

# In the United States Court of Federal Claims

No. 09-881C  
Filed June 18, 2010  
NOT FOR PUBLICATION

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HAROLD VINCENT,	)
	)
Plaintiff,	)
	)
v.	)
	)
THE UNITED STATES,	)
	)
Defendant.	)

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Harold Vincent, Angola, Louisiana, appearing *pro se*.

Dawn E. Goodman, Trial Attorney, Kirk Manhardt, 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**

GEORGE W. MILLER, Judge

Plaintiff, a Louisiana state prisoner, sued in this court alleging, among other things, deprivation by a United States District Court judge of his right to a jury trial. Defendant moved to summarily dismiss plaintiff's complaint for lack of subject matter jurisdiction and, in the alternative, for failure to state a claim upon which relief can be granted. Plaintiff filed a motion for leave to proceed *in forma pauperis*, which the Court **GRANTS** to the extent of considering plaintiff's complaint and defendant's motion to dismiss. For the reasons stated below, defendant's motion to dismiss for lack of subject matter jurisdiction is **GRANTED**.

### **I. Background**

Plaintiff, proceeding *pro se*, filed a complaint in this court on December 22, 2009, seeking a declaratory judgment and compensatory damages, and naming as defendant Judge

James J. Brady of the United States District Court for the Middle District of Louisiana. Compl. at 1-2 (docket entry 1). Plaintiff is currently incarcerated in the Louisiana State Penitentiary located in Angola, Louisiana. Compl. at 2. On August 13, 2001, plaintiff filed a complaint in federal district court pursuant to 42 U.S.C. § 1983 against the employees of Wade Correctional Center in Louisiana. Compl. at 1, *Vincent v. Stalder*, No. 01-665-JJB-SCR (M.D. La. docket entry 1, Aug. 13, 2001) (“M.D. La. Case”). Plaintiff alleged, among other things, that in retaliation for plaintiff’s exercise of his First Amendment rights, prison employees transferred him from Wade Correctional Center to the Louisiana State Penitentiary. *Id.* at 6. Plaintiff further alleged that, because of a serious heart condition, keeping him confined to restricted custody at the penitentiary for the remainder of his life would cause him irreparable injury. *Id.* at 7. Judge Brady presided over the lawsuit and subsequent trial. Compl. at 3.

At the close of plaintiff’s case, Judge Brady granted judgment as a matter of law pursuant to Federal Rule of Civil Procedure 50 in favor of defendants with respect to all claims except retaliatory transfer against defendant Kelly Ward. M.D. La. Case, Ruling Granting Motion for Judgment as a Matter of Law at 2 (docket entry 283, Mar. 7, 2006) (“Ruling”). The jury returned a verdict in favor of plaintiff on the retaliatory transfer claim and awarded him \$25,000 in compensatory damages and \$75,000 in punitive damages. Ruling at 2. Defendant Ward then filed a renewed motion for judgment as a matter of law, a motion for new trial, and a motion for remittitur. *Id.* at 1. Judge Brady granted the motion for judgment as a matter of law, which rendered defendant’s other motions moot. *Id.* at 6. Plaintiff’s appeal to the United States Court of Appeals for the Fifth Circuit was dismissed on June 1, 2006 for failure to pay a docketing fee. *Vincent v. Stalder*, No. 06-30321 (5th Cir. June 1, 2006). The Supreme Court denied certiorari on October 10, 2006. *Vincent v. Stalder*, 549 U.S. 961 (2006).

In the present case, plaintiff alleges that Judge Brady violated plaintiff’s right to a trial by jury when he vacated the jury’s verdict awarding plaintiff compensatory and punitive damages. Compl. at 3-4. Plaintiff further asserts that Judge Brady violated plaintiff’s rights under the Constitution and various Federal Rules of Civil Procedure when he allegedly failed to compel one of the defendants in the earlier case to produce particular phone records, failed to grant plaintiff a new trial after vacating the jury verdict, and showed “personal bias and prejudice” when, according to plaintiff, he used his influence to cause the firm representing the defendants to hire his former law clerk. Compl. at 4.

## II. Standard of Review

### A. Motion to Dismiss for Lack of Subject Matter Jurisdiction

Plaintiff must set forth a jurisdictional basis for his claims. Rule 8(a)(1) of the Rules of the Court of Federal Claims (“RCFC”). In determining whether it possesses jurisdiction, the court looks first at the complaint, which “must be well-pleaded in that it must state the necessary elements of the plaintiff’s claim, independent of any defense that may be interposed.” *Holley v. United States*, 124 F.3d 1462, 1465 (Fed. Cir. 1997). When the court decides a motion to dismiss for lack of subject matter jurisdiction, the allegations of the complaint must be construed

in the manner most favorable to the plaintiff. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974). Additionally, the complaints of *pro se* plaintiffs are held to “less stringent standards than formal pleadings drafted by lawyers.” *Haines v. Kerner*, 404 U.S. 519, 520 (1972). Nevertheless, despite the leeway afforded *pro se* plaintiffs, they must still meet jurisdictional requirements. *Kelley v. Sec’y, United States Dep’t of Labor*, 812 F.2d 1378, 1380 (Fed. Cir. 1987); *Biddulph v. United States*, 74 Fed. Cl. 765, 767 (2006). When defendant challenges plaintiff’s jurisdictional allegations, 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). If plaintiff fails to establish that the court possesses subject matter jurisdiction, then the Court must dismiss the complaint under RCFC 12(h)(3).

#### B. Motion to Dismiss for Failure to State a Claim

A complaint must be dismissed under RCFC 12(b)(6) for failure to state a claim upon which relief can be granted “when the facts asserted by the claimant do not entitle him to a legal remedy.” *Lindsay v. United States*, 295 F.3d 1252, 1257 (Fed. Cir. 2002). When the court considers a motion to dismiss for failure to state a claim pursuant to RCFC 12(b)(6), the allegations of the complaint must be accepted as true and should be construed favorably to the pleader. *Scheuer*, 416 U.S. at 236. Plaintiff need not provide detailed facts on which the claims are based, but there must be enough facts to state “a claim to relief that is plausible on its face.” *Mastrolia v. United States*, 91 Fed. Cl. 369, 376 (2010) (quoting *Cary v. United States*, 552 F.3d 1373, 1376 (Fed. Cir. 2009)). However, if the complaint’s allegations do not plausibly entitle plaintiff to relief even if true, dismissal of the complaint is appropriate under RCFC 12(b)(6). *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 558 (2007).

### III. Discussion

#### A. The Court Does Not Possess Subject Matter Jurisdiction over Plaintiff’s Complaint

Like all federal courts, the United States Court of Federal Claims is a court of limited jurisdiction. The judges of this court may only adjudicate “claim[s] 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) (“Tucker Act”).

This court possesses “jurisdiction over suits against the United States, not against individual federal officials.” *Brown v. United States*, 105 F.3d 621, 624 (Fed. Cir. 1997). Thus, when a plaintiff’s complaint names private parties rather than federal agencies, the court lacks jurisdiction to hear those allegations. *Shalhoub v. United States*, 75 Fed. Cl. 584, 585 (2007). Plaintiff’s complaint names an individual, Judge James J. Brady, acting in his official capacity, rather than the United States, as the defendant. Compl. at 1. Thus, the court would be justified in dismissing plaintiff’s complaint for that reason alone.

The Court will nonetheless construe the complaint liberally as one against the United States and analyze plaintiff's allegations notwithstanding this pleading flaw. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

Despite the leeway afforded *pro se* plaintiffs, they must still meet jurisdictional requirements. *Kelley*, 812 F.2d at 1380; *Biddulph*, 74 Fed. Cl. at 767. Thus, merely alleging violations of constitutional provisions or statutes is not sufficient for a plaintiff to satisfy the jurisdictional requirements of the Court of Federal Claims. The Tucker Act is a jurisdictional statute that does not create any substantive right enforceable against the United States for money damages. *United States v. Testan*, 424 U.S. 392, 398 (1976). In order to come within the court's jurisdiction, "a plaintiff must identify a separate source of substantive law that creates the right to money damages." *Greenlee County, Ariz. v. United States*, 487 F.3d 871, 875 (Fed. Cir. 2007) (quoting *Fisher v. United States*, 402 F.3d 1167, 1172 (Fed. Cir. 2005)). The separate source of substantive law must be 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). A constitutional provision, statute, or regulation is money-mandating if the particular provision of law relied upon expressly or impliedly grants the claimant a right to be paid a certain sum. *Eastport Steamship Corp. v. United States*, 372 F.2d 1002, 1007 (Ct. Cl. 1967). The independent source of substantive law must "fairly be interpreted as mandating compensation by the Federal Government for the damages sustained." *United States v. Mitchell*, 463 U.S. 206, 217 (1983) (quoting *Testan*, 424 U.S. at 400).

Plaintiff's complaint refers to a number of constitutional provisions and statutes, but "[n]ot every claim invoking the Constitution [or] a federal statute . . . is cognizable" in this court. *Mitchell*, 463 U.S. at 216. Plaintiff alleges that defendant violated his constitutional rights under the Due Process Clause of the Fifth Amendment and the Seventh Amendment. Compl. at 2-3. However, neither constitutional provision is money mandating. The Due Process Clause of the Fifth Amendment does not mandate monetary compensation for its violation, and a claim based upon the Due Process Clause is thus outside this court's jurisdiction. *Crocker v. United States*, 125 F.3d 1475, 1476 (Fed. Cir. 1997); *LeBlanc v. United States*, 50 F.3d 1025, 1028 (Fed. Cir. 1995). In addition, the Seventh Amendment cannot be fairly read to mandate the payment of money if violated.<sup>1</sup> Plaintiff further claims that defendant violated his constitutional right "to produce evidence." Compl. at 4. But even assuming for the sake of argument that there is a constitutional right to produce evidence in a civil case under the Due Process Clause of the Fifth Amendment or the Sixth Amendment, such constitutional provisions are not money mandating and thus a claim based upon those amendments is not within the jurisdictional purview of this court. See *Milas v. United States*, 42 Fed. Cl. 704, 710 (1999), *aff'd per curiam*, 217 F.3d 854 (Fed. Cir. 1999).

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<sup>1</sup> Mr. Vincent requests a jury trial in this case. Compl. at 6. But there are no jury trials in the Court of Federal Claims—all cases are decided by the judge as the trier of fact. *Persyn v. United States*, 34 Fed. Cl. 187, 194 (1995).

Plaintiff asserts that his rights pursuant to the Federal Rules of Civil Procedure were violated when Judge Brady vacated the jury verdict, refused to order defendants in the M.D. La. Case to produce certain phone records, and did not grant plaintiff a new trial. Compl. at 3-4. However, the Federal Rules of Civil Procedure are not a money-mandating source within this court's jurisdiction because they do not mandate the payment of money if violated. *See Young v. United States*, 88 Fed. Cl. 283, 288 (2009). In general, to be construed as money mandating, a statute must unequivocally discuss payment obligations of the United States. *U.S. Home Corp. v. United States*, No. 09-63, --- Fed. Cl. ---, 2010 WL 1634063, at \*9 (Fed. Cl. Apr. 15, 2010); *see also Agwiak v. United States*, 347 F.3d 1375, 1380 (Fed. Cir. 2003) (holding that a remote duty pay statute was money mandating because it contained language such as "is entitled" and "shall be paid").

Plaintiff further alleges that defendant violated plaintiff's statutory right under 28 U.S.C. § 144 by allegedly using his position as judge to acquire a job for his law clerk. Compl. at 4. However, 28 U.S.C. § 144 cannot be read to mandate the payment of money if violated. Instead, that statute provides the procedure a party to a proceeding in a district court may follow if the party believes the judge is prejudiced or possesses a personal bias. *See, e.g., Deal v. Warner*, 369 F. Supp. 174, 176 (W.D. Mo. 1973). Furthermore, a complaint of judicial misconduct is not properly brought in this court. *O'Connor v. United States*, 09-334, 2009 WL 4020235, at \*2 (Fed. Cl. Nov. 6, 2009). Judicial misconduct claims must be brought in the court of appeals for the circuit in which the alleged judicial misconduct occurred. 28 U.S.C. § 351.

Therefore, even if plaintiff's constitutional and statutory rights were violated as alleged, "they are not laws that promise to pay plaintiff money, and thus are not within this Court's power to address." *Smith v. United States*, No. 04-1685, 2005 WL 6114553, at \*2 (Fed. Cl. May 31, 2005).

Furthermore, plaintiff's claims for damages arise out of Judge Brady's allegedly wrongful conduct in the course of discharging his official duties and thus sound in tort. Compl. at 3; *see Campbell v. United States*, 38 Fed. Cl. 524, 531 (1997). Claims alleging acts of malfeasance or fraud by individual government officials are tort-based allegations over which this court lacks jurisdiction. *See* 28 U.S.C. § 1491(a)(1); *see also Brown*, 105 F.3d at 623; *Campbell*, 38 Fed. Cl. at 531. The United States district courts have exclusive jurisdiction to hear such tort claims. 28 U.S.C. § 1346(b)(1); *Campbell*, 38 Fed. Cl. at 531. The Court of Federal Claims therefore lacks jurisdiction over these claims.

B. *Plaintiff's Complaint Fails to State a Claim Upon Which Relief Can Be Granted*

Even if jurisdiction were proper, plaintiff's complaint is facially insufficient. Plaintiff seeks declaratory relief and compensatory damages for actions taken by Judge Brady when presiding over the trial in the M.D. La. Case.<sup>2</sup> Compl. at 5. Plaintiff alleges that Judge Brady violated his constitutional and statutory rights by vacating the jury verdict, failing to grant plaintiff a new trial, and allegedly failing to compel one of the Louisiana defendants to produce certain evidence. Compl. at 3-4. Plaintiff also avers that Judge Brady showed "personal bias and prejudice" when he allegedly used his position to acquire a job for his law clerk. Compl. at 4.

However, plaintiff's complaint fails to state a claim upon which relief can be granted because the doctrine of judicial immunity precludes plaintiff from suing a judge for damages because of a disagreement with the judge's decision. *Pierson v. Ray*, 386 U.S. 547, 553-54 (1967) ("Few doctrines [are] more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiction."). The judicial immunity afforded judges "is not overcome by allegations of bad faith or malice."<sup>3</sup> *Mireles v. Waco*, 502 U.S. 9, 11 (1991); see also *Pierson*, 386 U.S. at 554.

To the extent that plaintiff simply disputes the judge's decision, the proper method of proceeding would have been to take an appeal. *In re Complaint of Judicial Misconduct*, 12 Cl. Ct. 763, 764 (1987) ("If complainants are correct on the merits of the underlying controversy then their proper course is to appeal the error in the judge's decision. This is the very reason why our system has appellate as well as trial courts. It is contrary to the most basic principles of our legal system to challenge a judge's legal conclusions or findings of fact by impugning his or her character."). Once the appellate court renders its decision, unless the Supreme Court allows a further appeal, the case is over and the judgment is final. This court does not possess jurisdiction to review the decisions of other courts relating to proceedings in those courts. *Joshua v. United States*, 17 F.3d 378, 380 (Fed. Cir. 1994).

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<sup>2</sup> Plaintiff also seeks punitive or exemplary damages. Compl. at 5; *Black's Law Dictionary* 448 (9th ed. 2009) (defining punitive damages, also known as exemplary damages, as damages which are "assessed by way of penalizing the wrongdoer or making an example to others"). Plaintiff's request for punitive damages is beyond the jurisdictional reach of this court. *Taylor v. United States*, No. 08-25, 2008 WL 1992132, at \*5 (Fed. Cl. Mar. 5, 2008); see also *Greene v. United States*, 65 Fed. Cl. 375, 379 (2005) ("It is well-established that this Court lacks authority to grant punitive damages.").

<sup>3</sup> This judicial immunity "is not for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence and without fear of consequences." *Pierson*, 386 U.S. at 554 (quoting *Scott v. Stansfield*, (1868) 3 L.R. Exch. 220, 223 (Ct. of Exchequer) (U.K.)).

## CONCLUSION

For the reasons set forth above, defendant's motion to dismiss plaintiff's complaint for lack of subject matter jurisdiction pursuant to RCFC 12(b)(1) is **GRANTED**. Even if the Court were to conclude that it possessed subject matter jurisdiction, it would dismiss plaintiff's complaint pursuant to RCFC 12(b)(6) for failure to state a claim upon which relief can be granted.

When the court lacks subject matter jurisdiction over a case, the court may, rather than dismiss the action, transfer it to a more appropriate court if the transfer is "in the interest of justice." 28 U.S.C. § 1631. In order to determine if the transfer is in the interest of justice, the Court looks not only "at jurisdiction but also at the merits of the case." *Taylor ex rel. Estate of Keane v. United States*, 92 Fed. Cl. 36, 39 (2010). The Court asks whether it is "possible that there is jurisdiction in the District Court" and whether "the claim [has] any chance of receiving a remedy in the District Court." *Id.* Plaintiff's complaint against Judge Brady must be filed, if at all, as a misconduct action in the appropriate circuit. A transfer of this case to any district court would be futile, and transfer will therefore be **DENIED**.

The Clerk is directed to enter judgment dismissing plaintiff's complaint without prejudice. Plaintiff may appeal the Court's judgment to the Court of Appeals for the Federal Circuit within sixty (60) days of the date of entry of judgment. Failure to file a timely notice of appeal will waive the right to an appeal, and the Court's order will be final.

**IT IS SO ORDERED.**

  
GEORGE W. MILLER  
Judge