

In the United States Court of Federal Claims

NOT FOR PUBLICATION

No. 07-310C
(Filed: July 3, 2007)

* * * * *

DELBERT KYLER,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

* * * * *

ORDER OF DISMISSAL

In this action, filed on May 17, 2007, the pro-se plaintiff, Delbert Kyler (“Kyler” or “plaintiff”), alleges a breach of implied contract by the United States District Court for the Northern District of Oklahoma (“the District Court”).¹ Specifically, Mr. Kyler contends that he contracted with the United States government (“government”) when he filed a civil suit and paid filing fees to the District Court. Mr. Kyler contends that, in dismissing his case, the District Court judge “committed malfeasance and misprision by termination the contract.” Am. Compl. 4. Mr. Kyler seeks the \$1.5 million that he believes he would have recovered in the civil suit; a remand to the District Court; the termination of the District Court judge’s employment and a forfeiture of the District Court judge’s pension; and an inquiry into the District Court judge’s alleged misconduct. For the following reasons, the court finds that it lacks jurisdiction to hear this claim and therefore the case must be dismissed.

¹ Mr. Kyler filed an amended complaint on June 21, 2007, in response to the court’s May 31, 2007 Order.

First, this court does not have jurisdiction to review a final judgment of the United States District Court for the Northern District of Oklahoma. See 28 U.S.C. § 1291 (2000) (“The court of appeals . . . shall have jurisdiction of appeals from all final decisions of the district courts of the United States[.]”); see also Joshua v. United States, 17 F.3d 378, 380 (Fed. Cir. 1994) (“[T]he Court of Federal Claims does not have jurisdiction to review the decisions of district courts.”). Mr. Kyler has had the opportunity to appeal the District Court’s dismissal of his case. See Kyler v. Everson, 442 F.3d 1251 (10th Cir. 2006) (affirming the District Court’s judgment and granting the government’s motion that Mr. Kyler be required to pay \$8,000 in costs as a sanction for filing a frivolous appeal).

Second, even if there were an implied contract, this court does not have jurisdiction under the Tucker Act for damages for a breach of an implied contract because Mr. Kyler has not demonstrated that the implied contract “clearly and unmistakably subjects the government to monetary liability” for a breach. Sanders v. United States, 252 F.3d 1329, 1335 (Fed. Cir. 2001). “[T]he contract liability which is enforceable under the Tucker Act consent to suit does not extend to every agreement, understanding, or compact which can semantically be stated in terms of offer an acceptance or meeting of minds.” Id. (quoting Kania v. United States, 227 Ct. Cl. 458 (1981), cert. denied, 454 U.S. 895 (1981)). See also Roudnahal v. Ridge, 310 F. Supp. 2d 884, 894 (N.D. Ohio 2003) (holding that it did not have jurisdiction for damages under the Tucker Act where the plaintiffs had paid filing fees to the Immigration and Naturalization Service). Mr. Kyler’s lawsuit in a federal court did not provide for such monetary liability against the government in the event that his case was dismissed.

Finally, the Court of Federal Claims lacks jurisdiction against individual government officials, including a district court judge. See Brown v. United States, 105 F.3d 621, 624 (Fed. Cir. 1997) (“The Tucker Act grants the Court of Federal Claims jurisdiction over suits against the United States, not against individual federal officials.”).

For all of these reasons, the plaintiff’s action must be dismissed pursuant to Rule 12(b)(1) of the Rules of the United States Court of Federal Claims. The Clerk is directed to enter judgment accordingly.

IT IS SO ORDERED.

s/Nancy B. Firestone
NANCY B. FIRESTONE
Judge