In the United States Court of Federal Claims

No. 10-803 C

(Filed: January 4, 2011)

DERRICK DEVON GRIFFIN, Plaintiff, v. THE UNITED STATES, Defendant.	)	Pro Se; No Basis to Alter or Amend Judgment Pursuant to Rules 59(a) and 60(b)

Derrick Devon Griffin, Crawfordville, FL, pro se.

Jessica R. Toplin, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, for defendant.

OPINION AND ORDER

HEWITT, Chief Judge

Before the court is plaintiff's Motion to Alter or Amend Judgment (plaintiff's Motion or Pl.'s Mot.), filed December 27, 2010, Docket Number (Dkt. No.) 7.

Pursuant to Rule 59(e) of the Rules of the United States Court of Federal Claims (RCFC), "[a] motion to alter or amend a judgment must be filed no later than 30 days after the entry of the judgment." RCFC 59(e). Judgment was entered for defendant on December 1, 2010, see Judgment of Dec. 1, 2010, Dkt. No. 6, and plaintiff timely filed his Motion on December 27, 2010, see Pl.'s Mot.

I. Background

In his Complaint (Compl.), pro se plaintiff Derrick Devon Griffin (plaintiff or Mr. Griffin) asserted that he filed the suit "on behalf of the United States of America," Compl. 4, 6, 15; see also Compl. 1 (showing the caption of the case as "United States of

America ex. rel. Derrick Devon Griffin"), against the State of Florida, all of the counties in Florida, and numerous state and county officials and employees, Compl. 1-2. Mr. Griffin cited the False Claims Act, 31 U.S.C. §§ 3729-3733 (2006), see Compl. 2, 9, 10, and alleged that the state and counties have "defrauded the United States" by permitting judges, state attorneys, sheriffs, clerks, and other state and county employees to perform their jobs and earn wages without first taking a valid oath of office. See Compl. 6-15. The court held that "[b]ecause Mr. Griffin does not bring a claim against the United States, Mr. Griffin's Complaint must be dismissed pursuant to RCFC 12(h)(3) for lack of subject matter jurisdiction." Griffin v. United States, No. 10-803C, 2010 WL 4871495, at *2 (Fed. Cl. Dec. 1, 2010). Furthermore, because a district court previously had dismissed a similar complaint from Mr. Griffin, the court determined that it was not "in the interest of justice" to transfer plaintiff's Complaint. Id. at *3 (quoting 28 U.S.C. § 1631 (2006)).

In his Motion, plaintiff asks the court to alter or amend the court's judgment pursuant to RCFC 59(e). Pl.'s Mot. 1. For the following reasons, plaintiff's Motion is DENIED.

II. Legal Standards

The applicable standards for reconsideration of final decisions are set forth in RCFC 59(a) and RCFC 60(b). Plaintiff does not invoke either rule in his filing. See Pl.'s Mot. passim. Rule 59(a) provides that rehearing or reconsideration may be granted as follows:

> (A) for any reason for which a new trial has heretofore been granted in an action at law in federal court; (B) for any reason for which a rehearing has heretofore been granted in a suit in equity in federal court; or (C) upon the showing of satisfactory evidence, cumulative or otherwise, that any fraud, wrong, or injustice has been done to the United States.

RCFC 59(a)(1).

Rule 60(b) provides that relief from a final judgment, order, or proceeding may be granted "[o]n motion and just terms," for certain enumerated reasons, RCFC 60(b), two of which are potentially relevant to plaintiff's Motion, see Pl.'s Mot. 2. "A motion under Rule 60(b)(3) covers misconduct, including fraud and misrepresentation, and requires the moving party to establish the misconduct by clear and convincing evidence." Dynacs Eng'g Co. v. United States, 48 Fed. Cl. 240, 242 (2000) (citation omitted). Rule 60(b)(6) provides for relief for "any other reason that justifies relief." RCFC 60(b)(6).

"The decision whether to grant reconsideration lies largely within the discretion of the [trial] court." Yuba Natural Res., Inc. v. United States, 904 F.2d 1577, 1583 (Fed. Cir. 1990). "The court must consider such motion with 'exceptional care.'" Henderson County Drainage Dist. No. 3 v. United States (Henderson), 55 Fed. Cl. 334, 337 (2003) (quoting Fru-Con Constr. Corp. v. United States (Fru-Con), 44 Fed. Cl. 298, 300 (1999)). "A motion for reconsideration is not intended, however, to give an 'unhappy litigant an additional chance to sway' the court." Matthews v. United States, 73 Fed. Cl. 524, 525 (2006) (quoting Froudi v. United States, 22 Cl. Ct. 290, 300 (1991)). "Motions for reconsideration should not be entertained upon 'the sole ground that one side or the other is dissatisfied with the conclusions reached by the court, otherwise the losing party would generally, if not always, try his case a second time, and litigation would be unnecessarily prolonged.'" Fru-Con, 44 Fed. Cl. at 300 (brackets omitted) (quoting Seldovia Native Ass'n Inc. v. United States (Seldovia), 36 Fed. Cl. 593, 594 (1996), aff'd, 144 F.3d 769 (Fed. Cir. 1998)).

The moving party must support its motion for reconsideration by a showing of exceptional circumstances justifying relief, based on a manifest error of law or mistake of fact. Henderson, 55 Fed. Cl. at 337; Principal Mut. Life Ins. Co. v. United States (Principal), 29 Fed. Cl. 157, 164 (1993), aff'd, 50 F.3d 1021 (Fed. Cir. 1995). "Specifically, the moving party must show: (1) the occurrence of an intervening change in the controlling law; (2) the availability of previously unavailable evidence; or (3) the necessity of allowing the motion to prevent manifest injustice." Matthews, 73 Fed. Cl. at 526 (citing Griswold v. United States, 61 Fed. Cl. 458, 460-61 (2004)). Where a party seeks reconsideration on the ground of manifest injustice, it cannot prevail unless it demonstrates that any injustice is "apparent to the point of being almost indisputable." Pac. Gas & Elec. Co. v. United States, 74 Fed. Cl. 779, 785 (2006), rev'd on other grounds, 536 F.3d 1282 (Fed. Cir. 2008). In a motion for reconsideration, under RCFC 59(a), "manifest" is understood as "clearly apparent or obvious." Ammex, Inc. v. United States, 52 Fed. Cl. 555, 557 (2002) (quoting Principal, 29 Fed. Cl. at 164), aff'd, 384 F.3d 1368 (Fed. Cir. 2004).

Accordingly, the moving party "must do more than 'merely reassert[] arguments which were previously made and were carefully considered by the court.'" Bannum, Inc. v. United States, 59 Fed. Cl. 241, 243 (2003) (quoting Henderson, 55 Fed. Cl. at 337). A court "will not grant a motion for reconsideration if the movant 'merely reasserts . . . arguments previously made . . . all of which were carefully considered by the [c]ourt.'" Ammex, 52 Fed. Cl. at 557 (emphasis and omissions in original) (quoting Principal, 29 Fed. Cl. at 164).

III. Discussion

A. There Has Been No Change in Controlling Law

The jurisdiction of the United States Court of Federal Claims (Court of Federal Claims) is set forth in the Tucker Act, 28 U.S.C. § 1491. The Tucker Act provides that the Court of Federal Claims has jurisdiction to hear 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) (emphasis added). Rather than assert a claim against the United States, Mr. Griffin attempted to assert claims against state and local entities and employees on behalf of the United States. See Compl. 4-15. In his Motion, Mr. Griffin reasserted that "at no time is this Complaint against the United States of America, but against the State of Florida." Pl.'s Mot. 2. The Court of Federal Claims does not have jurisdiction to hear claims against states, localities, state and local government entities, or state and local government officials and employees. Moore v. Pub. Defender's Office, 76 Fed. Cl. 617, 620 (2007) (citing Stephenson v. United States, 58 Fed. Cl. 186, 190 (2003)).

Even if plaintiff had alleged a claim against the United States, the court would still lack jurisdiction over his claims because plaintiff failed to establish an independent substantive right to money damages from the United States. See Jan's Helicopter Serv., Inc. v. Fed. Aviation Admin., 525 F.3d 1299, 1306 (Fed. Cir. 2008). Plaintiff argues that the "substantive right rest[s] in the federal False Claims Act, 31 U.S.C. §§ 3729-3733" and in "Florida statu[t]e § 68.082(1)(A)." Pl.'s Mot. 2-3. However, the Court of Federal Claims does not have jurisdiction over claims under the False Claims Act, 31 U.S.C. §§ 3729-3733, "because monetary recovery from the government for such claims is only authorized for qui tam plaintiffs, see 31 U.S.C. § 3730(d), and the [United States Court of Appeals for the Federal Circuit] has held that such 'qui tam suits may only be heard in the district courts.'" Schweitzer v. United States, 82 Fed. Cl. 592, 595-96 (2008) (quoting LeBlanc v. United States, 50 F.3d 1025, 1031 (Fed. Cir. 1995)). Furthermore, the court does not have jurisdiction over alleged violations of state laws because state statutes do not create a right to money damages against the United States. Souders v. S.C. Pub. Serv. Auth., 497 F.3d 1303, 1307 (Fed. Cir. 2007). In his Motion, plaintiff, for the first time, also alleges a violation of "equal protection of laws." Pl.'s Mot. 7. The Fourteenth Amendment's Equal Protection Clause is not money-mandating, Tasby v. United States, 91 Fed. Cl. 344, 346 (2010) (citing LeBlanc, 50 F.3d at 1028), so even if plaintiff had asserted this claim in his Complaint, the claim would have been dismissed for lack of jurisdiction.

Because there has been no change in the applicable law, plaintiff is not entitled to reconsideration on the ground of "an intervening change in the controlling law . . . ." Matthews, 73 Fed. Cl. at 526 (quoting Griswold, 61 Fed. Cl. At 460-61).

B. There is No Previously Unavailable Evidence

Plaintiff does not raise any new evidence in his Motion. See Pl.'s Mot. passim. In his Motion, Mr. Griffin states that "the court . . . correctly wrote the nature of the complaint filed." Pl.'s Mot. 1. Mr. Griffin then reiterates the claims he raised in his Complaint: "(1) the U.S. Treasury on behalf of the United States forwarded money to the State of Florida, Incorporated, allocating the disbursements by the Chief Financial Officer of the State of Florida, Incorporated; (2) the defendants then submitted fr[au]dulent contract vouchers to be paid money from the funds sent by the United States for over seven (7) years; and (3) all monies paid would need to be reimbursed to the United States of America's Treasury Department." Pl.'s Mot. 2. Although Mr. Griffin attached two exhibits to his Motion that he did not attach to his Complaint, see Plaintiff's Exhibits M and N (letters from the Attorney General of Florida to a Tamarac City Attorney and to an attorney for the Dade County Value Adjustment Board, respectively), these exhibits are not previously unavailable evidence. The letters are more than ten years old and are dated September 22, 1999 and January 26, 2000, respectively. See id.

A party, even a pro se party, cannot prevail on a motion for reconsideration by raising an issue that was litigated, or could have been litigated at the time the complaint was filed. Matthews, 73 Fed. Cl. at 525-26 (construing pro se plaintiff's pleadings liberally but nevertheless finding that a pro se plaintiff cannot prevail on reconsideration by offering previously available evidence). Plaintiff has pointed to no previously unavailable evidence that would make reconsideration appropriate.

C. Plaintiff is Unable to Demonstrate Manifest Injustice

Plaintiff has likewise failed to demonstrate that there has been manifest injustice. There is nothing that plaintiff points to, or that the court can discern, that approaches the requisite level of injustice needed to support reconsideration. See Pac. Gas & Elec. Co., 74 Fed. Cl. at 785. Plaintiff is dissatisfied with the result, but dissatisfaction does not warrant reconsideration. See Shirlington Limousine & Transp., Inc. v. United States, 78 Fed. Cl. 27, 31 (2007); Seldovia, 36 Fed. Cl. at 594.

D. Plaintiff is Unable to Demonstrate Fraud, Misrepresentation or Misconduct by Defendant

Plaintiff states that "the defendant[s] knew of the fr[au]d and attempted to cover it up, and did for over seven (7) years."[1] Pl.'s Mot. 2. Under RCFC 60(b)(3), which addresses misconduct, including fraud, "the moving party [must] establish the misconduct by clear and convincing evidence." Dynacs Eng'g Co., 48 Fed. Cl. at 242 (citation omitted). "In addition, the movant must show that the fraud or misconduct prevented the movant from receiving a fair hearing or trial." Madison Servs., Inc. v. United States, 94 Fed. Cl. 501, 507 (2010) (citing Hutchins v. Zoll Med. Corp., 492 F.3d 1377, 1386 (Fed. Cir. 2007)). Plaintiff's bare allegation of fraud is not supported by documentation or concrete details and therefore is insufficient to establish fraud by clear and convincing evidence. See Dynacs Eng'g Co., 48 Fed. Cl. at 242 (citation omitted).

IV. Conclusion

Because plaintiff attempts to re-litigate issues the court has already considered and alleges fraud without any documentation or specific detail, the court declines to alter, amend, reconsider or otherwise grant plaintiff relief from the court's judgment.

For the foregoing reasons, plaintiff's Motion is DENIED.

IT IS SO ORDERED.

EMILY C. HEWITT
Chief Judge

[1]Plaintiff appears to refer to the State of Florida, rather than the United States, as defendant. See Pl.'s Mot. 2. However, given the liberal pleading requirements afforded to pro se plaintiffs, see Haines v. Kerner, 404 U.S. 519, 520 (1972), the court addresses Mr. Griffin's fraud claim as if he is referring to the United States as defendant.