

United States Court of Federal Claims

No: 09-24 C
March 27, 2009
UNPUBLISHED

KENNETH W. JONES,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Kenneth W. Jones, pro se.

Steven M. Mager, Court of Federal Claims Section, Civil Division, United States Department of Justice, for defendant.

OPINION and ORDER

Block, Judge.

I. INTRODUCTION

Before the court is defendant's motion to dismiss for lack of subject matter jurisdiction, pursuant to the RULES OF THE UNITED STATES COURT OF FEDERAL CLAIMS ("RCFC") 12(b)(1). Because a previous order of a judge of this court precludes the majority of plaintiff's claims, and because plaintiff's remaining claims fall outside of this court's jurisdiction, defendant's motion is granted.

II. FACTUAL BACKGROUND

Pro se plaintiff, Kenneth W. Jones, filed his complaint on January 12, 2009, seeking damages based upon alleged torts and various criminal and civil rights violations committed by defendant. Compl. at 1, 3–8. This is the third time plaintiff has raised these or similar claims in this court. Plaintiff first filed a similar complaint eight years ago. *Jones v. United States*, No. 00-606C at 1 (Fed. Cl. Nov. 29, 2000) (the "2000 case"). In that complaint, plaintiff alleged that the United States,

Cleveland (Ohio) police officers, and Ohio park rangers engaged in a conspiracy to improperly arrest plaintiff for the murder of his wife.¹ *Id.* Because plaintiff alleged only torts and civil rights violations and did not cite a money-mandating statute or constitutional provision, the court dismissed plaintiff's complaint for lack of subject matter jurisdiction. *Id.* at 1–3.

In 2002, plaintiff “raise[d] identical claims to those he raised [in the 2000 case].” *Jones v. United States*, 52 Fed. Cl. 200, 201 (2002) (the “2002 case”). To wit, plaintiff sought “damages from the government for alleged violations of his civil rights by Ohio police officers in connection with the murder of his wife.” *Id.* The court again determined that it lacked subject matter jurisdiction over plaintiff's claims. *Id.* Additionally, the court held that plaintiff's claims were also barred by the principle of *res judicata* and the Tucker Act's six-year statute of limitations. *Id.* Accordingly, the court dismissed plaintiff's case with prejudice and issued an order (the “2002 order”) precluding plaintiff from “filing any pleadings or documents related to the allegations raised in this case in this court without the advance written permission of a judge of this court.” *Id.* at 202.

This court is not alone in issuing such an order. In 2003, the United States District Court for the Northern District of Ohio stated:

Plaintiff has established a pattern of filing complaints in this court and others which are patently frivolous and vexatious and which appear calculated to harass the court and abuse the judicial process. Indeed, since 1989, [p]laintiff has instituted no less than fourteen actions, nine of which have been filed in this court. All of these cases were eventually dismissed.

Jones v. United States, No. 03-1597 at 8 (Oct. 15, 2003). In an effort to prevent plaintiff from further “encroaching on judicial resources needed by others,” the district court “permanently enjoined [plaintiff] from filing new lawsuits or other documents without seeking leave of court.” *Id.* at 7–8.

Nevertheless, in 2006, plaintiff filed yet another suit in the United States District Court for the Northern District of Ohio without properly seeking leave of the court. *In re Jones*, 06-43 at 1 (July 20, 2006), *aff'd Jones v. Willow Park Nursing & Rehab. Cent.*, No. 06-4126 (6th Cir. Jun. 9, 2008). Because plaintiff failed to follow the procedures outlined in the district court's previous decision prior to filing his 2006 suit, the district court dismissed plaintiff's complaint. *Id.* at 1–2.

In the instant action, plaintiff requests that “the defendant's be compelled to rescind the barring of this plaintiff Being able to file any future complaint in the sixth circuit district court [sic].” Am. Compl. 1. Plaintiff also asserts what he describes as “[i]mputed [n]egligence, [m]isappropriation[,] . . . [d]iscrimination[,] [and] other deprivation claims.” Compl. 1.

¹ Ultimately, the district attorney chose not to prosecute plaintiff for his wife's murder. *Id.*

III. DISCUSSION

Included with plaintiff's complaint is a copy of his Certificate of Honorable Discharge from the U.S. Army, which lists his social security number as [redacted], and his social security card, which lists his social security number as [redacted]. Compl. Exs. 1–2. Plaintiff asserts that he is entitled to the social security number listed on his Certificate of Honorable Discharge. Compl. at 5 (“I have . . . tried repeatedly to secure the social security number [redacted] that is on my . . . [d]ischarge, but have been compelled to surrender to the [social security card] that has the [n]umber [redacted] . . .”). According to plaintiff, defendant has conspired to deprive him of his rightful social security number. Compl. at 5, 7 (“I am continually told that social security number [redacted] belongs to [a]nother individual, this appears as obvious intentional misappropriation in Government Function.”). Plaintiff asserts that it was this alleged conspiracy and “misappropriation” of his social security number that led to his arrest. Compl. at 7 (“Exhibit 3 is a copy of [the] [i]ndictment I received for the [m]urder of my wife under the misappropriated [s]ocial [s]ecurity number [redacted] [T]his original Mr. Kenneth W. Jones, # [redacted], is not guilty of this crime.”). Thus, plaintiff's conspiracy and “misappropriation” claims relate to the same torts and civil rights violations that he raised in his 2000 and 2002 complaints in connection with his wife's murder. Because plaintiff did not receive written permission from a judge of this court before filing the instant complaint, the 2002 order bars these claims.

Alternatively, plaintiff's “misappropriation” claim falls outside of this court's jurisdiction because of the Tucker Act's six-year statute of limitations. The Tucker Act provides that “every claim of which the Court of Federal Claims has jurisdiction shall be barred unless the petition thereon is filed within six years after such claim first accrues.” 28 U.S.C. § 2501. Unlike most statutes of limitations, which are typically treated as affirmative defenses, the Tucker Act's statute of limitations is “a jurisdictional requirement for a suit in [this court].” *John. R. Sand & Gravel Co. v. United States*, 457 F.3d 1345, 1354 (Fed. Cir. 2006), *aff'd* 128 S.Ct. 750 (2008). A Tucker Act claim accrues—and the statute of limitations begins to run—“when all events have occurred to fix the government's alleged liability, entitling plaintiff to demand payment and sue here for his money.” *Martinez*, 333 F.3d 1295, 1303 (Fed. Cir. 2003) (quoting *Nager Elec. Co. v. United States*, 368 F.2d 847, 851 (Ct. Cl. 1966)) (internal quotations omitted).

Here, plaintiff alleges that the government misappropriated his social security number on October 25, 1974, the date the Army issued plaintiff his Certificate of Honorable Discharge. Compl. at 4. Thus, even accepting plaintiff's allegations of fact as true, this court lacks jurisdiction over plaintiff's misappropriation claim because the Tucker Act's six-year statute of limitations expired in 1980, over twenty-eight years ago. Similarly, plaintiff's claims that defendant's agents “deliberately wrecked [his] car into a wall” on September 25, 1989, and robbed him at gunpoint on September 27, 1989, expired in 1995. Compl. at 7, Ex. 8. Therefore, these claims also fall outside of this court's jurisdiction.

Finally, this court notes that it does not possess jurisdiction to review the decisions of district courts. *See Joshua v. United States*, 17 F.3d 378, 380 (Fed. Cir. 1994) (“[T]he Court of Federal Claims does not have jurisdiction to review decisions of district courts . . . relating to proceedings before those courts.”); *Matthews v. United States*, 72 Fed. Cl. 274, 282 (2006) (“this court lacks jurisdiction to consider whether the United States District Court for the District of Nevada abused its discretion in failing to consider the merits of plaintiff's claims”); *Naylor v. United States*, 53 Fed. Cl. 172, 175 (2002) (“this court has no jurisdiction to review decisions of United States district

courts or courts of appeals”). Thus, this court cannot consider plaintiff’s request to rescind the order of the United States District Court for the Northern District of Ohio enjoining plaintiff from filing new lawsuits there without prior leave.

Before concluding, this court wishes to remind plaintiff that the 2002 order remains in effect. Should plaintiff file any additional claims in this court related to the allegations he raised in his 2000 and 2002 complaints, the court may find him in contempt. *See* 28 U.S.C. § 2521(b)(3) (permitting this court “to punish by fine or imprisonment, at its discretion, such contempt of its authority” as “disobedience or resistance to its lawful writ, process, order, rule, decree, or command”). Furthermore, this court may sanction plaintiff should he file any other frivolous lawsuits. *See* RCFC 11(b)(2) (“By presenting to the court a pleading . . . an . . . unrepresented party certifies that to the best of the person’s knowledge . . . the claims . . . and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law”); RCFC 11(c) (“If after notice and a reasonable opportunity to respond, the court determines that RCFC 11(b) has been violated, the court may impose an appropriate sanction on any . . . party that violated the rule or is responsible for the violation.”). This court sincerely hopes that such disciplinary actions will not be necessary.

IV. CONCLUSION

For the above reasons, defendant’s MOTION TO DISMISS is GRANTED. The Clerk is directed to take the necessary steps to dismiss this matter. NO COSTS.

IT IS SO ORDERED.

Lawrence J. Block
Judge