

In the United States Court of Federal Claims

No. 09-623C
Filed January 7, 2010
NOT FOR PUBLICATION

TOMMY LEE STEVENS,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

Tommy Lee Stevens, Mount Olive, North Carolina, *pro se*.

Alexis J. Echols, Trial Attorney, Donald Kinner, Assistant Director, Jeanne E. Davidson, Director, Commercial Litigation Branch, Civil Division, Tony West, Assistant Attorney General, United States Department of Justice, Washington, D.C., for defendant.

OPINION AND ORDER

Plaintiff Tommy Lee Stevens has sued the Government for spoliation of evidence, alleging that the United States has “taken” or hidden its records of a lawsuit he filed in 1986 or 1987 in the United States District Court for the Eastern District of North Carolina that challenged his 1984 conviction in North Carolina state court for second degree rape. Complaint (docket entry 1, Sept. 22, 2009); Plaintiff’s Response to Defendant’s Motion for Summary Dismissal (docket entry 7, Dec. 10, 2009). Because the Court lacks jurisdiction to hear Mr. Stevens’s claims, the complaint will be dismissed.

Pro se plaintiffs are entitled to liberal construction of their pleadings. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972). But this leniency does not allow the court to hear cases outside of its jurisdiction. So the *pro se* plaintiff, like all plaintiffs, must meet jurisdictional requirements before his case can be heard. *Kelley v. Sec’y, U.S. Dep’t of Labor*, 812 F.2d 1378, 1380 (Fed. Cir. 1987); *Biddulph v. United States*, 74 Fed. Cl. 765, 767 (2006). If plaintiff fails to establish that the court possesses subject matter jurisdiction, then the court must dismiss the

complaint under Rule 12(h)(3) of the Rules of the Court of Federal Claims (“RCFC”).

There are two ways that a court might be presented with a spoliation issue. One is the destruction of evidence during a pending litigation over which the judge is already presiding. In such a case, the court would possess the authority to sanction the spoliation of evidence under the applicable Rules of Procedure, 28 U.S.C. § 1927, and the court’s inherent authority to control the litigation pending before it.¹ *Multiservice Joint Venture LLC v. United States*, 85 Fed. Cl. 106, 112 (2008).

The second manner in which a court might hear a spoliation claim is if, as is the case here, plaintiff files a separate lawsuit asserting spoliation as an independent cause of action. No federal law supports a freestanding lawsuit for spoliation. *Lombard v. MCI Telecomms. Corp.*, 13 F. Supp. 2d 621, 628 (N.D. Ohio 1998) (entering judgment on “asserted claim for spoliation of evidence under federal law, because no such independent cause of action exists”). Certain states recognize a cause of action in tort for spoliation of evidence, *see Smith v. Superior Court*, 198 Cal. Rptr. 829 (Cal. Ct. App. 1984), but North Carolina is not one of those states, *Grant v. High Point Reg. Health Sys.*, 645 S.E.2d 851, 856 (N.C. Ct. App. 2007).

Even if there were a cause of action for spoliation, it would arise in tort, and would not be enforceable in this court. This court does not possess jurisdiction to hear tort claims. 28 U.S.C. § 1491(a)(1) (conferring jurisdiction over “cases not sounding in tort”). Furthermore, although Mr. Stevens seeks \$10,000 and the restoration of the missing documents, he points to no federal law regarding an independent cause of action for spoliation “which if violated, provides for a claim for money damages against the United States.” *Fisher v. United States*, 402 F.3d 1167, 1172 (Fed. Cir. 2005) (en banc) (observing that “plaintiff must identify a separate source of substantive law that creates the right to money damages,” *i.e.*, a source which is “money mandating”). Moreover, the Court may grant injunctive and declaratory relief only in extremely limited circumstances not relevant here. *James v. Caldera*, 159 F.3d 573 (Fed. Cir. 1998).

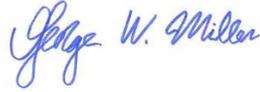
Because plaintiff has failed to demonstrate that this Court has jurisdiction over his claim, defendant’s motion is **GRANTED**. When finding a lack of subject matter jurisdiction, the court may transfer the complaint to another court if the transfer is “in the interest of justice.” 28 U.S.C. § 1631. Plaintiff’s allegations do not support a cause of action. A transfer of this case would be futile and transfer will therefore be **DENIED**. In view of the foregoing, plaintiff’s complaint is hereby **DISMISSED** pursuant to RCFC 12(b)(1) and 12(h)(3).

The Clerk is directed to enter judgment dismissing plaintiff’s complaint in accordance with this Opinion and Order. Plaintiff may appeal the Court’s judgment to the Court of Appeals

¹ In cases filed in federal district court relying upon diversity jurisdiction, some federal courts have held that such an allegation of spoliation is substantive and governed by state law, while others consider spoliation a procedural matter to be dealt with under the Federal Rules of Civil Procedure. *Adkins v. Wolever*, 554 F.3d 650, 652 (6th Cir. 2009).

for the Federal Circuit within sixty (60) days from the date of entry of judgment. Failure to file a timely notice of appeal will waive the right to an appeal, and this Court's order will be final.

IT IS SO ORDERED.



GEORGE W. MILLER
Judge