

In the United States Court of Federal Claims

NOT FOR PUBLICATION

No. 05-737 C

(Filed: October 5, 2005)

_____)	
)	
)	
DAVID L. MILLER,)	
)	Pro se Plaintiff's Motion
Plaintiff,)	for Relief
v.)	
)	
THE UNITED STATES,)	
)	
Defendant.)	
_____)	

ORDER

Before the court is plaintiff's "Motion [for] Relief from Aug. 9, [']05 Judgment" (Pl.'s Mot.) and "Brief in Support of Motion for Relief from Aug. 9, [']05 Judgment" (Pl.'s Br.). The Clerk of the Court has sent plaintiff's motion and brief to chambers unfiled because they appear to petition the court to reconsider judgment, although no judgment has been entered in this case. Plaintiff requests the court to reconsider aspects of its non-final Order and Opinion filed August 9, 2005. Miller v. United States, No. 05-737 C, 2005 U.S. Claims LEXIS 245 (Fed. Cl. Aug. 9, 2005) (dismissing certain of plaintiff's claims in his complaint filed pro se on July 8, 2005). Because there is no judgment entered in this case, the court treats plaintiff's pending motion as a motion for reconsideration pursuant to Rule 59 of the Rules of the Court of Federal Claims (RCFC). See RCFC 59 Rules Committee Note ("[N]on-final orders . . . can be the subject of motions for reconsideration at any time before final judgment.").

Rule 59 provides that:

[R]econsideration may be granted to all or any of the parties and on all or part of the issues, for any of the reasons established by the rules of common law or equity applicable as between private parties in the courts of the United States. On a motion under this rule, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact

and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

RCFC 59(a)(1) (2002). The decision to grant a motion for reconsideration lies within the sound discretion of the 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.” Fru-Con Constr. Corp. v. United States, 44 Fed. Cl. 298, 300 (1999). To prevail on a motion for reconsideration, the movant must point to a manifest error of law or mistake of fact. Franconia Assocs. v. United States, 44 Fed. Cl. 315, 316 (1999). The movant does not persuade the court to grant such motion by merely reasserting arguments which were previously made and were carefully considered by the court. Principal Mut. Life Ins. Co. v. United States, 29 Fed. Cl. 157, 164 (1993). A motion for reconsideration “is not intended to give an unhappy litigant an additional chance to sway the court,” Fru-Con Constr. Corp. v. United States, 44 Fed. Cl. at 300 (quoting Bishop v. United States, 26 Cl. Ct. 281, 286 (1992)), and a motion for reconsideration will not be granted “if the movant ‘merely reasserts . . . arguments previously made . . . all of which were carefully considered by the Court,’” Ammex, Inc. v. United States, 52 Fed. Cl. 555, 557 (2002) (internal citations omitted). Rather, the movant must show: (1) that an intervening change in the controlling law has occurred; (2) that previously unavailable evidence is now available; or (3) that the motion is necessary to prevent manifest injustice. Fru-Con Constr. Corp., 44 Fed. Cl. at 301.

After careful consideration, the court finds that plaintiff has failed to meet this burden.¹ The Clerk of the Court is therefore directed to FILE plaintiff’s motion for reconsideration, and plaintiff’s motion for reconsideration is DENIED.

IT IS SO ORDERED.

EMILY C. HEWITT
Judge

¹The court has carefully considered all of plaintiff’s arguments, including his argument under 10 U.S.C. §§ 333(a) and (b) (2000). See Pl.’s Mot. at 1, 2, 4; Pl.’s Br. at 1-3. Section 333 of Title 10 of the United States Code is not a money-mandating statute and, as the court noted in its August 9, 2005 Opinion and Order, “[T]he absence of a money-mandating source [is] fatal to the court’s jurisdiction under the Tucker Act.” Miller, 2005 U.S. Claims LEXIS 245, at * 3 (quoting Fisher v. United States, 402 F.3d 1167, 1173 (2005)). Nor do the unrelated statutes, 18 U.S.C. §§ 3071 and 3072 (2000), see Pl.’s Mot. at 2; Pl.’s Br. at 2, cure this fatal flaw.