

In the United States Court of Federal Claims

No. 09-516C

Filed: December 15, 2009

CAROLYN E. O'CONNOR,)
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 Plaintiff,)
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 v.)
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 THE UNITED STATES,)
)
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 Defendant.)
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Carolyn E. O'Connor, Richmond, VA, pro se.

Allison Kidd-Miller, with whom were Assistant Attorney General Tony West, Director Jeanne E. Davidson, and Assistant Director Deborah A. Bynum, U.S. Department of Justice, Civil Division, Commercial Litigation Branch, Washington, DC, counsel for defendant.

OPINION

WIESE, Judge.

Plaintiff, a pro se litigant, sues here for monetary and injunctive relief in redress of alleged injuries she attributes to actions of the United States Equal Employment Opportunity Commission, the United States Department of Justice, and various members of the federal judiciary. Because the court lacks jurisdiction over her claims, the complaint is hereby dismissed.¹

BACKGROUND

¹ Plaintiff has filed an application to proceed in forma pauperis. We now grant that application for the limited purpose of waiving the filing fee for initiation of this action.

Beginning in 2006, plaintiff filed a series of complaints with the Equal Employment Opportunity Commission (“EEOC”) against, *inter alia*, her former employer Vance Security Services, Inc. Plaintiff was dissatisfied, however, with the way the EEOC administratively handled and ultimately resolved her cases, so she in turn filed suit in this court on August 6, 2009, seeking to remedy what she describes in her complaint as the EEOC’s “grossly negligent investigative procedure” and the “intentional acts committed by the United States” in “sanction[ing] the EEOC operations at the Richmond, Virginia branch.” In particular, plaintiff alleges that the federal government obstructed justice and recklessly endangered her civil rights in violation of the Supreme Court’s decision in *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803), Section 35 of the Judiciary Act of 1789, 1 Stat. 73, 92, and the First, Fifth, and Seventh Amendments to the United States Constitution, including the Fifth Amendment’s Due Process Clause. Plaintiff seeks a court order requiring the EEOC to provide her with a full copy of her case file, an order directing the Executive Branch to cease the investigative operations of the EEOC, an order requiring President Barack Obama to discipline judges who abuse individuals’ rights, a jury trial under the Seventh Amendment, compensatory damages in the amount of \$2,000,000, and punitive damages in the amount of \$2,000,000.

On August 7, 2009, Judge George W. Miller, the judge to whom this case was originally assigned, dismissed another of plaintiff’s cases, Case No. 09–116, then before him.² Judge Miller additionally directed the Clerk of Court to refuse to accept the filing of any additional complaints from plaintiff unless she first sought and received leave to file such a complaint from a judge of this court. Following the dismissal of that action, plaintiff filed an amended complaint in this case on September 4, 2009, alleging that the United States and the Department of Justice were strictly liable for the infringement of plaintiff’s civil rights and that the Department of Justice had “dealt with Plaintiff in bad faith.” Plaintiff further asserted that the United States was vicariously liable for Judge Miller’s actions in dismissing her other lawsuit and requested that Judge Miller be dismissed and that the government rescind both his law license and his pension.

The government moved to consolidate and dismiss plaintiff’s five cases that were pending before Judge Miller, including this one. Judge Miller denied the

² Including the present complaint, plaintiff has filed a total of 10 suits in this court: Case Nos. 09-116C, 09-324C, 09-334C, 09-335C, 09-348C, 09-383C, 09-486C, 09-494C, 09-495C, and 09-516C. Case No. 09-324C was dismissed by Judge Loren A. Smith on May 28, 2009; Case No. 09-116C was dismissed by Judge George W. Miller on August 7, 2009; Case Nos. 09-334C, 09-335C, and 09-348C were dismissed by Judge Miller on November 6, 2009; and Case Nos. 09-383C, 09-486C, 09-494C, and 09-495C were dismissed by Judge Miller on December 9, 2009.

motion to consolidate but dismissed the other four cases on December 9, 2009. Because the instant case named him personally, however, Judge Miller transferred it to the undersigned for resolution.

DISCUSSION

I.

This court’s jurisdiction is conferred by the Tucker Act, a statute which gives the court jurisdiction over claims 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) (2006). The Tucker Act does not, however, “create any substantive right enforceable against the United States for money damages,” but merely “confers jurisdiction upon [this court] whenever the substantive right exists.” United States v. Testan, 424 U.S. 392, 398 (1976). To proceed here, a plaintiff must therefore allege either the violation of a money-mandating provision of law (i.e., the right to the payment of money based on the terms of the Constitution, a statute, or a regulation) or a monetary entitlement based on a contract with the United States. If there is no such express legal authority for payment of money damages, the court lacks jurisdiction to hear the claim. James v. Caldera, 159 F.3d 573, 580 (Fed. Cir. 1998) (requiring that a claimant “assert a claim under a separate money-mandating constitutional provision, statute, or regulation, the violation of which supports a claim for damages against the United States” in order to establish jurisdiction).

Given these jurisdictional requirements, we are bound to conclude that plaintiff states no injury for which this court may provide redress. The sources of law on which plaintiff relies—principally the First, Fifth, and Seventh Amendments to the United States Constitution—do not, as is required under this court’s jurisdictional grant, mandate the payment of compensation for their violation. Cosma-Nelms v. United States, 72 Fed. Cl. 170, 172 (2006) (concluding that this court’s jurisdiction “only extends to those provisions of the Constitution which are money mandating” and does not therefore include claims based on the First Amendment or the Fifth Amendment’s Due Process Clause); Webster v. United States, 74 Fed. Cl. 439, 444 (2006) (finding that the Seventh Amendment is not money-mandating and does not therefore support jurisdiction in this court).

Equally unavailing is plaintiff’s reliance on the Judiciary Act of 1789 and on the Supreme Court’s decision in Marbury v. Madison. Section 35 of the Judiciary Act of 1789 originally provided that “in all the courts of the United States, the parties

may plead and manage their own causes personally”³ 1 Stat. 73, 92. The right to litigate one’s own case does not, however, carry with it a right to recover damages for violations of law not involving the right to the recovery of money. Similarly, the proposition set forth in Marbury v. Madison that “where there is a legal right, there is also a legal remedy by suit or action at law, whenever that right is invaded,” 5 U.S. (1 Cranch.) at 163, does not supplant this court’s jurisdictional requirement that the provision of law on which a plaintiff relies must be money-mandating.

Plaintiff’s various demands for injunctive relief against the EEOC and various members of the federal judiciary similarly fall outside this court’s jurisdiction. Except in limited circumstances not present here, the Tucker Act does not allow for the award of equitable or injunctive relief. Kanemoto v. Reno, 41 F.3d 641, 644–45 (Fed. Cir. 1994). Plaintiff’s claims must therefore be dismissed.

II.

Plaintiff has made certain unsubstantiated allegations regarding Judge George W. Miller. If plaintiff believes that those allegations, if true, rise to the level of judicial misconduct as described in the Rules of Judicial-Conduct and Judicial-Disability Proceedings,⁴ she may file a complaint of judicial misconduct with the

³ The right identified in the Judiciary Act is now codified at 28 U.S.C. § 1654 (2006) and currently reads in relevant part as follows: “In all courts of the United States the parties may plead and conduct their own cases personally”

⁴ The court observes that “judicial misconduct” as defined by the Rules of Judicial Conduct does not include any “allegation that is directly related to the merits of a decision or procedural ruling. An allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse, without more, is merits-related.” Judicial Conduct Rule 3. Cognizable allegations of judicial misconduct include:

- (A) using the judge’s office to obtain special treatment for friends or relatives;
- (B) accepting bribes, gifts, or other personal favors related to the judicial office;
- (C) having improper discussions with parties or counsel for one side in a case;
- (D) treating litigants or attorneys in a demonstrably egregious and hostile manner;
- (E) engaging in partisan political activity or making inappropriately

(continued...)

Clerk of Court of the U.S. Court of Federal Claims. Judicial Conduct Rules 3(a), 7(a)(2).

III.

For the reasons set forth above, defendant's motion to dismiss is granted and the Clerk is directed to enter judgment accordingly.

⁴(...continued)

partisan statements;

(F) soliciting funds for organizations; or

(G) violating other specific, mandatory standards of judicial conduct, such as those pertaining to restrictions on outside income and requirements for financial disclosure.

Judicial Conduct Rule 3.