28 U.S.C. § 1343(a)(4); see also McCauley v. United States, 152 F.3d 948 (Fed. Cir. 1998). Finally, Ms. Stephens posits that this Court has jurisdiction under 28 U.S.C. § 1332, which provides for diversity jurisdiction in the district courts. 28 U.S.C. § 1332 does not apply here because this Court is not a district court. Therefore, the Court lacks jurisdiction over Ms. Stephens’ constitutional and statutory claims.

B. Issues 3-35

In Issues 3 through 35, Ms. Stephens alleges violations of practically every tort imaginable and perhaps created some new ones of her own.¹ As with Ms. Stephens’ constitutional and statutory claims, her allegations rarely contain anything more than conclusory legal allegations, or blind recitations of the elements for a tortious action. Ms.

¹ Plaintiff’s allegations include: Medical Malpractices and Medical Negligence; Intentional Spoliation by a Party (Interference with Evidence); Interference of Contract Relations; Intentional Interference with Contractual Relations; Interference with Prospective Business Advantage; Interference with Employer-Employee Relationship; Invasion of Privacy; Products Liability; Assault; Physical Interference with Person or Property; Trespass; Harassment; Intentional Infliction of Emotional Distress; Negligent Infliction of Emotional Distress; Discrimination; Negligence; Negligence (Medical); Conspiracies; Educational Malpractice; Nuisance; Defamation; Libel and Slander; Retaliation; Stalking; Interference with Communications; Distributions or Misuse of Official and Confidential Information; Improper Government Authorities; Official Oppression; Proximate; Premise; Improper Influence; Loss of Consortium; and False Arrest/Detention.

Stephens fails to identify which of the many named defendants committed the violations for which she seeks redress, or provide any factual details for the Court to understand the basis for her allegation.

Furthermore, the Court has carefully reviewed all the claims presented by issues 3-35 and has not identified any claim over which this Court has jurisdiction. This Court does not possess jurisdiction over tort claims. Shearin v. United States, 992 F.2d 1195, 1197 (Fed. Cir. 1993) (“It is well settled that the United States Court of Federal Claims lacks . . . jurisdiction to entertain tort claims.”). Therefore, to the extent that issues 3-35 present a claim against the United States, the Court must dismiss the claims because they are for tortious actions over which this Court lacks jurisdiction.

C. Plaintiff’s Other Filings

In addition to the complaint, Ms. Stephens filed a request for a jury trial, a motion to require a dental exam, a motion to extend time to amend the complaint, and two form CJA 21s. This Court has no authority to grant Ms. Stephens’ request for a jury trial. McNeil v. United States, 78 Fed. Cl. 211, 216 (2007). The Seventh Amendment’s right to a trial by jury does not apply to actions against the Government. Lehman v. Nakshian, 453 U.S. 156, 160 (1981). Nor does this Court have authority to grant Ms. Stephens’ request to purchase a computer system or a Westlaw subscription through the CJA 21 forms submitted under the Criminal Justice Act (“CJA”), 18 U.S.C. § 3006A. The CJA and its provisions are inapplicable here as the CJA provides for the adequate representation of defendants and only applies to the district courts. As previously noted, the Court of Federal Claims is not a district court, and Ms. Stephens is not the defendant in this case. Ms. Stephens motion to extend time to amend the complaint is itself untimely. Ms. Stephens has not provided an amended complaint with her motion and the rationale provided by the motion does little more than repeat accusations and citations that Ms. Stephens has already presented to the Court in her other pleadings. Finally, regarding Ms. Stephens’ motion to require a dental exam, the Court is without authority to require Ms. Stephens to undergo a dental examination, and certainly would not stop her from doing the same. To the extent Ms. Stephens wants the Government or the Court to pay for the examination, she has failed to present any basis for such a request. Therefore, her motion must be denied.

D. Transfer to a District Court

The sole remaining issue is whether the Court should transfer the case, pursuant to 28 U.S.C. § 1631, to a United States district court for further proceedings. A transfer “should occur only if it would be in the public interest, and should not take place if the action would most probably be dismissed in the District Court.” Singleton v. United States, 6 Cl. Ct. 156, 168 (1984). Generally, the Court will look to two factors: (1) whether it is possible the district court will possess jurisdiction over the action; and (2)

whether the plaintiff has any chance of receiving a remedy in the district court. Taylor v. United States, 92 Fed. Cl. 36, 39 (2010). The Court finds that transfer in this case is not appropriate and would not be in the public interest. To the extent Ms. Stephens articulated an actionable tort claim against the United States, Defendant contends she has not complied with the exhaustion requirement of the Federal Tort Claims Act and any claim would be dismissed by the district court.

CONCLUSION

Plaintiff's complaint fails to state a claim over which this Court has jurisdiction. Therefore, Defendant's motion to dismiss is GRANTED. The complaint is hereby DISMISSED without prejudice. Plaintiff's request for the complaint to reflect a request for a jury trial, motion to require a dental exam, motion for extra time to amend the complaint, and CJA authorization requests are DENIED.

IT IS SO ORDERED.

THOMAS C. WHEELER
Judge