

ORIGINAL

In the United States Court of Federal Claims

No. 10-774C

(Filed: November 8, 2011)

NOT FOR PUBLICATION

FILED

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**U.S. COURT OF
FEDERAL CLAIMS**

ELEANOR CATHERINE CLIFFORD,)
)
Plaintiff,)
)
v.)
)
THE UNITED STATES,)
)
Defendant.)

Eleanor Catherine Clifford, Janesville, Wis., plaintiff *pro se*.

Jeffrey A. Regner, Trial Attorney, Franklin E. White, Jr., 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 Eleanor Catherine Clifford filed her original complaint on November 4, 2010 (docket entry 1). Thereafter she filed two amended complaints on February 7, 2011 and April 6, 2011 (docket entries 9 & 15).¹ Her complaints allege genocide, attempted genocide, intent to torture, improper denial of Social Security entitlements, and criminal conspiracy.² Defendant filed motions to dismiss for lack of jurisdiction (docket entry 5, Dec. 17, 2010; docket entry 12, Feb. 23, 2011). Plaintiff filed two motions for summary judgment (docket entry 13, Mar. 2, 2011; docket entry 16, Apr. 7, 2011). For the reasons set forth below, the Court **GRANTS** plaintiff's motion for leave to file a second amended complaint, **GRANTS** defendant's motions to dismiss for lack of subject matter jurisdiction with respect to all of plaintiff's claims except her claims for Social Security benefits and for vaccine-related injuries, and **DENIES** plaintiff's motions for summary judgment as moot. Instead of dismissing the Social Security benefit claims and vaccine-related injury claims, the Court **ORDERS** that the Social Security benefit claims be transferred pursuant to 28 U.S.C. § 1631 to the United States District Court for the Western

¹ The second amended complaint is attached to a pending motion for leave to file a second amended complaint, which the Court grants later in this Opinion and Order. *See infra* Part I.B.

² In consideration of plaintiff's *pro se* status, the Court has interpreted plaintiff's two amended complaints as *supplements* to the original complaint. Thus, all of plaintiff's allegations are properly before the Court.

District of Wisconsin and that the vaccine-related injury claims be referred to the Office of Special Masters of the United States Court of Federal Claims.

I. Background

A. Factual Background

1. Complaint

Plaintiff's first claim is for genocide for the death of Ivy B. Olin. Compl. ¶ A.1. She further alleges eight counts of attempted genocide pursuant to 18 U.S.C. § 1091 on the bases that: (1) she contracted vaccine-related polio; (2) during childbirth, she suffered anaphylactic shock, which was concealed from her; (3) she and her sister were severely allergic to thimerosal in the vaccines, a fact that was concealed from plaintiff and her sister; and (4) she suffered permanent mind and body damage from the use of vaccines containing thimerosal, which were administered with the intent to cause serious bodily harm or death. Compl. ¶ B.1.A–D. Plaintiff also alleges seven claims for intent to cause permanent damage to her mental faculties by the use of vaccines containing thimerosal. *Id.* ¶ C.1.

Plaintiff alleges four counts of intent to torture on the bases that: (1) the Rock County Job Center in Janesville, Wisconsin, intentionally misplaced her job-tier assignment with the intent to cause physical and mental deterioration and harm to a United States citizen in violation of her civil rights, *id.* ¶ D.1.A; (2) the Social Security Administration intentionally denied her Social Security entitlements with the intent to, *inter alia*, cause homelessness and severe poverty, *id.* ¶ D.1.B; (3) the Social Security Administration intentionally denied plaintiff's claim for Social Security dual entitlements and previously concealed her entitlements with an intent to, *inter alia*, torture plaintiff, *id.* ¶ D.1.C; and (4) the "AMA healthcare provider" Mercy Healthcare of Janesville, Wisconsin, concealed the true facts of her allergy to thimerosal and then "induc[ed]" vaccine-related injuries. *Id.* ¶ D.1.D (original capitalization omitted).³

Plaintiff further claims that both the Rock County W-2 Agency and the Social Security Administration field office in Janesville, Wisconsin, violated 18 U.S.C. § 1091 and committed genocide by subjecting a group of people "to conditions of life that are intended [sic] to cause the physical destruction of the group," Compl. ¶ E, and by forcibly transferring children of one group to another group. *Id.* ¶ F.

In an attachment to her complaint, plaintiff alleges the intentional omission of numerous medical facts and the intentional omission of numerous facts related to Social Security entitlements. *See id.* at 4.

Plaintiff seeks punishment for the crimes she alleges and requests that the Social Security Administration commissioner grant her a "declaration of rights of due process in the determination of dual-entitlements [sic]," *id.* at 4, and the dollar amount of "all past entitlements/benefits owed." *Id.* Ex. 1 (cover sheet to complaint).

³ For the remainder of this Opinion and Order, unless otherwise noted, quotations from plaintiff's pleadings omit the original capitalization.

2. First Amended Complaint

To her first amended complaint, plaintiff attached a November 4, 2010 letter from the Social Security Administration denying her application for benefits. First Am. Compl. Ex. A. She appears to allege violations of provisions of the Social Security Act relating to the procedures for the payment of benefits. *See id.* at 3 (citing 42 U.S.C. §§ 405, 1383). Plaintiff alleges the intentional omission or concealment of numerous medical facts, *id.* at 3–4, and facts related to Social Security entitlements. *Id.* at 4.

3. Second Amended Complaint

In her second amended complaint, plaintiff alleges violations of the genocide statute, 18 U.S.C. § 1091, and also asserts additional violations of 18 U.S.C. § 241, a criminal statute authorizing punishment of individuals who conspire to prohibit others from enjoying the rights guaranteed to them by law. Second Am. Compl. 1–2.

B. *Procedural History*

Before filing her complaint in this Court on November 4, 2010, plaintiff filed a petition on October 21, 2010 that was referred to the Office of Special Masters. *See Clifford v. Sec’y of Health & Human Servs.*, 1:10-vv-00719-UNJ (Fed. Cl.). That petition appears to contain substantially similar allegations to those contained in plaintiff’s original complaint in this action. Plaintiff has provided this Court with a copy of the Special Master’s December 10, 2010 decision dismissing all claims not within the scope of the National Childhood Vaccine Injury Act of 1986 (“Vaccine Act”). *See* Pl.’s Apr. 7, 2011 Mot. to Enter Summary J. Ex. C. The Vaccine Act proceeding has since been dismissed without prejudice pursuant to plaintiff’s motion to withdraw her petition. *Clifford*, 1:10-vv-00719-UNJ (Fed. Cl. July 15, 2011).

Additionally, plaintiff filed a complaint against the commissioner of the Social Security Administration in the Western District of Wisconsin on July 9, 2010. *See Clifford v. Astrue*, 3:10-cv-00384-bbc (W.D. Wis.). The complaint in that action contained substantially similar, if not identical, allegations to those contained in plaintiff’s original complaint in this action. When plaintiff failed to allege that she had exhausted her administrative remedies, that action was dismissed for failure to prosecute on August 17, 2010. *Id.* The district court then denied her motion to transfer the Wisconsin action to the Court of Federal Claims. *Id.*

Plaintiff’s motion for leave to file her second amended complaint in this action is **GRANTED** pursuant to Rule 15(a)(2) of the Rules of the Court of Federal Claims (“RCFC”). *See* RCFC 15(a)(2) (“[A] party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.”).

II. **Discussion**

When considering a motion to dismiss for lack of subject matter jurisdiction, the Court assumes that all of a plaintiff’s uncontested factual allegations are true and draws all reasonable inferences in a plaintiff’s favor. *Henke v. United States*, 60 F.3d 795, 797 (Fed. Cir. 1995). *Pro se* plaintiffs’ pleadings are read liberally, *Haines v. Kerner*, 404 U.S. 519, 520–21 (1972) (per curiam), but, like all plaintiffs, *pro se* plaintiffs bear the burden to establish that their claims are within the Court’s jurisdiction. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375,

377 (1994) (“[T]he burden of establishing [jurisdiction] rests upon the party asserting jurisdiction”); *Biddulph v. United States*, 74 Fed. Cl. 765, 767 (2006) (holding that despite liberal construction of their pleadings, *pro se* plaintiffs must establish jurisdiction). If the Court finds that it lacks jurisdiction over a claim, that claim must be dismissed. *See* RCFC 12(h)(3). *But cf.* 28 U.S.C. § 1631 (requiring transfer if in the “interest of justice”); 28 U.S.C. § 610.

A. Plaintiff’s Claims Based on Allegations of Genocide, Torture, and Other Crimes Are Not Within the Court’s Jurisdiction and Must Be Dismissed

The Court “has no jurisdiction to adjudicate any claims whatsoever under the federal criminal code [Title 18].” *Joshua v. United States*, 17 F.3d 378, 379 (Fed. Cir. 1994). Here, plaintiff claims genocide, attempted genocide, intent to torture, and criminal conspiracy in violation of 18 U.S.C. §§ 241 and 1091. These are criminal claims. As such, they are outside the Court’s jurisdiction and must be **DISMISSED** for lack of jurisdiction.

B. Plaintiff’s Claims for Vaccine-Related Injuries Must Be Heard by the Office of Special Masters

The Office of Special Masters has jurisdiction to hear plaintiff’s claims for vaccine-related injuries. The Vaccine Act sets up a system pursuant to which a claim is first heard by a special master. 42 U.S.C. § 300aa-12(d)(1); *see generally* *Bruesewitz v. Wyeth LLC*, 131 S. Ct. 1068, 1073–74 (2011) (describing system created by Vaccine Act). If a party requests review of the special master’s decision, the Court of Federal Claims conducts that review. *Id.* § 300aa-12(e)(1). In this case, plaintiff filed a petition pursuant to the Vaccine Act, but voluntarily withdrew her petition on July 15, 2011. Plaintiff seeks to include in this action claims that appear to be substantially similar to the claims she previously set forth in her petition filed pursuant to the Vaccine Act. *See* Pl.’s Apr. 7, 2011 Mot. to Enter Summary J. Ex. C (special master’s decision dismissing claims outside the Vaccine Act). However, vaccine-related injury claims must be heard and determined in the first instance by the Office of Special Masters. Therefore, in order to increase the likelihood that plaintiff’s vaccine-related injury claims will be litigated in the proper forum, the Court **ORDERS** that plaintiff’s claims for vaccine-related injuries be referred to the Office of Special Masters.

In referring this action, the Court expresses no opinion as to whether plaintiff’s claims for vaccine-related injuries are time-barred by 42 U.S.C. § 300aa-16(a), as argued by defendant in its motion to dismiss the original complaint.⁴ *See* Def.’s Dec. 17, 2010 Mot. to Dismiss 5–7.

C. Plaintiff’s Claims for Social Security Benefits Are Not Within the Court’s Jurisdiction, But Should Be Transferred to a Court With Jurisdiction

With respect to plaintiff’s claims regarding the denial of Social Security benefits, the Court does not have jurisdiction over those claims because the Social Security Act provides that district courts have jurisdiction over challenges to a final decision by the commissioner of the

⁴ In subsequent filings, defendant has requested that this Court refer the vaccine-related injury claims to Special Master Denise K. Vowell for consolidation with *Clifford*, 1:10-vv-00719-UNJ (Fed. Cl.), to the extent this Court does not dismiss the claims. *See, e.g.*, Def.’s Supplement to Dec. 17, 2010 Mot. to Dismiss 1 (docket entry 6, Jan. 7, 2011).

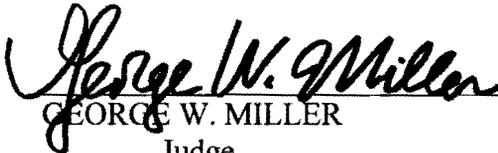
Social Security Administration. 42 U.S.C. § 405(g); *Addams-More v. United States*, 81 Fed. Cl. 312, 315 (2008) (“[The Court of Federal Claims] cannot adjudicate claims arising from the Social Security Act” (citing *Marcus v. United States*, 909 F.2d 1470, 1471 (Fed. Cir. 1990))). Therefore, the Court has determined that it lacks subject matter jurisdiction over those claims.

When the Court lacks jurisdiction over an action, 28 U.S.C. § 1631 provides that the court shall transfer that action to a court “in which the action . . . could have been brought at the time it was filed,” but only if such transfer “is in the interest of justice.” 28 U.S.C. § 1631; *see* 28 U.S.C. § 610. In 2010, plaintiff filed a civil complaint against the commissioner of the Social Security Administration in the United States District Court for the Western District of Wisconsin. *See Clifford v. Astrue*, 3:10-cv-00384-bbc (W.D. Wis.). On August 17, 2010, the district court dismissed plaintiff’s claims for Social Security benefits because plaintiff had not demonstrated that she had exhausted her administrative remedies. *Id.* To her first amended complaint in this action, plaintiff attached a November 4, 2010 letter from the Social Security Administration denying her application for benefits, suggesting that plaintiff may now have exhausted her administrative remedies.⁵ First Am. Compl. Ex. A. Accordingly, in the interest of justice, and in order to enhance the likelihood that plaintiff’s claims will be heard in the proper forum, the Court **ORDERS** that plaintiff’s claims for Social Security benefits be transferred to the United States District Court for the Western District of Wisconsin.

CONCLUSION

The Court **GRANTS** plaintiff’s motion for leave to proceed *in forma pauperis* to the extent necessary to permit her to litigate the pending motions (docket entry 3, Nov. 4, 2010). For the reasons set forth, the Court **GRANTS** plaintiff’s motion for leave to file a second amended complaint, **GRANTS** defendant’s motions to dismiss for lack of subject matter jurisdiction with respect to all of plaintiff’s claims except her claims for Social Security benefits and for vaccine-related injuries, and **DENIES** plaintiff’s motions for summary judgment as moot. Plaintiff’s claims for Social Security benefits are **ORDERED** transferred to the United States District Court for the Western District of Wisconsin. Plaintiff’s claims for vaccine-related injuries are **ORDERED** referred to the Office of Special Masters of the Court of Federal Claims. The Clerk is instructed to transfer the Social Security benefit claims to the United States District Court for the Western District of Wisconsin and refer plaintiff’s vaccine-related injury claims to the Office of Special Masters. The Clerk shall enter judgment accordingly.

IT IS SO ORDERED,



GEORGE W. MILLER
Judge

⁵ The Court expresses no opinion as to whether the letter attached to the first amended complaint satisfies any exhaustion requirement. The Court also expresses no opinion as to whether plaintiff’s Social Security benefit claims are time-barred. The Court leaves these determinations to the district court.

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United States Court of Federal Claims
717 Madison Place, N.W.
Washington, DC 20005

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