

In the United States Court of Federal Claims

No. 09-733C

(Filed: December 11, 2009)

(Unpublished)

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 *
 CONNIE MARSHALL, *
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 Plaintiff, *
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 v. *
 *
 THE UNITED STATES, *
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 Defendant. *
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RCFC 12(b)(1), 12(b)(6); Motion
 to Dismiss; Tort and Civil Rights
 Claims; Necessary Steps to
 Control Frivolous Litigation;
 Further Filings Prohibited Absent
 Leave of Court.

Connie Marshall, appearing *pro se*, Pensacola, Florida, Plaintiff.

Alex P. Hontos, with whom were *Tony West*, Assistant Attorney General, *Jeanne E. Davidson*, Director, and *Patricia M. McCarthy*, Assistant Director, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, D.C., for Defendant.

OPINION AND ORDER

WHEELER, Judge.

In this action, *pro se* Plaintiff Connie Marshall seeks damages of \$50 million relating to allegations that she has been “victimized” by the Department of Justice, the Department of Homeland Security, the Federal Bureau of Investigations, and other state and federal officials. (Compl. 1.) Ms. Marshall further alleges that her grandchildren were unlawfully taken from her by the state of Kentucky and that she has been a “victim of a hate crime in which [she] was assaulted three times.” *Id.* The case is before the Court on Defendant’s motion to dismiss pursuant to Rules 12(b)(1) and 12(b)(6) of the Rules of the Court of Federal Claims (“RCFC”). For the reasons stated below, Defendant’s motion to dismiss is GRANTED.

Background

In a complaint filed in this Court on October 27, 2009, Ms. Marshall asserts that for the past six years, she has “been a victim of criminal activity” by unnamed state and federal officials in Louisville, Kentucky. Id. Ms. Marshall suggests that her grandchildren were “taken illegally by the state” and that she was “a victim of a hate crime.” Id. Ms. Marshall alleges that in her attempts to “fight both issues,” unnamed authorities began “terrorizing, torturing, and tormenting” her. Id.

Ms. Marshall specifically alleges that (1) her electrical property has been destroyed or damaged; (2) her utilities have been turned off; (3) her “employment and business have been destroyed;” (4) her privacy has been invaded; (5) her mail has been intercepted; (6) she was issued a fraudulent birth certificate; and (7) she has been victim to “numerous other violations of Human Rights, Civil Liberties, and [v]iolations of the United States Constitution.” Id. at 1, 2. Ms. Marshall further contends that she has been tortured by electromagnetic frequencies including “satellites, infrasound, and microwaving” for the past three to four years and that low-flying helicopters and other aircraft have passed over her home. Id. at 2. Ms. Marshall also attached to her complaint a “log of events” describing problems with her personal internet connection and home telephone service, which she attributes to Defendant in one form or another.

Ms. Marshall asserts that in light of the aforementioned actions, the Government has “violated her Civil Rights, Civil Liberties, Human Rights, the United States Constitution and the Fourth Amendment Bill of Rights.” Id. at 3. She also alleges that the Government has violated the “Federal Wiretapping Act, Patriot Act, Foreign Intelligence Surveillance Act (FISA), [made] False Claims, and committed Government Waste and Fraud.” Id. For these alleged wrongs, Ms. Marshall demands judgment in the amount of \$50 million. Id.

On November 16, 2009, Defendant filed a motion to dismiss Ms. Marshall’s complaint pursuant to RCFC 12(b)(1) and 12(b)(6). (Def.’s Mot. to Dismiss 1.) Defendant argues that the majority of Ms. Marshall’s claims are beyond this Court’s jurisdiction. Id. at 4-8. Defendant contends that Ms. Marshall’s remaining allegations concerning the Federal Wiretap Act, FISA, and the Patriot Act should be dismissed for failure to state a claim upon which relief may be granted. Id. at 8-9. In the event that the Court grants Defendant’s motion, the Government argues that transferring Ms. Marshall’s claims to another court is not in the interest of justice and that Ms. Marshall should seek this Court’s permission prior filing any additional lawsuits in the Court. Id. at 9-10. To date, Ms. Marshall has not responded to Defendant’s motion to dismiss.

On November 17, 2009, Ms. Marshall filed motions for “Injunctive Relief,” a “Restraining Order,” and an “Emergency Protective Order.” (Dkt. # 10.) These motions

generally reiterate the allegations in Ms. Marshall's October 2009 complaint and describe in some detail an apparently new dispute with her telephone service provider. (Pl. Mot. Inj. Relief 2-3.) Defendant responded to Ms. Marshall's motion for injunctive relief on November 23, 2009 and maintains that this Court lacks jurisdiction to entertain Ms. Marshall's claims, and that Ms. Marshall has otherwise failed to state a claim upon which relief may be granted. (Def. Resp. Pl. Mot. Inj. Relief 1-3.) On December 7, 2009, Ms. Marshall filed a Reply to Defendant's Response arguing that she continues to be a victim of "racism" and "corruption" by federal and state officials. (Pl. Reply 1-3.)

Discussion

A. Standard of Review

Before this Court is Defendant's motion to dismiss pursuant to 12(b)(1), and 12(b)(6) of the Court's rules. In ruling on a motion to dismiss for lack of subject matter jurisdiction, the Court accepts as true the undisputed allegations in the complaint, and draws all reasonable inferences in favor of the plaintiff. Hamlet v. United States, 873 F.2d 1414, 1415-16 (Fed. Cir.1989) (citing Scheuer v. Rhodes, 416 U.S. 232, 236 (1974) abrogated on other grounds by Harlow v. Fitzgerald, 457 U.S. 800 (1982)). While *pro se* litigants are afforded considerable leeway in presenting their pleadings to the Court, Haines v. Kerner, 404 U.S. 519, 520 (1972), this broad latitude does not exempt *pro se* litigants from meeting this Court's jurisdictional requirements. Henke v. United States, 60 F.3d 795, 799 (Fed. Cir. 1995). *Pro se* plaintiffs still have the burden of establishing subject matter jurisdiction by a preponderance of the evidence. Tindle v. United States, 56 Fed. Cl. 337, 341 (2003). In determining whether the plaintiff has met this burden, the Court looks "beyond the pleading and 'inquire[s] into jurisdictional facts' in order to determine whether jurisdiction exists." Lechliter v. United States, 70 Fed. Cl. 536, 543 (2006) (quoting Rocovich v. United States, 933 F. 2d 991, 993 (Fed. Cir. 1991)). The Court will dismiss for lack of subject matter jurisdiction only where it appears beyond a doubt that the plaintiff can prove no set of facts in support of her claim that would entitle her to relief. Frymire v. United States, 51 Fed. Cl. 450, 454 (2002) (citing Davis v. Monroe County Bd. of Educ., 526 U.S. 629, 654 (1999)).

To survive a motion for failure to state a claim, a plaintiff's complaint must contain "sufficient factual matter, accepted as true, to state a 'claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). For the Court to accept plaintiff's allegations as true, she must plead more than "labels and conclusions" or a "formulaic recitation of the elements of a cause of action[.]" Twombly, 550 U.S. at 555. This standard does not require "detailed factual allegations," *id.* at 555, but demands more than an "unadorned, the defendant-unlawfully-harmed-me accusation," Iqbal, 129 S.Ct. at 1950. When analyzing a plaintiff's complaint, the Court may refuse to accept as true all "legal conclusions couched as. . . factual

allegations.” Id. Where there are “well-pleaded factual allegations,” the Court must “assume their veracity” and then determine whether they “plausibly give rise to an entitlement of relief.” Id. at 1949-50. A claim will be considered plausible when a plaintiff pleads enough factual content to allow the Court “to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Id. at 1950 (citing Twombly, 550 U.S. at 556).

B. This Court Lacks Subject Matter Jurisdiction Over Plaintiff’s Claims.

The Court of Federal Claims is a court of limited jurisdiction. Southfork Sys., Inc. v. United States, 141 F.3d 1124, 1132 (Fed. Cir. 1998). Under the Tucker Act, this Court has jurisdiction “to render judgment upon any claim 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) (2006). The Tucker Act, however, “does not create any substantive right enforceable against the United States for money damages[;] . . . the Act merely confers jurisdiction upon it whenever the substantive right exists.” United States v. Testan, 424 U.S. 392, 398 (1976) (citation omitted). Therefore, a plaintiff coming before this Court must identify a separate provision of law conferring a substantive right for money damages against the United States. See Todd v. United States, 386 F.3d 1091, 1094 (Fed. Cir. 2004) (citation omitted).

Defendant argues that Ms. Marshall’s complaint asserts claims beyond this Court’s jurisdictional limits. (Def. Mot. to Dismiss 4.) The Court agrees. It is well settled that the Court lacks jurisdiction to entertain claims sounding in tort. See 28 U.S.C. §1491(a)(1); see also Keene Corp. v. United States, 508 U.S. 200, 214 (1993); Brown v. United States, 105 F.3d 621, 623 (Fed. Cir. 1997). Although the nature of Ms. Marshall’s claims is not entirely clear, it appears that most of her allegations sound in tort. See Compl. 1-2. For example, Ms. Marshall states that unknown officials have intercepted her mail, invaded her privacy, defrauded her, and “tortured and terrorized” her. Id. All of these alleged wrongs sound in tort and are expressly excluded from this Court’s jurisdiction. See Brown v. United States, 105 F.3d at 623 (noting that fraud is a tort); Mendes v. United States, 88 Fed. Cl. 759, 762 (2009) (stating that invasion of property and physical injuries sound in tort); Berdick v. United States, 612 F.2d 533, 536 (Ct. Cl. 1979) (noting that defamation is a tort); Edelmann v. United States, 76 Fed. Cl. 376, 381 (2007) (stating that harassment, intimidation and theft are all torts); see also Woodruff v. United States, 80 Fed. Cl. 806, 816 (2008) (noting that fraud, misrepresentation, and destruction of personal property sound in tort).

It further appears that Ms. Marshall is alleging a civil rights claim against state and federal officials. (Compl. 2, 3.) This Court does not have jurisdiction to address civil rights claims. See McCauley v. United States, 38 Fed. Cl. 250, 265 (1997), aff’d, 152 F.3d 948 (Fed. Cir. 1998), cert. denied, 525 U.S. 1032 (1998), reh’g denied, 525 U.S. 1173 (1999). Nor

does the Court possess jurisdiction to entertain criminal matters. See Brown v. United States, 88 Fed. Cl. 322, 328 (2009) (holding that the Court of Federal Claims lacks jurisdiction to adjudicate criminal claims); Joshua v. United States, 17 F.3d 378, 379 (Fed. Cir. 1994). To the extent that Ms. Marshall is alleging that state or federal officials engaged in criminal behavior, no jurisdiction exists in this Court. Similarly, Ms. Marshall's allegations that the government committed waste is beyond this Court's purview. The Court does not possess jurisdiction to hear claims of government mismanagement. See Galloway Farms, Inc. v. United States, 834 F.2d 998, 1005 (Fed. Cir. 1987); City of Manassas Park v. United States, 633 F.2d 181, 183-84 (Ct. Cl. 1980) (noting that this court lacks jurisdiction over government waste claims).

While the Court lacks jurisdiction to entertain claims sounding in tort, civil rights allegations, or criminal matters, the Court does possess jurisdiction to entertain monetary claims founded upon the Takings Clause of the United States Constitution. See 28 U.S.C. §1491(a)(1). Ms. Marshall alleges in her complaint that helicopters and military aircraft have flown over her home "low enough to rattle [her] windows." (Compl. 2.) This Court has held that in certain circumstances, the presence of low-flying aircraft may be construed as a viable takings claim. See e.g., United States v. Causby, 328 U.S. 256, 266-67 (1946) (recognizing a Fifth Amendment takings claim in connection with overflights of U.S. aircrafts); Brown v. United States, 73 F.3d 1100, 1104-06 (Fed. Cir. 1996). However, in order to bring a takings suit before this Court, a claimant must "concede[] the validity of the government action which is the basis of the takings claim." Tabb Lakes, Ltd. v. United States, 10 F.3d 796, 802 (Fed. Cir. 1993). Where the plaintiff challenges the validity of the takings, the Court lacks jurisdiction to entertain the plaintiff's complaint. Crocker v. United States, 125 F.3d 1475, 1476 (Fed. Cir. 1997); Fla. Rock Indus., Inc. v. United States, 791 F.2d 893, 898-99 (Fed. Cir. 1986).

Even liberally construing Ms. Marshall's complaint as raising a takings claim, it is evident that Ms. Marshall has failed to concede to the validity of the government's alleged actions. Instead, Ms. Marshall repeatedly contends that Defendant has "tortured," "terrorized," and "victimized" her. (Compl. 1, 2, 4.) Therefore, to the extent that Ms. Marshall raises a takings claim, the Court lacks jurisdiction to hear it.

C. Ms. Marshall's Remaining Allegations Fail to State a Claim Upon Which Relief May be Granted.

Ms. Marshall concludes her complaint by stating that Defendant has violated the Federal Wiretap Act, the Patriot Act, and FISA. (Compl. 3.) Although not entirely clear on the face of her complaint, the Court will assume that Ms. Marshall asserts these allegations in connection with her claim that her mail has been intercepted. See Compl. 1, 4. Even giving the most generous deference to her *pro se* status, Ms. Marshall's allegations that

Defendant violated the referenced statutes are wholly conclusory and offer insufficient factual material to be even considered remotely plausible. For example, the Federal Wiretap Act only regulates the government's interception of wire, oral, or electronic communications. See 18 U.S.C. §2510-2522 (2006). At most, Ms. Marshall contends that her postal mail has been intercepted. (Compl. 1.) Ms. Marshall's complaint thus fails to allege that Defendant engaged in any behavior that would entitle her to relief under this statute.

Moreover, Ms. Marshall's conclusory allegations that Defendant intercepted her mail, in violation of unidentified provisions of the Patriot Act and FISA, clearly lack the requisite factual material to be considered plausible. Such claims against the government amount to no more than a "collection of unsubstantiated events" that cannot survive a motion to dismiss. See Marshall v. Huber, No. 09-308, 2009 WL 1904330, at *2 (W.D. Ky. July 1, 2009). Defendant's motion to dismiss Ms. Marshall's remaining allegations is therefore GRANTED.

D. Transfer is not in the Interest of Justice.

In certain circumstances, this Court may, pursuant to 28 U.S.C. §1631, transfer a plaintiff's claims to another court. Section 1631 provides:

Whenever a civil action is filed in a court . . . and that court finds that there is a want of jurisdiction, the court shall, *if it is in the interest of justice*, transfer such action . . . to any such court in which the action . . . could have been brought at the time it was filed . . . and the action . . . shall proceed as if it had been filed in . . . the court to which it is transferred on the date upon which it was actually filed in . . . the court from which it is transferred.

28 U.S.C. §1631 (emphasis added). Thus, in order for this Court to transfer Ms. Marshall's complaint to another forum, three elements must be met: (1) the transferor court lacks jurisdiction; (2) the claims could have been brought in the transferee court at the time the case was filed; and (3) the transfer is in the interest of justice. See Skillo v. United States, 68 Fed. Cl. 734, 744 (2005).

In this case, the Court has already established that it lacks jurisdiction to entertain Ms. Marshall's claims. While Ms. Marshall could have brought her claims in state or federal district court, the Court finds that it is not in the interest of justice to transfer her complaints elsewhere. As Defendant noted in its Motion to Dismiss, Ms. Marshall's complaint is the

latest in a series of many suits that she has filed against the Government.¹ These complaints typically name the state or federal government as defendants, contain substantially similar allegations, and have repeatedly been dismissed as frivolous. Indeed, less than two months ago, this Court dismissed a complaint filed by Ms. Marshall based on similar allegations that she asserts here. See Marshall v. United States, No. 09-337C, 2009 WL 3614386, at *3 (Fed. Cl. Oct. 15, 2009). In light of the numerous suits that Ms. Marshall has filed against the government containing the same basic allegations, the Court declines to transfer Ms. Marshall's claims to another court. The Court also grants Defendant's request that Ms. Marshall seek leave of court prior to filing any additional lawsuits in the Court of Federal Claims.

E. Plaintiff's Motion for Emergency Injunctive Relief is Denied.

As this Court does not have subject matter jurisdiction to hear Plaintiff's claims, Ms. Marshall's emergency motion for injunctive relief is hereby DENIED.

Conclusion

Based upon the forgoing, Defendant's motion to dismiss is GRANTED, and Plaintiff's motion for injunctive relief is DENIED. The Clerk is directed to DISMISS Plaintiff's complaint without prejudice. Any new actions brought by Plaintiff in this Court shall not be filed without leave of the undersigned.

IT IS SO ORDERED.

THOMAS C. WHEELER
Judge

¹ See e.g., Marshall v. Bowles, 92 Fed. App'x 283, 285 (6th Cir. 2004) (affirming the district court's dismissal of Ms. Marshall's claims against a state domestic-relations judge), cert. denied, 543 U.S. 988 (2005); Marshall v. Global Connections, Inc., No. 09-455, 2009 WL 3346969, at *2 (W.D. Ky. Oct. 14, 2009) (dismissing Ms. Marshall's claims that a telecommunications company had intercepted her telephone calls as "frivolous."); Marshall v. Staffieri, No. 09-448, 2009 WL 2476556, at *2-3 (W.D. Ky. Aug. 11, 2009) (dismissing Ms. Marshall claims that a utility company, among other things, destroyed her property, as "frivolous,"); Marshall v. Haynes, No. 2008-CA-001226-MR, 2009 WL 2835131, at *3 (Ct. App. Ky. Sept. 4, 2009) (holding that the circuit court properly dismissed with prejudice Ms. Marshall's complaint alleging wrongful termination and discrimination); Marshall v. Huber, No. 09-428, 2009 WL 1974397, at *2 (W.D. Ky. July 8, 2009) (dismissing Ms. Marshall's complaint that officials "redlined" her, defamed her, and made false claims about her); Marshall v. Huber, No. 09-308, 2009 WL 1904330, at *2 (W.D. Ky. July 1, 2009) (dismissing as "frivolous," Ms. Marshall's claims contending that various officials intended to harass or kill her).

