

In the United States Court of Federal Claims

No. 05-549C
No. 05-550C
(Consolidated)
(Unpublished)

(Filed June 28, 2005)

EDWARD EARL THOMAS,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

Before the Court are two complaints and motions to proceed in forma pauperis, filed by Edward Earl Thomas. The Court hereby consolidates these actions -- Nos. 05-549 and 05-550. Solely for the purposes of addressing whether this Court has jurisdiction, Plaintiff's motion to proceed in forma pauperis is granted. However, the complaint is dismissed for lack of jurisdiction. 28 U.S.C. § 1915(e)(2)(B)(ii).

1 Under Rule 42(a), the Court may order actions involving a common question of law or fact consolidated. When "[I]n determining whether consolidation is appropriate, the Court must weigh the interest of judicial economy against the potential for delay, confusion and prejudice that may result from consolidation." Cienega Gardens v. United States, 62 Fed. Cl. 28, 31 (2004); See also Karuk Tribe of California v. United States, 27 Fed. Cl. 429, 433 (1993). In addition, "[t]he court has broad discretion to determine whether consolidation is appropriate. Cienega Gardens, 62 Fed. Cl. at 32. Because both actions filed by Plaintiff on the same day involve the same facts and the same claims, the Court hereby consolidates these actions.

2 28 U.S.C. § 1915(e)(2)(B)(ii) provides that notwithstanding any fee that may have been paid, the "court shall dismiss the case at any time if the court determines that . . . the action or appeal

Background³

In these complaints filed on May 13, 2005, Plaintiff is seeking combined damages of \$1.9 billion. In No. 549C, Plaintiff seeks \$1 billion for “mental, stress, pain, suffering [sic]” stemming from police brutality and discrimination that occurred while he was a prisoner in Saginaw, Michigan. In No. 550C, Plaintiff seeks \$9 million for “two cases for malpractice, discrimination and bias then pain and mental stress [sic]” stemming from fraud and clerical errors that occurred during the processing and disposition of his five claims filed in a Michigan court. Plaintiff alleges that he was in his own cell when one of the prison guards let two other individuals into his cell to “jump” him. He alleges that as a result of the beating, he suffered “multiple closed head injuries, skull fracture, broken should [sic] and ribs, whiplash, upper and lower back [sic].” Thereafter, Plaintiff alleges that he was represented by a lawyer and was offered \$100,000 in what appears to be a settlement that he did not accept. Plaintiff also alleges that he proceeded to trial where a jury was selected, which was later determined to have a conflict of interest. Plaintiff alleges that the United States Court of Appeals for the Sixth Circuit “used discrimination and bias” against him along with the Federal Bureau of Investigation (FBI) in Bay City, Michigan.⁴

Jurisdiction

Subject matter jurisdiction may be challenged at any time by any party, by the Court sua sponte, and even on appeal. Booth v. United States, 990 F.2d 617, 620 (Fed. Cir. 1993). In ruling on a motion to dismiss for lack of subject matter jurisdiction, the Court must presume all undisputed factual allegations to be true and construe all reasonable inferences in favor of the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974); Cedars-Sinai Med. Ctr. v. Watkins, 11 F.3d 1573, 1583 (Fed. Cir. 1993); Holland v. United States, 57 Fed. Cl. 540, 551 (2003). It is the traditional role of the Court, with respect to pro se plaintiffs, to examine the record “to see if plaintiff has a cause of action somewhere displayed.” Ruderer v. United States, 188 Ct. Cl. 456, 468 (1969). Still, the fact that 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.” Henke v. United States, 60 F.3d 795, 799 (Fed. Cir. 1995). In such instances, the Court does not hold Plaintiff’s pleadings to the more stringent standards that would apply if Plaintiff were represented by counsel. See, Hughes v. Rowe, 449 U.S. 5, 9 (1980). Ultimately, however, the plaintiff bears the burden of establishing jurisdiction by a preponderance

... fails to state a claim on which relief may be granted.” The Court may also dismiss a complaint sua sponte at any time for want of jurisdiction. See RCFC 12(h)(3).

³ This background is derived from Plaintiff’s complaints.

⁴ The Court is unable to decipher the source of the alleged discrimination by the Sixth Circuit or the FBI. However, in Plaintiff’s second complaint, he alleges that he could not get to the “appeals court cause [sic] of proper fee . . . ‘trick.’” Moreover, Plaintiff sought to reopen a police brutality action in another case filed in this Court because he allegedly could not gain access to his records pertaining to that case. Thomas v. United States, No. 04-1713C, slip op. (Fed. Cl. Dec. 10, 2004). Irrespective of the basis of the discrimination claim, the Court is without jurisdiction over such claims.

of the evidence. Taylor v. United States, 303 F.3d 1357, 1359 (Fed. Cir. 2002).

At the outset, the Court notes that Plaintiff's complaint alleges various "violations" by individual prison guards, individual judges, and individual FBI agents. However, this Court only has jurisdiction over claims against the United States. See generally United States v. Sherwood, 312 U.S. 584, 588 (1941) (where the relief sought is against a person or entity other than the United States, the suit is beyond the jurisdiction of the Court of Claims); Stephenson v. United States, 58 Fed. Cl. 186, 190 (2003) ("[P]laintiffs' assertion of claims against various individual officials in their personal and professional capacities cannot be entertained in this court.").

Even assuming Plaintiff's claims were properly against the United States, to the extent that Plaintiff is alleging purely tort claims -- mental stress, pain and suffering, and fraud -- this Court does not have jurisdiction over such claims. See Brown v. United States, 105 F.3d 621, 623 (Fed. Cir. 1997) ("The Court of Federal Claims is a court of limited jurisdiction. It lacks jurisdiction over tort actions against the United States."). Therefore, to the extent Plaintiff alleges tort claims, they are dismissed for lack of jurisdiction.

Similarly, this Court does not have jurisdiction over Plaintiff's discrimination claims against the FBI and the Sixth Circuit. See Cottrell v. United States, 42 Fed. Cl. 144, 149-50 (1998). Finally, to the extent that Plaintiff is challenging decisions of either the District Court in Detroit, Michigan, or decisions of the Sixth Circuit, this Court lacks jurisdiction over such appeals. Accordingly, Plaintiff's complaints fail to establish jurisdiction in this Court.

Decision

The CLERK of the Court is directed to consolidate actions 05-549 and 05-550, return Plaintiff's defective filings unfiled, and dismiss the consolidated actions for lack of jurisdiction. It is so **ORDERED**. No costs.

MARY ELLEN COSTER WILLIAMS
Judge