

In the United States Court of Federal Claims

NOT FOR PUBLICATION

No. 10-203C

(Filed June 30, 2010)

DEBORAH DIANE FLETCHER,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

MEMORANDUM OPINION AND ORDER

WOLSKI, Judge.

Pending before the Court is defendant’s motion to dismiss this case for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted, filed under Rules 12(b)(1) and 12(b)(6) of the Rules of the United States Court of Federal Claims (“RCFC”). The motion to dismiss the case is **GRANTED** due to the lack of subject matter jurisdiction, for the reasons that follow.

I. BACKGROUND

On April 6, 2010, plaintiff Deborah Diane Fletcher filed this *pro se* action, purportedly against the Social Security Administration (“SSA”). The primary claim in her brief complaint is that since January 2006 she has requested hearings and the ability to review her records, but all requests have been denied. Compl. ¶ 4. She also alleges that she “question[s] the amount of her two checks she receive[s]” from the SSA, and that she is owed some unspecified amount from the SSA for several unspecified months. Compl. ¶ 5.

In response, defendant filed a motion to dismiss the case, under RCFC 12(b)(1) and 12(b)(6). The basis of the RCFC 12(b)(1) motion is that this Court has no jurisdiction over claims to social security benefits. Def.’s Mot. at 3-4. The government also maintains that Ms. Fletcher has failed to state a claim upon which relief can be granted, as the sparse facts alleged do not support a right to legal relief. *Id.* at 5.

Plaintiff’s opposition to the motion, filed May 27, 2010, did not address defendant’s legal

arguments. *See* Pl. Mot. to Stop Dismiss. Instead, she argued that she needs to review her records or be provided a hearing in order to determine how large her monthly checks should be, and that materials she received from the SSA indicated that federal court was the place she should go if her rights to review records or to be provided a hearing were denied. *Id.*

II. DISCUSSION

A. Applicable Legal Standard

Whether a federal court has jurisdiction to decide the merits of a case is a threshold matter. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998) (quoting *Ex parte McCardle*, 74 U.S. (7 Wall.) 506, 514 (1869)). “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. at 514. The parties or the court sua sponte may challenge the existence of subject matter jurisdiction at any time. *Capron v. Van Noorden*, 6 U.S. (2 Cranch) 126, 127 (1804); *Folden v. United States*, 379 F.3d 1344, 1354 (Fed. Cir. 2004); *James v. United States*, 86 Fed. Cl. 391, 394 (2009).

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, “‘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, while “leniency with respect to mere formalities should be extended to a *pro se* party,” *Kelley v. Sec’y, U.S. Dep’t of Labor*, 812 F.2d 1378, 1380 (Fed. Cir. 1987), 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 Henke*, 60 F.3d at 799; *McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S. 178, 188-89 (1936); *Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 748 (Fed. Cir. 1988).

B. Analysis

Under the Tucker Act, the United States Court of Federal Claims has 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). Congress has thus given our Court the power to hear and award claims for money damages to which parties are entitled by virtue of specific laws, usually referred to as “money-mandating statutes.” *See Contreras v. United States*, 64 Fed. Cl. 583, 588 (2005).

But Congress may also specify, in a particular statute that mandates payment of money, that review is restricted to a court other than ours. In this regard, the Federal Circuit has held

that our Court has no jurisdiction “over claims to social security benefits” because claims related to social security benefits must be brought first in the SSA and appeals from SSA decisions may only be filed in a federal district court. *Marcus v. United States*, 909 F.2d 1470, 1471 (Fed. Cir. 1990) (citing 42 U.S.C. § 405(g)-(h)); *see also* 42 U.S.C. § 405(g) (2006) (“Any individual, after any final decision of the Commissioner of Social Security made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action Such action shall be brought in the district court.”); *Dumont v. United States*, 345 Fed. Appx. 586, 593 (Fed. Cir. 2009); *Addams-More v. United States*, 296 Fed. Appx. 45, 47-48 (Fed. Cir. 2008). Thus, to the extent she seeks the payment of social security benefits, her case, if ripe, would need to be filed in the United States District Court for the District of Maryland. Her claimed rights to an SSA hearing or review of her records are not claims for money damages and are thus also not within our jurisdiction.

Since this Court clearly lacks jurisdiction over the subject matter of plaintiff’s case, no opinion will be offered on the alternative ground that plaintiff has failed to state a claim upon which relief can be granted. Motions to dismiss under RCFC 12(b)(6) are merits-based, *see Forest Glen Props., LLC v. United States*, 79 Fed. Cl. 669, 677 (2007), and courts without jurisdiction should normally avoid merits questions. *Strategic Hous. Fin. Corp. v. United States*, 2010 U.S. App. LEXIS 11473, at *38 (Fed. Cir. June 7, 2010) (“a federal court should not render an opinion on the merits when it determines that it lacks jurisdiction over the matter”).

C. Transfer

Although it has understandably not been raised by the plaintiff, who is representing herself and is not expected to know the finer points of legal procedure, the Court will briefly discuss the option of transferring the case to the district court. When a plaintiff fails to file a motion to transfer, the court may raise the possibility of transfer sua sponte. *Crone v. United States*, 2005 U.S. Claims LEXIS 505, at *25 (Fed. Cl. Dec. 20, 2005). Under 28 USC § 1631, a 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.” 28 USC § 1631 (2006). A transfer, however, should “not take place if the action most probably would be dismissed in the District Court” because of its “drain on party and judicial economy and time.” *Singleton v. United States*, 6 Cl. Ct. 156, 168 (1984). A transfer is not in the interest of justice when it is “far from clear that the federal district court would be able to entertain the plaintiffs’ claims as a result of the plaintiffs’ failure to first exhaust mandatory administrative remedies.” *Ace Prop. & Cas. Ins. Co. v. United States*, 60 Fed. Cl. 175, 187 (2004). Similarly, a court should not transfer a case if the transfer would be futile. *Husband v. United States*, 90 Fed. Cl. 29, 35 (2009).

Because of the lack of detail in the complaint, this Court cannot even hazard a guess as to whether plaintiff’s claims are ripe for review in the district court. Thus, the Court declines to transfer this case to the District Court of Maryland under 28 USC § 1631. The Court recognizes, however, the possibility of the opposite problem -- that plaintiff’s claims may have been ripe when the case was filed, but could be barred if contained in a new complaint under the

applicable statute of limitations. If plaintiff files a complaint in the United States District Court for the District of Maryland, and finds that the time for filing the lawsuit has run out while her case was pending in our Court, plaintiff may file a motion to request an amended decision to transfer this case to the district court. *See Tex. Peanut Farmers v. United States*, 409 F.3d 1370, 1374 (Fed. Cir. 2005) (quoting *Phillips v. Seiter*, 173 F.3d 609, 610 (7th Cir. 1999) (citations omitted) (“A compelling reason for transfer is that the [appellant], whose case if transferred is for statute of limitations purposes deemed by section 1631 to have been filed in the transferor court . . . will be time-barred if his case is dismissed and thus has to be filed anew in the right court.”)). Alternatively, the plaintiff may argue in a subsequent proceeding that the statute of limitations was satisfied by timely filing in the wrong court. *See Henke v. United States*, 60 F.3d 795, 800 (Fed. Cir. 1995).

III. CONCLUSION

For the foregoing reasons, defendant’s motion to dismiss this case for lack of subject matter jurisdiction, pursuant to RCFC 12(b)(1), is hereby **GRANTED**. The Clerk shall close the case. No costs shall be awarded.

IT IS SO ORDERED.

s/ Victor J. Wolski

VICTOR J. WOLSKI

Judge