

In the United States Court of Federal Claims

Case No. 06-416C
(Filed: March 26, 2008)
NOT TO BE PUBLISHED

PATRICIA ANNE SALLIS,
Plaintiff, pro se,
v.
THE UNITED STATES OF AMERICA,
Defendant.

Patricia Sallis, Plaintiff, pro se.

Sean B. McNamara, Commercial Litigation Branch, Department of Justice, Washington, D.C., for Defendant. With him on the briefs were Peter D. Keisler, Assistant Attorney General, and Jeanne E. Davidson, Director.

John Bergen, Law Clerk.

Sharon J. Kim, Intern.

OPINION AND ORDER

BASKIR, Judge.

This case comes before the Court on the Government's Motion to Dismiss pursuant to Rule 12(b)(1) of the Rules of the U.S. Court of Federal Claims (RCFC) for lack of subject matter jurisdiction. The Plaintiff, Patricia Anne Sallis, appearing pro se, seeks the return of personal property seized during the course of a criminal investigation and related damages. The complaint is outside the jurisdiction of this Court. We therefore GRANT the Government's Motion to Dismiss.

BACKGROUND

On November 16, 2005, Government officials seized the Plaintiff's parked automobile. The Government attests that the seizure was lawfully made pursuant to a valid warrant issued by the United States District Court for the Eastern District of Oklahoma. Defendant's Motion (Def. Mot.) App. 18-19. The seizure took place in the course of ongoing criminal proceedings against the Plaintiff's sons in a case styled *United States v. Brandon Lamar Sallis*, No. CR-06-07-WH (E.D. Okla). Defendant's Reply Brief (Def. Rep.) App. 1-4. During this criminal investigation, the Plaintiff's bank account and work records were apparently also seized. Compl. at 1. On April 21, 2006, the Plaintiff's sons were convicted in District Court of various criminal offenses, including money laundering and drug trafficking. Def. Rep. App. 1. Accordingly, on July 30, 2007, the District Court entered a Preliminary Order of Forfeiture of all property used or intended to be used in the commission of these crimes, including the Plaintiff's automobile. Def. Rep. App. 5.

Immediately thereafter, the Plaintiff filed a Motion for Return of Property in the Eastern District of Oklahoma pursuant to Rule 41(g) of the Federal Rules of Criminal Procedure (Fed. R. Crim. P.). Def. Rep. App. 8-21. In light of this motion, on October 5, 2007, the Government removed the Plaintiff's automobile from its Motion for Final Order of Forfeiture. Def. Rep. App. 22-25. The District Court granted the Plaintiff's uncontested motion and ordered that Plaintiff's vehicle be released on November 20, 2007. See Order Authorizing Release of Property to Claimant.

Plaintiff subsequently filed a contempt motion in district court against various Government officials for their alleged delay in returning her vehicle. See Motion for Civil Contempt of Court (Nov. 21, 2007) and Amended Motion for Civil Contempt of Court (Dec. 14, 2007). On December 18, 2007, the District Court denied Plaintiff's contempt motions. In so doing, it recognized the Plaintiff's frustration, but anticipated the return of her vehicle within two days of the Order date. See Order Denying Claimant's Motion and Amended Motion for Civil Contempt of Court (Dec. 18, 2007). On January 30, 2008, the District Court closed the matter.

Wholly separate from the foregoing actions in District Court, on May 16, 2006, the Plaintiff brought suit *pro se* in this Court. The Plaintiff captioned her complaint "Motion for Libel/Slander and Stress and Illegible [sic] Seizure and Forfeiture." In it, the Plaintiff alleges that her automobile was unlawfully seized and forfeited. The Plaintiff moves this Court to order its return and for one million dollars (\$1,000,000) for "libel/slander and stress." Compl. at 2. The Plaintiff concedes that two warrants were issued in the course of the criminal prosecution of her sons for the seizure of two vehicles in her possession. She argues, however, that no warrant was issued for the automobile at issue in this case. Plaintiff's Response (Pl. Resp.) at 1.

In lieu of filing an answer, the Government filed a Motion for Leave to File a Dispositive Motion, asserting its intention to move for dismissal for lack of subject matter jurisdiction. We ordered the parties to confer and file a Joint Preliminary Status Report (JPSR), which the parties did on May 25, 2007. The Government also filed its Motion to Dismiss on May 25.

The Government asserts that the Plaintiff's allegations of improper seizure and tortuous misstatements of fact are insufficient to invoke this Court's jurisdiction. JPSR at 2. Furthermore, the Government contends that this Court lacks jurisdiction to entertain allegations of improper seizure of property pursuant to a district court order. JPSR at 3.

The Plaintiff responded to the Government's motion on October 4, 2007. She asserts that the District Court has "ignored [her] plea for a hearing as a Third Party." Pl. Resp. at 1. On October 17, 2007, the Government filed its reply, maintaining that this Court lacks jurisdiction and requesting that we dismiss pursuant to Rule 12(b)(1).

DISCUSSION

A. Tucker Act Jurisdiction and Rule 41(g)

Like all Federal courts, the United States Court of Federal Claims is a court of limited jurisdiction. *Phaidin v. United States*, 28 Fed. Cl. 231, 233 (1993). The Tucker Act grants this Court jurisdiction to render judgment upon any claim against the United States founded upon the Constitution, any Act of Congress or any regulation of the executive department, 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 does not itself create a substantive right of recovery. Rather, the statutory language has been interpreted to require that a plaintiff seeking to invoke the Court's jurisdiction present a claim for presently due money damages from the United States. *United States v. King*, 395 U.S. 1, 3 (1969); *United States v. Mitchell*, 445 U.S. 535, 538 (1980) (Tucker Act jurisdiction dependent upon an underlying statute or regulation that is money-mandating).

This requirement applies to the Plaintiff's claims, irrespective of her *pro se* status. While *pro se* litigants are generally allowed some leniency in the formalities of their pleadings, their *pro se* status does not alleviate the burden they face of establishing the jurisdiction of this Court. See *Estelle v. Gamble*, 429 U.S. 97, 106 (1976); see also *Ledford v. United States*, 297 F.3d 1378, 1381 (Fed. Cir. 2002).

In invoking this Court's jurisdiction, the Plaintiff relies primarily on Rule 41(g) of the Federal Rules of Criminal Procedure. Pl. Br. at 1. Rule 41(g) provides a mechanism by which parties may seek the return of seized property. The Rule states:

A person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move for the property's return. *The motion must be filed in the district where the property was seized.* The court must receive evidence on any factual issue necessary to decide the motion. If it grants the motion, the court must return the property to the movant, but may impose reasonable conditions to protect access to the property and its use in later proceedings.

Fed. R. Crim. P. 41(g) (emphasis added).

Because the Plaintiff has availed herself of the 41(g) proceedings in the District Court, and because that Court has ordered the return of the subject property, the Plaintiff's request for return of her vehicle is moot. The mootness doctrine originates from the "case or controversy" requirement of Article III of the United States Constitution. *CCL Serv. Corp. v. United States*, 43 Fed. Cl. 680, 688 (1999). The judicial power of Federal courts is constitutionally restricted to "cases" and "controversies." *Flast v. Cohen*, 392 U.S. 83, 94 (1968). Thus, if a plaintiff's allegations become moot for some reason, there would be no justiciable "case or controversy" a court could decide and therefore the court would be divested of subject matter jurisdiction. *Emery Worldwide Airlines, Inc. v. United States*, 47 Fed. Cl. 461, 469 (2000).

Mootness notwithstanding, this Court cannot grant the Plaintiff this type of relief. There is a comprehensive system governing the administration and judicial review of *in rem* forfeiture actions. See *Vereda, Ltda. v. United States*, 271 F.3d 1367, 1375 (Fed. Cir. 2001). The Supreme Court has instructed that when such a "specific and comprehensive scheme for administrative and judicial review" is provided by Congress, as is the case here, this Court's Tucker Act jurisdiction is preempted. *Id.* (citing *United States v. Fausto*, 484 U.S. 439, 454-55 (1988); *St. Vincent's Med. Ctr. v. United States*, 32 F.3d 548, 549-50 (Fed. Cir. 1994)).

This Court lacks jurisdiction to collaterally review the decisions of district courts. *Vereda*, 271 F.3d at 1375. The U.S. Court of Federal Claims is a trial court. As such, the Court lacks jurisdiction to review the procedures or findings of a district court. See *Joshua v. United States*, 17 F.3d 378, 380 (Fed. Cir. 2001) ("[T]he Court of Federal Claims does not have jurisdiction to review the decisions of district courts or the clerks of district courts relating to proceedings before those courts."). Accordingly, we cannot disturb a district court's disposition of property subject to a Rule 41(g) motion. See *AmeriSource Corp. v. United States*, 75 Fed. Cl. 743, 749 (2007) (denying the plaintiff's claim for relief for the deprivation of property held as criminal evidence and stating "[w]e

do not sit as a reviewing court to evaluate the procedures or findings of a Rule 41 proceeding.”); *Carranza v. United States*, 67 Fed. Cl. 106, 110-12 (2005) (takings claim was barred by *res judicata* because the District Court had already issued an adverse ruling on the plaintiff’s Rule 41(g) motion). For these reasons, this Court lacks jurisdiction to entertain the Plaintiff’s claims for relief with respect to the seizure or return of her car.

B. Tort Claims

The Plaintiff alleges that she has suffered libel, slander, and stress resulting from the Government’s allegedly unlawful seizure of her automobile and the purportedly false allegations made against her in the course of the criminal prosecution of her sons. Compl. at 1. These claims sound entirely in tort, see *Regents of Univ. of New Mexico v. Knight*, 321 F.3d 1111, 1116 (Fed. Cir. 2003), and are plainly excluded from this Court’s jurisdiction, see 28 U.S.C. § 1491(a)(1) (stating that the jurisdiction of the Court of Federal Claims is limited to cases “not sounding in tort”). Accordingly, the Plaintiff’s tort claims must be dismissed for lack of subject matter jurisdiction.

C. First and Fourth Amendment Claims

The complaint also can be read to allege violations of the First and Fourth Amendments. See Compl. at 1. However, neither Amendment may be construed as money-mandating. See U.S. CONST. amend. I and IV; *United States v. Connolly*, 716 F.2d 882, 887 (Fed. Cir. 1983) (“[T]he First Amendment, standing alone, cannot be so interpreted to command the payment of money.”); *LaChance v. United States*, 15 Cl. Ct. 127, 130 (1988) (“[T]he Fourth Amendment does not mandate the payment of money by the United States.”). Accordingly, this Court lacks jurisdiction over any such alleged constitutional violations.

CONCLUSION

This Court lacks jurisdiction to entertain the Plaintiff’s claims for relief. Based on the foregoing, **we hereby GRANT the Government’s Motion to Dismiss for lack of subject matter jurisdiction.** The Clerk of the Court is ordered to dismiss the complaint in its entirety. The parties are to bear their own costs.

IT IS SO ORDERED.

LAWRENCE M. BASKIR
Judge