

In the United States Court of Federal Claims

No. 07-798 C
(Filed: March 19, 2008)

LARRY L. MOORE, *
 *
 Plaintiff, *
 *
 v. *
 *
 THE UNITED STATES *
 *
 Defendant. *

OPINION AND ORDER

SWEENEY, Judge

Before the court are plaintiff's "Complaint of Human/Civil Rights/Violation [of] Parental Rights, /Discrimination- /Failure to Respond in Existing Claim,"¹ plaintiff's Application to Proceed In Forma Pauperis, and defendant's motion to dismiss. On February 13, 2008, defendant filed an unopposed motion for enlargement of time on behalf of plaintiff, who is proceeding pro se. Although plaintiff's response was due on February 11, 2008, defendant requested that the court extend plaintiff's deadline until February 26, 2008. In its February 14, 2008 order, the court granted defendant's motion; however, plaintiff never filed a response. Having closely examined the allegations of the Complaint, the court finds that there is no reason to await a response. For the reasons set forth below, plaintiff's application to proceed in forma pauperis is denied, and defendant's motion to dismiss is granted.

I. BACKGROUND

In his complaint, plaintiff alleges that Child Protective Services of Phoenix, Maricopa County, Arizona ("C.P.S.") discriminated against him by "showing a lack of support in rejecting a plan for reunification, and participating [in] the planned separation [of] the children and their father relationship [sic]." Compl. ¶ 1. According to plaintiff, C.P.S. violated Arizona state law and denied him "due process (in good faith) or Habeas-Corpus" when it "terminate[d] Plaintiffs['] parental rights on the basis of a lie." Id. ¶ 3. Additionally, plaintiff claims that C.P.S. committed negligence, id. ¶ 6, violated his civil and human rights, id. ¶ 7, engaged in racial discrimination, id. ¶¶ 4, 7, and engaged in actions that offended his religious beliefs, id.

¹ Together with his Complaint, plaintiff submitted a Summary and a series of exhibits.

¶ 8. Although plaintiff indicates that there is “[n]o amount of Money(s) [that] would take away love in sharing special growing times,” plaintiff seeks \$43.5 million in damages. Id. ¶ 7.

II. APPLICATION TO PROCEED IN FORMA PAUPERIS

Plaintiff filed an application to proceed in forma pauperis together with his Complaint. Pursuant to 28 U.S.C. § 1915 (2000), courts of the United States are authorized to waive filing fees or security under certain circumstances.² The statute provides, in relevant part:

Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant’s belief that the person is entitled to redress.

28 U.S.C. § 1915(a)(1). Subsection (b), which addresses requirements for prisoners bringing a civil action or filing an appeal, is not applicable here.³ See Pl.’s Application Proceed In Forma Pauperis 2 (indicating that plaintiff is not a prisoner). Plaintiff states that, “because of [his] poverty, [he is] unable to pay” filing fees. Id. at 1. He also states that “most all [of his] funds are depleted.” Id.

The threshold for a motion to proceed in forma pauperis is not high. Fiebelkorn v. United States, 77 Fed. Cl. 59, 62 (2007). Nonetheless, the court is unable to determine plaintiff’s financial situation based upon the information supplied in his application. Plaintiff represents that he receives “enough [money] to help pay bills” through business sources, “inheritance(s) being held/on hold by trustee (litigation),” and “S.S.I. \$560.00 monthly,” which appears to

² While the Court of Federal Claims is not considered a “court of the United States” within the meaning of title 28 of the United States Code, the court has jurisdiction to grant or deny an application to proceed in forma pauperis. See 28 U.S.C. § 2503(d) (2000) (deeming the Court of Federal Claims to be “a court of the United States” for the purposes of section 1915); see also Matthews v. United States, 72 Fed. Cl. 274, 277-78 (2006) (recognizing that Congress enacted the Court of Federal Claims Technical and Procedural Improvements Act of 1992, authorizing, inter alia, the court to adjudicate applications to proceed in forma pauperis pursuant to section 1915).

³ The court notes that section 1915(a)(1) utilizes both the terms “person” and “prisoner,” 28 U.S.C. § 1915(a)(1), which “raises the issue of whether it applies to both prisoners and non-prisoners,” Hayes v. United States, 71 Fed. Cl. 366, 366 (2006). This court has previously held that “the right to petition a federal court to proceed in forma pauperis applies to both prisoners and non-prisoners.” Id. at 367.

represent social security income. Pl.’s Application Proceed In Forma Pauperis 1. Plaintiff also indicates that he owns no other assets but is responsible for his children, “who are not in my care (yet).” Id. at 2. Although plaintiff indicates that he is presently employed, he neither “state[s] the amount of [his] salary or wages per month, and give[s] the name and address of [his] employer” nor discloses the amount of monies he earns through his business or any inheritance to which he may be entitled, as required in the application. Id. at 1. Because plaintiff has not fully disclosed his financial circumstances as required, the court is unable to determine whether he meets the requirements to proceed in forma pauperis. Consequently, the court denies plaintiff’s application. Furthermore, after careful review of plaintiff’s Complaint, the court has determined that it is jurisdictionally defective and must be dismissed for lack of subject matter jurisdiction.

III. JURISDICTION

A. Pro Se Plaintiff

The Court of Federal Claims holds pleadings of a pro se plaintiff to less stringent standards than litigants represented by counsel. Haines v. Kerner, 404 U.S. 519, 520 (1972)). Courts have “strained [their] proper role in adversary proceedings to the limit, searching . . . to see if plaintiff has a cause of action somewhere displayed.” Ruderer v. United States, 412 F.2d 1285, 1292 (Ct. Cl. 1969). Although plaintiff’s pleadings are held to a less stringent standard, such leniency “with respect to mere formalities does not relieve the burden to meet jurisdictional requirements.” Minehan v. United States, 75 Fed. Cl. 249, 253 (2007); see also Kelley v. Sec’y, U.S. Dep’t of Labor, 812 F.2d 1378, 1380 (Fed. Cir. 1987) (“[A] court may not similarly take a liberal view of that jurisdictional requirement and set a different rule for pro se litigants only.”); Bernard v. United States, 59 Fed. Cl. 497, 499, aff’d, 98 Fed. App’x 860 (Fed. Cir. 2004) (noting that pro se plaintiffs are not excused from satisfying jurisdictional requirements). As the Court of Federal Claims stated in Demes v. United States, “[w]hile a court should be receptive to pro se plaintiffs and assist them, justice is ill-served when a jurist crosses the line from finder of fact to advocate.” 52 Fed. Cl. 365, 369 (2002).

B. Standard of Review

Subject matter jurisdiction is “an inflexible matter that must be considered before proceeding to evaluate the merits of a case.” Matthews, 72 Fed. Cl. at 278. Subject matter jurisdiction may be challenged at any time by the parties, by the court sua sponte, or on appeal. Folden v. United States, 379 F.3d 1344, 1354 (Fed. Cir. 2004), cert. denied, 545 U.S. 1127 (2005). When considering an RCFC 12(b)(1) motion, the burden of establishing the court’s subject matter jurisdiction resides with the party seeking to invoke it. McNutt v. Gen. Motors Acceptance Corp. of Ind., 298 U.S. 178, 189 (1936). The court “consider[s] the facts alleged in the complaint to be true and correct.” Reynolds v. Army & Air Force Exch. Serv., 846 F.2d 746, 747 (Fed. Cir. 1988); see also Henke v. United States, 60 F.3d 795, 797 (Fed. Cir. 1995) (recognizing the court’s obligation to “assume all factual allegations to be true and to draw all reasonable inferences in plaintiff’s favor”).

A plaintiff bears the burden of establishing jurisdiction by a preponderance of the evidence, Reynolds, 846 F.2d at 748, and needs to only set forth a prima facie showing of jurisdictional facts to survive a motion to dismiss, Raymark Indus., Inc. v. United States, 15 Cl. Ct. 334, 338 (1988). Where a defendant or the court challenges jurisdiction, “the plaintiff cannot rely merely on allegations in the complaint, but must instead bring forth relevant, competent proof to establish jurisdiction.” Murphy v. United States, 69 Fed. Cl. 593, 600 (2006). The court may consider matters outside the pleadings when examining jurisdiction. Cedars-Sinai Med. Ctr. v. Watkins, 11 F.3d 1573, 1583-84 (Fed. Cir. 1993)); see also Reynolds, 846 F.2d at 748 (“If a motion to dismiss for lack of subject matter jurisdiction . . . challenges the truth of the jurisdictional facts alleged in the complaint, the district court may consider relevant evidence in order to resolve the factual dispute.”). If the court finds that it lacks subject matter jurisdiction, then it must dismiss the claim. Matthews, 72 Fed. Cl. at 278; see also RCFC 12(h)(3) (“Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.”).

C. The Tucker Act

The Court of Federal Claims is a court of limited jurisdiction. Jentoft v. United States, 450 F.3d 1342, 1349 (Fed. Cir. 2006) (citing United States v. King, 395 U.S. 1, 3 (1969)). The scope of this court’s jurisdiction to entertain claims and grant relief depends upon the extent to which the United States has waived its sovereign immunity. King, 395 U.S. at 4. In “construing a statute waiving the sovereign immunity of the United States, great care must be taken not to expand liability beyond that which was explicitly consented to by Congress.” Fid. Constr. Co. v. United States, 700 F.2d 1379, 1387 (Fed. Cir.), cert. denied, 464 U.S. 826 (1983). A waiver of sovereign immunity “cannot be implied but must be unequivocally expressed.” King, 395 U.S. at 4. Unless Congress consents to a cause of action against the United States, “there is no jurisdiction in the Court of Claims more than in any other court to entertain suits against the United States.” United States v. Sherwood, 312 U.S. 584, 587-88 (1941).

The Tucker Act, 28 U.S.C. § 1491 (2000), confers upon the Court of Federal Claims 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.” Id. § 1491(a)(1). Although the Tucker Act waives the sovereign immunity of the United States for claims for money damages, it “itself does not create a substantive cause of action; in order to come within the jurisdictional reach and the waiver of the Tucker Act, a plaintiff must identify a separate source of substantive law that creates the right to money damages.” Greenlee County, Ariz. v. United States, 487 F.3d 871, 875 (Fed. Cir. 2007) (quoting Fisher v. United States, 402 F.3d 1167, 1172 (Fed. Cir. 2005)). The separate source of substantive law must constitute 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). “[I]n order for a claim against the United States founded on statute or regulation to be successful, the provisions

relied upon must contain language which could fairly be interpreted as mandating recovery of compensation from the government.” Cummings v. United States, 17 Cl. Ct. 475, 479 (1989) (citations omitted), aff’d, 904 F.2d 45 (Fed. Cir. 1990); see also United States v. Testan, 424 U.S. 392, 398 (1976) (stating that a “grant of a right of action must be made with specificity”).

The Court of Federal Claims “may not entertain claims outside this specific jurisdictional authority.” Adams v. United States, 20 Cl. Ct. 132, 135 (1990)). As noted above, the Tucker Act expressly provides that the “United States Court of Federal Claims shall have jurisdiction . . . in cases not sounding in tort.” 28 U.S.C. § 1491(a)(1) (emphasis added); see also Shearin v. United States, 992 F.2d 1195, 1197 (Fed. Cir. 1993) (stating that it is “well settled that the United States Court of Federal Claims lacks . . . jurisdiction to entertain tort claims”); Pratt v. United States, 50 Fed. Cl. 469, 482 (2001) (providing that the court “lacks jurisdiction to award plaintiff’s prayer for damages for emotional distress and pain and suffering”). Therefore, “[t]o the extent that . . . allegations sound in tort, the Court of Federal Claims lacks jurisdiction under the Tucker Act” Alves v. United States, 133 F.3d 1454, 1459 (Fed. Cir. 1998).

IV. DISCUSSION

Plaintiff alleges that C.P.S. engaged in discriminatory conduct that has resulted in his separation from his family. Compl. ¶¶ 2-4, 6-7. Plaintiff does not, however, name the United States as a defendant. See generally id. (styling his Complaint and asserting various allegations against C.P.S.). The only reference to a federal agency contained in the Complaint concerns plaintiff’s contact with the Phoenix Field Office of the Federal Bureau of Investigation (“F.B.I.”), id. ¶ 2, to which plaintiff submitted a Freedom of Information-Privacy Act (“FOIA”) request, id. Ex. (containing a copy of a letter from the F.B.I. acknowledging receipt of plaintiff’s request submitted to its Phoenix Field Office). Plaintiff states that he contacted the F.B.I. “to share the attack that was on this family,” id. at ¶ 2, though it is unclear from the Complaint whether plaintiff alleges that the F.B.I. “share[d]” in this “attack” or whether plaintiff simply reported this “attack” to federal authorities, see id.

In the Summary accompanying his Complaint, plaintiff acknowledges the dismissal of two previous complaints he filed in this court. Compl. Summary ¶¶ 2-6; see also Moore v. Durango Jail, in Maricopa County, Phoenix, Ariz., 77 Fed. Cl. 92 (2007) (dismissing the complaint for lack of subject matter jurisdiction because plaintiff asserted claims in tort against state agencies); Moore v. Public Defenders Office, 76 Fed. Cl. 617 (2007) (same). Nonetheless, plaintiff argues that filing his lawsuits in this court “will support these Acts of Cruelty, Violation of Parental [sic] and allow Acts of Sovereignty.” Compl. Summary ¶ 5. The court may not entertain plaintiff’s most recent Complaint. The Tucker Act confers upon the Court of Federal Claims jurisdiction to “render judgment upon any claim against the United States” 28 U.S.C. § 1491 (emphasis added). “When a plaintiff’s complaint names private parties, or state agencies, rather than federal agencies, this court has no jurisdiction to hear those allegations.” Shalhoub v. United States, 75 Fed. Cl. 584, 585 (2007) (citing Stephenson v. United States, 58 Fed. Cl. 186, 190 (2003)); see also United States v. Sherwood, 312 U.S. 584, 588-89 (1941)

(“We think it plain that the present suit could not have been maintained in the Court of Claims because the court is without jurisdiction of any suit brought against private parties”); Nat’l City Bank of Evansville v. United States, 163 F. Supp. 846, 852 (Ct. Cl. 1958) (“It is well established that the jurisdiction of this court extends only to claims against the United States, and obviously a controversy between private parties could not be entertained.” (footnotes omitted)). Because plaintiff has not asserted any allegations against the United States, the court lacks jurisdiction to adjudicate plaintiff’s claims.⁴

Even if plaintiff’s Complaint properly named the United States as a defendant, the court lacks jurisdiction over plaintiff’s claims. To the extent that plaintiff’s Complaint contains allegations of negligence, the Court of Federal Claims “lacks jurisdiction over any and every kind of tort claim.” Cottrell v. United States, 42 Fed. Cl. 144, 149 (1998) (emphasis added); see also Shearin v. United States, 992 F.2d 1195, 1197 (Fed. Cir. 1993) (stating that it is “well settled that the United States Court of Federal Claims lacks . . . jurisdiction to entertain tort claims”). Thus, the court lacks jurisdiction “over claims that defendant engaged in negligent, fraudulent, or other wrongful conduct when discharging its official duties Even where the claim is framed under non-tort law, the court lacks jurisdiction if the essence of the claim lies in tort.” Cottrell, 42 Fed. Cl. at 149.

Additionally, plaintiff fails to identify a separate source of substantive law that constitutes 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., 27 F.3d at 1554. It is well-settled that the Court of Federal Claims lacks jurisdiction over claims alleging a denial of due process, James v. Caldera, 159 F.3d 573, 581 (Fed. Cir. 1998), and violations of civil and human rights, Sanders v. United States, 34 Fed. Cl. 75, 80 (1995) (“This court does not have jurisdiction to entertain general civil rights claims that are not based upon an appropriate money-mandating provision.”), aff’d without op., 104 F.3d 376 (Fed. Cir. 1996) (per curiam). To the extent that plaintiff’s Complaint can be construed to assert a FOIA-based claim, the court also lacks jurisdiction. Bernard v. United States, 59 Fed. Cl. 497, 503 (“The court does not have jurisdiction over FOIA claims.”), aff’d, 98 Fed. App’x 860 (Fed. Cir. 2004) (per curiam). Additionally, the court lacks jurisdiction over plaintiff’s claims of racial discrimination. Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17 (2000), confers upon the federal district courts exclusive jurisdiction over such allegations, and “there is no Tucker Act jurisdiction in the Court of Federal Claims to entertain claims involving race . . . or other claims involving civil rights violations,” Cottrell v. United States, 42 Fed. Cl. 144, 149 (1998); Dixon v. United States, 17 Cl. Ct. 73, 77 (1989). Furthermore, the court lacks jurisdiction over alleged violations of state laws because state statutes do not create a right to money damages against the United States. Sounders v. S.C. Public Serv. Auth., 497 F.3d 1303, 1307 (Fed. Cir. 2007) (“Claims founded on state law are also outside the scope of the limited jurisdiction of the Court

⁴ The rules of this court, in conformity with its enabling statute, the Tucker Act, provide that the only appropriate defendant in the Court of Federal Claims is the United States. RCFC 10(a).

of Federal Claims.”). Finally, although it is unclear from his Complaint, to the extent that plaintiff seeks relief in the form of a writ of habeas corpus, the Court of Federal Claims lacks jurisdiction to grant petitions for habeas corpus. See 28 U.S.C. § 2241(a) (2000) (“Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions.”); Ledford v. United States, 297 F.3d 1378, 1381 (Fed. Cir. 2002) (“[T]he habeas statute does not list the Court of Federal Claims among those courts empowered to grant a writ of habeas corpus, and the trial court therefore is without power to entertain [plaintiff’s] petition.”).

V. CONCLUSION

Accordingly, for the reasons stated above, plaintiff’s motion to proceed in forma pauperis is **DENIED**. Defendant’s motion to dismiss for lack of subject matter pursuant to RCFC 12(b)(1) is **GRANTED**, and plaintiff’s Complaint is **DISMISSED WITHOUT PREJUDICE**. The Clerk of the Court is directed to enter judgment in accordance with this opinion.

No costs.

IT IS SO ORDERED.

MARGARET M. SWEENEY
Judge