In the United States Court of Federal Claims

No. 08-443 C
(Filed: October 29, 2008)

TERESA JANE TAYLOR AND PHOENIX W.C. TAYLOR,	*
Plaintiffs,	*
v.	*
THE UNITED STATES,	*
Defendant.	*

OPINION AND ORDER

On June 16, 2008, plaintiffs, Teresa Jane Taylor ("Ms. Taylor") and her minor child, Phoenix W.C. Taylor (collectively, "plaintiffs"), filed a pro se complaint, an application to proceed in forma pauperis, a motion to appoint pro bono counsel, a motion to transfer, a motion to issue a temporary restraining order, and a "Motion to Submit Discoveries." On July 3, 2008, defendant filed a Motion for Summary Dismissal of Pro Se Complaint pursuant to Rules 12(b)(1) and 12(b)(6) of the Rules of the United States Court of Federal Claims ("RCFC"). In its motion, defendant requests summary dismissal "in the interest of avoiding the need for the parties to participate in unnecessary briefing or case management." Def.'s Mot. Summ. Dismissal Pro Se Compl. 1. Although the court afforded plaintiffs ample time to respond to defendant's motion, plaintiffs did not file any response brief. The court finds that there is no need to delay ruling on defendant's motion. For the reasons set forth below, the court grants plaintiffs' application to proceed in forma pauperis, grants defendant's motion to dismiss, denies plaintiffs' motion to appoint pro bono counsel, denies plaintiffs' motion to transfer, denies plaintiffs' motion to issue a temporary restraining order, and denies as moot plaintiffs' "Motion to Submit Discoveries."

I. BACKGROUND[1]

The gravamen of plaintiffs' complaint is that Ms. Taylor "has been formally and legally prevented from filing any suits in OHIO and from continuing any existing actions . . . ." Compl. ¶ 5. On or about April 14, 2008, Ohio Attorney General Marc Dann initiated a civil action against Ms. Taylor in the Wayne County, Ohio Court of Common Pleas that alleged that Ms.

[1] The facts are derived from plaintiffs' complaint and materials included in plaintiffs' "Discovery (Exhibits) Directory" ("Pls.' Ex.").

Taylor was "a vexatious litigator." Id. ¶ 7; Pls.' Ex. A. In his complaint, Mr. Dann claimed that Ms. Taylor, among other things,

> instituted **at least 30 civil actions and appeals** against public officials and private entities in various Ohio courts. Her lawsuits have served merely to harass or maliciously injure the defendants in those civil actions. Virtually none of her lawsuits have had any legal grounding or were warranted under existing law. In addition, almost all of her lawsuits have not been supported by any good faith argument for an extension, modification, or reversal of existing law. This activity constitutes vexatious conduct pursuant to R.C. § 2323.52. Her endless litigation is nothing more than a campaign to harass public officials and other private entities.
>
> [S]ince December 2007, Defendant has filed **at least 11 civil actions in the Court of Claims of Ohio**, against various public officials and agencies, including the Office of the Attorney General, the Ohio Department of Job and Family Services, the Ohio Department of Education, the Ohio Public Defender, the Ohio State University, and the Ohio Board of Psychology. . . .
>
> [S]ince December[] 2007, Defendant has initiated **at least 6 civil actions in the Wayne County Court of Common Pleas**. . . .
>
> In addition to the above, since September[] 2007, Defendant has filed **at least 14 civil actions in the U.S. District Court for the Northern District of Ohio**, most of which are against various public officials, including the State of Ohio, county prosecutors, sheriff and police departments, judges, magistrates, and county agencies.

Pls.' Ex. A. On May 27, 2008, the Honorable Robert J. Brown determined that Ms. Taylor's "conduct has overwhelmingly not been warranted under existing law and has not been supported by a good-faith argument for an extension, modification[,] or reversal of existing law," Pls.' Ex. D, and granted a preliminary injunction restraining Ms. Taylor from filing additional lawsuits and maintaining or continuing pending lawsuits,[2] Pls.' Ex. B, D.

---

[2] Plaintiffs instituted this action on June 16, 2008, while the state court action against Ms. Taylor was pending before Judge Brown. A hearing on a final injunction was scheduled for July 24, 2008. A review of the Wayne County, Ohio Court of Common Pleas docket indicates that on August 21, 2008, Judge Brown entered a final judgment and order against Ms. Taylor precluding her from instituting any legal proceedings without first obtaining leave to proceed from the court. See Dann v. Taylor, No. 08-CV-306 (Ohio Ct. Common Pleas Aug. 21, 2008).

The undersigned notes that Ms. Taylor is no stranger to this court. On January 14, 2008, Ms. Taylor filed a complaint in the United States Court of Federal Claims ("Court of Federal

The instant complaint indicates that plaintiffs have "been [the] victim[s] of violent crimes within the boundaries of [their] own home," thereby causing Ms. Taylor to file reports with both local law enforcement and the Federal Bureau of Investigation.[3] Compl. ¶ 10. According to Ms. Taylor, the Wayne County, Ohio prosecutor's office failed to prosecute numerous crimes, id. ¶ 13, which apparently caused Ms. Taylor to institute the various actions Mr. Dann described in the state court action.[4] The instant complaint discusses many of the lawsuits Ms. Taylor initiated, including: (1) a "civil protection order violation" against her son's father, who has allegedly failed to make child support payments, id. ¶ 15; (2) a "related common pleas civil suit" against her son's father "for . . . continued abuse and assaults and mental abuse," id. ¶ 16; (3) an "order for child support initiated by the State Child Support enforcement agency," id. ¶ 17; (4) a "civil suit in the Wayne County Common Pleas against [Ms. Taylor's] ex[-]husband . . . for sending an email containing pornography," id. ¶ 18; (5) a civil suit and "request for a stalking order" against an individual who allegedly "threatened [Ms. Taylor] with forced action," id. ¶ 19; and (6) a small claims lawsuit against Gateway, a computer manufacturer, alleging that its laptop "malfunctioned after two days and could not be fully used and presented itself as a hazard to one['s] safety as it would not shut down," id. ¶ 20. The complaint indicates that all of these actions involved allegations of abuse or harassment. Id. ¶¶ 13, 15-20.

Plaintiffs acknowledge that Ms. Taylor initiated eleven cases in the Ohio Claims Court; however, according to Ms. Taylor, she "was unaware that they could be condensed and were not filed at all the same time . . . ." Id. ¶ 21. Plaintiffs claim that these cases included, among other things, allegations of: (1) sexual abuse by a mental health care provider; emotional abuse by a state child support agency; (2) negligence, intimidation, and property damage against the Ohio State University for exposing Ms. Taylor to toxic chemicals during her pregnancy, thereby causing her heart failure and seizures; (3) "child abuse, medical neglect, discrimination, child

---

Claims") alleging similar misdeeds as those pled in the instant complaint. The court's dismissal of Ms. Taylor's complaint without prejudice was affirmed by the United States Court of Appeals for the Federal Circuit ("Federal Circuit"). See Taylor v. United States, No. 08-25C, 2008 WL 1992132 (Fed. Cl. Mar. 5, 2008), aff'd, No. 2008-5063, 2008 WL 4532357 (Fed. Cir. Oct. 8, 2008).

[3] Ms. Taylor's son, the complaint alleges, "has the right to be free from violence and abuse, to sue for damages and intent, [and] to have municipal cases filed for him by the state and country . . . ." Compl. ¶ 12.

[4] These crimes included a civil protection order violation, an "ethnic intimidation and child abuse and hate crime," and an "illegal transmission of pornography to [Ms. Taylor's] campus email address . . . ." Compl. ¶ 13. The civil protection order violation claim, plaintiffs allege, was made against "the father of [Ms. Taylor's] infant, and a related municipal court charge with an issued warrant documented by the Ohio State University Police . . . ." Id. ¶ 15. The complaint alleges that Ms. Taylor was raped at the age of fifteen and that she and her first-born child have been subjected to emotional torture by numerous individuals. Id. ¶ 13.

endangerment, abuse of a disabled woman," sexual abuse, and other violations against the Ohio Department of Job and Family Services for actions in three different counties; (4) neglect of duty in office and "intentional attempted murder" against the State of Ohio; (5) separate incidents of abuse and discrimination against the State of Ohio; (6) abuse perpetrated by Ms. Taylor's uncle, who allegedly sexually abused her, that Ms. Taylor filed in Ohio district court; and (7) abuse by an alleged rapist and failure to prosecute by the Allen County, Ohio prosecutor that Ms. Taylor filed in federal district court. Id. ¶¶ 21-26. According to plaintiffs, "not one single case has been filed twice . . . ." Id. ¶ 28.

Plaintiffs allege that Mr. Dann, "the state of Ohio[,] and the [U]nited [S]tates force[d] this woman and her child out of their own home . . . as Marc Dann has forced an injunction preventing these people from seeking any court action" in violation of the Fifth Amendment to the United States Constitution. Id. ¶ 32. Additionally, plaintiffs allege that the Eighth Amendment protects them from various acts they claim constitute cruel and unusual punishment, including, among other things, "forc[ing] a disabled, paralyzed woman and her infant child to endure emotional, physical, sexual, financial[,] and social abuse because they don't have the money to pay filing fees," and "punish[ing] this woman from exerting her right as an American citizen under the crime victims bill of rights . . . ." Id. ¶ 33. Plaintiffs further allege that they were deprived their First Amendment "right to life" by both the State of Ohio and defendant "by forcing these people to die at the hands of abusers." Id. ¶ 34. Asserting that their Fourteenth Amendment equal protection rights were violated, plaintiffs allege that the State of Ohio and defendant have deprived them of their rights, "despite waterworks and economic and popularity status . . . ." Id. ¶ 35. Furthermore, plaintiffs invoke the Rules of Decision Act, 28 U.S.C. § 1652 (2000), and allege that "[t]here is no conflict between the federal and state law here, only a conflict between the laws and the actions of the state . . . . [T]here is a Unique federal interest here, no private right[,] but [a] general public right . . . ." Compl. ¶ 36. Finally, plaintiffs allege that the United States Supreme Court ("Supreme Court") conferred upon them a right to institute a lawsuit based upon the Fourth Amendment, "despite the lack of any federal statute authorizing such," in its decision in Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971). Compl. ¶ 37.

Plaintiffs seek $2 million in damages "for the Federal Constitution violations, for the attempts by government officials to end innocent lives, one disabled . . . woman and her infant child," and for numerous other wrongs committed against them. Id. ¶ 39. Additionally, plaintiffs request that the court order publication of a public apology in various Ohio newspapers "on behalf of the state, the city of Wooster, the attorney general[,] and the United States of America," and that this public apology acknowledge the merits of plaintiffs' case "so that the rest of society may be informed of the importance of civil recourse, Americans' rights, and the intended equality of the American Justice System . . . ." Id. Plaintiffs also seek the issuance of a restraining order against the State of Ohio that requires "all enforcers of law within the state be ORDERED to stop harassing and abusing and attempting to intimidate the plaintiff and her child . . . ." Id. Lastly, plaintiffs request that the court: (1) permanently bar Mr. Dann "from ever practicing law or law enforcement or rehabilitations corrections or mental health"; (2) reprimand

and institute an investigation by the United States of "all involved parties within the realm of the state attorney general office . . . who have contributed[,] in part or whole[,] to the continuing of this case"; (3) clear Ms. Taylor's credit report "when the truth of the child support matter is proven"; and (4) "loose[]" Ms. Taylor's tax return. Id. ¶ 40.

II. APPLICATION TO PROCEED IN FORMA PAUPERIS

Plaintiffs filed an application to proceed in forma pauperis together with their 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.[5] 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.[6] See Pls.' Application to Proceed In Forma Pauperis 2 (indicating that plaintiff is not a prisoner). Ms. Taylor states that, "because of [her] poverty, [she is] unable to pay" filing fees. Id. at 1. Upon review of her application, the court is satisfied that Ms. Taylor meets the requirements to proceed in forma pauperis. Therefore, the court grants plaintiffs' application.

---

[5] 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 to 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).

[6] 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.

III. LEGAL STANDARDS

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 plaintiffs' 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 (noting that pro se plaintiffs are not excused from satisfying jurisdictional requirements), aff'd, 98 Fed. App'x 860 (Fed. Cir. 2004). 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. 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. 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 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." 28 U.S.C. § 1491(a)(1) (2000). 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." Fisher v. United States, 402 F.3d 1167, 1172 (Fed. Cir. 2005) (en banc in part). 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) (en banc). "[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 Tucker Act, as stated above, 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). It is "well settled that the United States Court of Federal Claims lacks . . . jurisdiction to entertain tort claims." Shearin v. United States, 992 F.2d 1195, 1197 (Fed. Cir. 1993); 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).

The Court of Federal Claims "may not entertain claims outside [its] specific jurisdictional authority." Adams v. United States, 20 Cl. Ct. 132, 135 (1990). Consequently, it must, "at the outset," determine whether the constitutional provision upon which a claim is based is one that is money-mandating. Fisher, 402 F.3d at 1173. As the Federal Circuit has stated,

> [i]f the court's conclusion is that the Constitutional provision, statute, or regulation meets the money-mandating test, the court shall declare that it has jurisdiction over the cause, and shall then proceed with the case in the normal course. For purpose of the case before the trial court, the determination that the source is money-mandating shall be determinative both as to the question of the court's jurisdiction and thereafter as to the question of whether, on the merits, plaintiff has a money-mandating source on which to base his cause of action.

Id. The Court of Federal Claims possesses jurisdiction over takings claims, Murray v. United States, 817 F.2d 1580, 1583 (Fed. Cir. 1987), and "[i]t is undisputed that the Takings Clause of the Fifth Amendment is a money-mandating source for purposes of Tucker Act jurisdiction," Jan's Helicopter Serv., Inc. v. FAA, 525 F.3d 1299, 1309 (Fed. Cir. 2008); see also Moden v. United States, 404 F.3d 1335, 1341 (Fed. Cir. 2005) ("[T]he Takings Clause of the Fifth Amendment is money-mandating. Thus, to the extent [plaintiff has] a nonfrivolous takings claim founded upon the Fifth Amendment, jurisdiction under the Tucker Act is proper."[7]); Russell v.

[7] Whereas the Moden court concluded that it had jurisdiction to reach the merits of plaintiffs' case because the plaintiffs' claim was "neither frivolous, nor so insubstantial, implausible, foreclosed by prior decisions, or otherwise completely devoid of merit as not to

United States, 78 Fed. Cl. 281, 289 (2007) ("The Takings and Just Compensation Clauses of the Fifth Amendment do constitute a money-mandating source and claims under these clauses are within the jurisdiction of the court.").

C. Motion to Dismiss–RCFC 12(b)(1)

The court's "general power to adjudicate in specific areas of substantive law . . . is properly raised by a [Rule] 12(b)(1) motion." Palmer v. United States, 168 F.3d 1310, 1313 (Fed. Cir. 1999). 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. See McNutt v. Gen. Motors Acceptance Corp. of Ind., 298 U.S. 178, 189 (1936). The plaintiff "bears the burden of establishing subject matter jurisdiction by a preponderance of the evidence." Reynolds v. Army & Air Force Exch. Serv., 846 F.2d 746, 748 (Fed. Cir. 1988). The court must accept as true the allegations in the plaintiff's complaint and must construe such facts in the light most favorable to the nonmoving party. See Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), overruled on other grounds by Harlow v. Fitzgerald, 457 U.S. 800, 814-19 (1982); Reynolds, 846 F.2d at 747. If the defendant or the court questions jurisdiction, the plaintiff cannot rely solely on allegations in the complaint but must bring forth relevant, adequate proof to establish jurisdiction. See McNutt, 298 U.S. at 189. In deliberating a motion to dismiss for lack of subject matter jurisdiction, the court may examine relevant evidence in order to decide any factual disputes. See Moyer v. United States, 190 F.3d 1314, 1318 (Fed. Cir. 1999); Reynolds, 846 F.2d at 747. 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

---

involve a federal controversy," 404 F.3d at 1341-42, the Federal Circuit subsequently held in Jan's Helicopter Service, Inc. that the jurisdictional requirement of a nonfrivolous claim did not apply to complaints filed in the Court of Federal Claims, see 525 F.3d at 1309 (explaining that once the court determines that a claim is founded upon a money-mandating source and that a plaintiff has "made a nonfrivolous allegation that it is within the class of plaintiffs entitled to recover under the money-mandating source[, t]here is no further jurisdictional requirement that the court determine whether the additional allegations of the complaint state a nonfrivolous claim on the merits"). As the court noted in Briseno v. United States, "[i]f there is direct, irreconcilable conflict between two panel decisions of the Federal Circuit, the earlier decision is controlling precedent." 83 Fed. Cl. 630, 633 n.5 (2008) (citing Newell Cos. v. Kenney Mfg. Co., 864 F.2d 757, 765 (Fed. Cir. 1988)). However, "the Jan's Helicopter panel announced that any contrary aspects of the Moden discussion of the 'nonfrivolous' claim issue were dicta . . . ." Id.; see Jan's Helicopter Serv., Inc., 525 F.3d at 1308 n.9 ("In any event, the court's statements [in Moden], quoted at page 4 of the dissent, are dicta, and we are not bound by them . . . .") Consequently, the Briseno court was "constrained to follow Jan's Helicopter as controlling precedent even though it is the later-issued circuit decision." 83 Fed. Cl. at 633 n.5. For the reasons set forth in infra Part IV, plaintiffs' alleged takings claim fails under either the Moden or Jan's Helicopter Service, Inc. standard.

the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.").

D. Motion to Dismiss–RCFC 12(b)(6)

The Supreme Court recently clarified the standard with respect to the degree of specificity with which a plaintiff must plead facts sufficient to survive a Rule 12(b)(6) motion. Bell Atl. Corp. v. Twombly, 127 S. Ct. 1955 (2007). In Twombly, the Supreme Court explained that "a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Id. at 1964-65 (citation & quotation marks omitted). Further, the Supreme Court elucidated that while a complaint does not need to contain "detailed" factual allegations, its "[f]actual allegations must be enough to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true (even if doubtful in fact)."[8] Id. (citation & footnote omitted). Thus, in reviewing an RCFC 12(b)(6) motion, this court "must assume all well-pled factual allegations are true and indulge in all reasonable inferences in favor of the nonmovant." United Pac. Ins. Co. v. United States, 464 F.3d 1325, 1327-28 (Fed. Cir. 2006) (citations & quotation marks omitted). Additionally, this court must decide "'not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims.'" Swierkiewicz v. Sorema N.A., 534 U.S. 506, 511 (2002) (quoting Scheuer, 416 U.S. at 236).

IV. DISCUSSION

In order to assert Tucker Act jurisdiction for a claim against the United States, plaintiffs must "identify a separate source of substantive law that creates the right to money damages." Fisher, 402 F.3d at 1172. Where allegations are based upon violations of the Constitution or a federal statute, that separate source of substantive law must constitute a "money-mandating . . . provision." Loveladies Harbor, Inc., 27 F.3d at 1554. In this case, plaintiffs' complaint asserts violations of the First, Fourth, Fifth, Eighth, and Fourteenth Amendments, and a violation of the Rules of Decision Act.

A. Plaintiffs' First, Fourth, Eighth, and Fourteenth Amendment Claims

The Court of Federal Claims lacks jurisdiction over plaintiffs' First Amendment claims. It is well-settled that the First Amendment "does not mandate the payment of damages for its breach and cannot be construed as a money-mandating source." Russell, 78 Fed. Cl. at 288; Edelmann v. United States, 76 Fed. Cl. 376, 383 (2007); see also United States v. Connolly, 716 F.2d 882, 887 (Fed. Cir. 1983) ("[T]he literal terms of the first amendment neither explicitly nor

[8] In so holding, the Supreme Court determined that the "no set of facts" language set forth in Conley v. Gibson, 355 U.S. 41, 45 (1957), "has earned its retirement." Twombly, 127 S. Ct. at 1969.

implicitly obligate the federal government to pay damages."). While plaintiffs assert that the First Amendment affords them a "right to life," Compl. ¶ 34, the express language of the First Amendment provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const. amend. I. To the extent that plaintiffs' First Amendment allegations can be construed as asserting a claim based upon the right to petition the government for redress of grievances, that clause does not mandate the payment of money by the United States. See Daniels v. United States, 77 Fed. Cl. 251, 256 (2007) ("While plaintiffs' allegations may implicate the First Amendment right to petition the Government for redress of grievances . . . , th[is] provision do[es] not mandate payment of money by the Government.").

Similarly, plaintiffs' Fourth Amendment claim lacks merit. The Fourth Amendment provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend IV. Nothing in plaintiffs' complaint raises the specter of an unreasonable search and seizure by defendant. More fundamentally, for purposes of this court's jurisdictional analysis, the Fourth Amendment is not a money-mandating constitutional provision. See, e.g., Fry v. United States, 72 Fed. Cl. 500, 507 (2006) ("As a matter of law, the Fourth Amendment's prohibition on unreasonable search and seizure . . . [is] not money-mandating."); Hanford v. United States, 63 Fed. Cl. 111, 119 (2004) ("'[V]iolations of 4th [A]mendment search and seizure' are 'excluded' from the jurisdiction of this court because the Fourth Amendment is not a money-mandating constitutional provision." (quoting Stephenson v. United States, 58 Fed. Cl. 186, 192 (2003))). Furthermore, although the Supreme Court held in Bivens "that a party may, under certain circumstances, bring an action for violations of constitutional rights against Government officials in their individual capacities[,] . . . [t]he Tucker Act grants the Court of Federal Claims jurisdiction over suits against the United States, not against individual federal officers." Brown v. United States, 105 F.3d 621, 624 (Fed. Cir. 1997). The court, therefore, lacks jurisdiction to entertain these claims.

With respect to plaintiffs' Eighth Amendment claim,[9] these allegations clearly fall outside the scope of the court's jurisdictional grant. See Trafny v. United States, 503 F.3d 1339, 1340 (Fed. Cir. 2007) ("The Court of Federal Claims does not have jurisdiction over claims arising under the Eighth Amendment, as the Eighth Amendment 'is not a money-mandating provision.'"

[9] The Eight Amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII.

(quoting Edelmann, 76 Fed. Cl. at 383)). Lastly, the Equal Protection Clause of the Fourteenth Amendment provides, in relevant part: "[N]or shall any State . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. It is well-settled that this provision does not constitute a money-mandating provision. LeBlanc v. United States, 50 F.3d 1025, 1028 (Fed. Cir. 1995). Indeed, the Fourteenth Amendment "applies only to the states and cannot support a claim against the federal government." Lowe v. United States, 79 Fed. Cl. 218, 228 n.11 (2007). Accordingly, the court dismisses these allegations for lack of jurisdiction.

B. Plaintiffs' Fifth Amendment Claim

Plaintiffs appear to assert a Fifth Amendment takings claim based upon the following allegations:

> [T]he attorney general and the state of Ohio and the [U]nited [S]tates force this woman and her child out of their own home in [an] effort to protect their lives, something these enforcers of law are supposed to get paid to do, and force these people to have this right violated every time someone abuses them and gets away with it, as these people's only real possessions are their personal lives, as [Ohio Attorney General] Marc Dann has forced an injunction preventing these people from seeking any court action including all state common pleas and municipal, and stopping all current appeals, rendering them dismissed, one is a divorce on grounds of domestic violence and child abuse, and fraud, and neglect, and non[-]payment of child support and contempt . . . .

Compl. ¶ 32. The Court of Federal Claims possesses jurisdiction over takings claims. Murray, 817 F.2d at 1583. In this case, however, the court lacks jurisdiction over plaintiffs' alleged takings claim for the reasons set forth in infra Parts IV.B.1-3.

1. Plaintiffs' Alleged Takings Claim Does Not Assert a Claim Against the Federal Government

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). Plaintiffs' alleged takings claim, however, does not assert a claim against the United States. Plaintiffs merely name the United States as a defendant and cite the federal government as having engaged in conduct without further explanation. As the court noted in May Co., Inc. v. United States, "at no point . . . does plaintiff even intimate how the United States" was involved in the actions alleged in the complaint. 38 Fed. Cl. 414, 416 (1997). Here, plaintiffs have not set forth any allegations that the federal government has effectuated a taking of their property without just compensation. Accordingly, the court lacks jurisdiction over plaintiffs' alleged takings claim because the claim is not against the United States.

2. Plaintiffs' Alleged Takings Claims Is Asserted Against Ohio State Officials

It is apparent from their complaint that plaintiffs seek redress for actions allegedly committed by the Ohio Attorney General and other state officials. The court, however, lacks jurisdiction to entertain claims asserting misconduct by state officials. Smith v. United States, 51 Fed. Cl. 36, 38 (2001) (citing Vlahakis v. United States, 215 Ct. Cl. 1018 (1978)). "When a plaintiff's complaint names private parties, or state agencies, rather than federal agencies, this court has no jurisdiction to hear those allegations."[10] 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)). Furthermore, to the extent that plaintiffs' complaint alleges wrongful conduct by officials in the course of the discharge of their official duties, see Smithson v. United States, 847 F.2d 791, 794 (Fed. Cir. 1988) ("[T]he more natural reading of [the] complaint is that [it is] . . . a tort claim against the Government for misfeasance and misconduct; that claim is, of course, outside the Claims Court's jurisdiction."), such allegations sound in tort. Because the court cannot entertain tort claims, it lacks jurisdiction over plaintiffs' alleged takings claim.

3. Plaintiffs Cannot Collaterally Attack the Actions of the Wayne County, Ohio Court of Common Pleas

Plaintiffs' alleged takings claim, in essence, challenges the propriety of the injunction issued by Judge Brown. See Compl. ¶ 32 (alleging that Attorney General Dann "has forced an injunction preventing these people from seeking any court action including all state common pleas and municipal, and stopping all current appeals, rendering them dismissed"). Although Judge Brown entered a final judgment against Ms. Taylor on August 21, 2008, see supra note 2, a review of the docket in Dann v. Taylor indicates that Ms. Taylor filed a motion for leave to file an opposition and motion for a new trial on August 26, 2008. Those proceedings remain pending as of the date of this Opinion and Order. Therefore, it is apparent that Ms. Taylor continues to litigate in and to seek relief from the Ohio state courts.

Plaintiffs may not, however, institute an action in the Court of Federal Claims–cloaked as a takings action–that challenges Judge Brown's actions. "Even though an action has an independent purpose and contemplates some other relief, it is a collateral attack if it must in

---

[10] To the extent that any federal official allegedly effectuated a taking of plaintiffs' property in violation of the Fifth Amendment, the court lacks jurisdiction over such claims. Smith, 51 Fed. Cl. at 38 (citing Frank's Livestock & Poultry Farm, Inc. v. United States, 17 Cl. Ct. 601, 607 (1989), aff'd, 905 F.2d 1515 (Fed. Cir. 1990)); supra Part IV.A.

some fashion overrule a previous judgment." Miller v. Meinhard-Commercial Corp., 462 F.2d 358, 360 (5th Cir. 1972). The Supreme Court has stated that "[i]t is generally true that a judgment by a court of competent jurisdiction bears a presumption of regularity and is not thereafter subject to collateral attack." Kalb v. Feuerstein, 308 U.S. 433, 438 (1940). Thus, the Court of Federal Claims "cannot entertain a taking claim that requires the court to 'scrutinize the actions of' another tribunal." Vereda, Ltda. v. United States, 271 F.3d 1367, 1375 (Fed. Cir. 2001) (quoting Allustiarte v. United States, 256 F.3d 1349, 1352 (Fed. Cir. 2001)). Rather, as the court explained in Ullman v. United States, "[t]he proper course for a dissatisfied litigant to redress legal errors is through appeal, not by collateral attack on the judgment in a separate lawsuit." 64 Fed. Cl. 557, 571 (2005); accord Allustiarte, 256 F.3d at 1352 (indicating that the proper course for a party dissatisfied with a bankruptcy court decision was to seek judicial review in the district court, followed by the court of appeals, and not to institute a separate action in the Court of Federal Claims). Therefore, Ms. Taylor cannot assert a takings claim that calls upon the Court of Federal Claims to reconsider the determination by Judge Brown that she is a "vexatious" litigant because doing so would require the court to scrutinize the actions of the Wayne County, Ohio Court of Common Pleas.

4. Alternatively, Plaintiffs Have Not Demonstrated They Have Been Deprived of Any Property Interest

Finally, assuming that plaintiffs overcame the jurisdictional deficiencies contained in their complaint and alleged that the federal government effectuated a taking of their property, they have failed to state a claim upon which relief can be granted. The Takings Clause of the Fifth Amendment provides: "[N]or shall private property be taken for public use, without just compensation." U.S. Const. amend. V. Plaintiffs must therefore show that they possess a private property interest that was taken by the federal government for public use.

The Federal Circuit has articulated a two-part test to "evaluate claims that a governmental action constitutes a taking of private property without just compensation." Maritrans Inc. v. United States, 342 F.3d 1344, 1351 (Fed. Cir. 2003). First, "as a threshold matter, the court must determine whether the claimant has established a property interest for purposes of the Fifth Amendment." Am. Pelagic Fishing Co., L.P. v. United States, 379 F.3d 1363, 1372 (Fed. Cir. 2004). "[O]nly persons with a valid property interest at the time of the taking are entitled to compensation." Wyatt v. United States, 271 F.3d 1090, 1096 (Fed. Cir. 2001). "Second, once a court has determined that a property interest exists, it must determine whether a taking occurred." Maritrans Inc., 342 F.3d at 1351. "If the claimant fails to demonstrate the existence of a legally cognizable property interest, the court['s] task is at an end," and it need not reach the second part of the test. Am. Pelagic Fishing Co., 379 F.3d at 1372.

Plaintiffs have not satisfied the first part of this test. At no point do plaintiffs establish the existence of a cognizable property interest. Rather, plaintiffs claim that the Ohio Attorney General and the State of Ohio denied Ms. Taylor access to the state justice system by issuance of an injunction. Access to the court is not a private property right within the meaning of the Fifth

Amendment. Judge Brown's preliminary injunction "temporarily prohibit[ed]" Ms. Taylor from instituting or continuing any legal proceeding without first obtaining leave of the court to proceed, Pls.' Ex. D, and Judge Brown's final judgment required that Ms. Taylor seek leave to proceed. Accordingly, Ms. Taylor was not denied any access to the Ohio state courts. Moreover, the issuance of an injunction is not recognized as the taking of private property for public use. See Boise Cascade Corp. v. United States, 296 F.3d 1339, 1353-54 (Fed. Cir. 2002) (stating that plaintiff "is incorrect to suppose that the district's court injunction was responsible for [a] taking" and that the district court's injunction "did not take whatever remained of [plaintiff's] putative property interest"). As such, assuming that plaintiffs asserted a takings claim against the federal government, such a claim must be dismissed pursuant to RCFC 12(b)(6) for failure to state a claim upon which relief can be granted.

C. The Court Lacks Jurisdiction Under the Rules of Decision Act

The Rules of Decision Act provides: "The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply." 28 U.S.C. § 1652. The Rules of Decision Act contains no language indicating that it is a money-mandating provision for the purpose of conferring Tucker Act jurisdiction upon the court. See Loveladies Harbor, Inc., 27 F.3d at 1554 (requiring that the separate source of substantive law constitute a money-mandating statute). Furthermore, where plaintiffs have alleged constitutional violations, the Rules of Decision Act has no bearing. Persyn v. United States, 32 Fed. Cl. 579, 583 (1995) (citing Erie RR. Co. v. Tompkins, 304 U.S. 64, 72-73 (1938)). Therefore, the court cannot exercise jurisdiction over plaintiffs' complaint based upon the Rules of Decision Act.

D. Plaintiffs' Motion to Appoint Pro Bono Counsel

The court construes plaintiffs' motion to appoint pro bono counsel as raising a right to counsel pursuant to the Sixth Amendment. The Sixth Amendment provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

U.S. Const. amend VI. As the Federal Circuit noted in Lariscey v. United States, "[t]he right of indigents to counsel in criminal matters in the federal courts is guaranteed by the Sixth Amendment. In civil proceedings, however, the right to counsel is highly circumscribed, and has been authorized in exceedingly restricted circumstances." 861 F.2d 1267, 1270 (Fed. Cir. 1988).

Plaintiffs do not have the right to assistance of counsel before the Court of Federal Claims. Heuss v. United States, 75 Fed. Cl. 636, 637 (2007). Plaintiffs have not been criminally prosecuted, and the Court of Federal Claims only entertains civil claims. See Hanford v. United States, 63 Fed. Cl. 111, 119 n.5 (2004). Additionally, the court cannot entertain Sixth Amendment claims because this constitutional provision "do[es] not . . . obligate the United States to pay money damages." Dupre v. United States, 229 Ct. Cl. 706, 706 (1981). Moreover, the Sixth Amendment "cannot combine with the Tucker Act to provide the court jurisdiction. Milas v. United States, 42 Fed. Cl. 704, 710 (1999), aff'd, 217 F.3d 854 (Fed. Cir. 1999). As a result, plaintiffs' motion is denied.

E. Plaintiffs' Motion to Transfer

Plaintiffs request that the court transfer "the case in Wayne County Common Pleas began by the Attorney General, as well as all other cases within the state of Ohio involving the plaintiffs here . . . to a United States Court . . . ." Pls.' Mot. Transfer 1. To the extent that plaintiffs' motion is brought pursuant to 28 U.S.C. § 1631 (2000), the court cannot effectuate a transfer. Section 1631 governs transfers of cases between federal courts. See Brown v. United States, No. 08-186C, 2008 WL 4646056, at *6 (Fed. Cl. Oct. 16, 2008). It provides, in relevant part:

> Whenever a civil action is filed in a court as defined in section 610 of this title[11] . . . the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court in which the action . . . could have been brought at the time it was filed or noticed . . . .

28 U.S.C. § 1631 (footnote added). The court cannot transfer the Wayne County, Ohio Court of Common Pleas action against Ms. Taylor to a federal court because the Wayne County, Ohio Court of Common Pleas is not a court defined in 28 U.S.C. § 610. See supra note 11. For the same reasons, the court cannot transfer any other case pending within the Ohio state court system. Plaintiffs must satisfy jurisdictional prerequisites in order to institute actions in–or, where plaintiffs are defendants, to remove actions to–federal court. The court, therefore, cannot transfer these matters. As such, plaintiffs' motion to transfer is denied.

F. Plaintiffs' Motion for Temporary Restraining Order

Plaintiffs request that the court issue a temporary restraining order "prohibiting the United States and the state of OHIO from harassing, abusing, intimidating, or continuing any civil action pending this lawsuit in the federal court of claims . . . ." Pls.' Mot. Issue TRO 1. The court determines that plaintiffs' complaint asserts no basis for the issuance of a temporary

---

[11] The word "court," as used in section 1631, "includes the courts of appeals and district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, the District Court of the Virgin Islands, the United States Court of Federal Claims, and the Court of International Trade." 28 U.S.C. § 610 (2000).

restraining order and that the allegations contained therein are frivolous and not meritorious. Therefore, plaintiffs' motion to issue a temporary restraining order is denied.

G. Plaintiffs' "Motion to Submit Discoveries"

In their "Motion to Submit Discoveries," plaintiffs "request permission to submit exhibits as evidence, clearly marked and labeled, having an attached discovery guide to the table of contents." Pls.' Mot. Submit Discoveries 1. Because the court has, in addressing the allegations contained in their complaint, already considered plaintiffs' accompanying exhibits, see Pension Benefit Guar. Corp. v. White Consol. Indus., Inc., 998 F.2d 1192, 1196 (3d Cir. 1993) ("To decide a motion to dismiss, courts generally consider only the allegations contained in the complaint, exhibits attached to the complaint[,] and matters of public record."); supra note 1, plaintiffs' motion is unnecessary. Therefore, plaintiffs' motion to submit discoveries is denied as moot.

V. CONCLUSION

Accordingly, for the reasons stated above:

1. Plaintiffs' application to proceed in forma pauperis is **GRANTED**.

2. Plaintiffs' motion to appoint pro bono counsel is **DENIED**.

3. Plaintiffs' motion to transfer is **DENIED**.

4. Plaintiffs' motion for a temporary restraining order is **DENIED**.

5. Plaintiffs' "Motion to Submit Discoveries" is **DENIED AS MOOT**.

6. Defendant's motion for summary dismissal of plaintiffs' pro se complaint is **GRANTED**. Plaintiffs' complaint is **DISMISSED WITHOUT PREJUDICE**. The Clerk of Court is directed to enter judgment in accordance with this Opinion and Order.

No costs.

IT IS SO ORDERED.

MARGARET M. SWEENEY
Judge