

In the United States Court of Federal Claims

No. 09-337C

(Filed: October 15, 2009)

(Unpublished)

\*\*\*\*\* \*
CONNIE MARSHALL, \*
Plaintiff, \*
v. \*
THE UNITED STATES, \*
Defendant. \*

RCFC 12(b)(1); Motion to Dismiss; Tort and Civil Rights Claims; Lack of Subject Matter Jurisdiction.

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

Carrie A. Dunsmore, with whom were Tony West, Assistant Attorney General, Jeanne E. Davidson, Director, and Donald E. Kinner, 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 \$6 million relating to allegations that her mail has been intercepted by state and federal officials, and that she has been the victim of hate crimes by unknown government employees. (Compl. ¶¶ 1, 2.) The case is before the Court on Defendant’s motion to dismiss for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) 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 May 26, 2009, Ms. Marshall apparently asserts that her mail and telephone calls have been intercepted by unknown state and federal officials. (Compl. 1, 2.) She states that she has not received proper return receipts for mail sent to the White House. (Compl. 2.) For example, Ms. Marshall suggests that certified mail sent to the President of the United States and other officials was not properly certified as evidenced by a “smeared stamp.” (Compl. 3.)

Ms. Marshall further asserts that she has “been a victim of criminal activity” in Louisville, Kentucky where state officials allegedly have either taken or attempted to take her grandchildren illegally. (Compl. 1.) Ms. Marshall also suggests that either six years ago or for the past six years, she has been a victim of hate crimes by unnamed federal officials. (Compl. 1.) She demands judgment in the amount of \$6 million. (Compl. 4.)

On July 20, 2009, Defendant filed a motion for summary dismissal of Ms. Marshall’s complaint pursuant to RCFC 12(b)(1). (Def.’s Mot. to Dismiss 1.) Defendant contends that Ms. Marshall fails to allege a claim within this Court’s jurisdiction. Id. at 1. On August 20, 2009, Ms. Marshall requested an enlargement of time to respond to Defendant’s Motion for Summary Dismissal of her complaint. (Pl.’s Mot. for Enlargement of Time 1.) Ms. Marshall asserts that she has attempted to contact legal counsel but has been unable to obtain representation because her email, postal mail and telephone calls have been intercepted by “corrupt officials in Kentucky.” Id. at 1. The Court granted Ms. Marshall an enlargement of time, requiring her to respond to Defendant’s motion to dismiss on or before September 21, 2009. (Order, August 24, 2009.)

Ms. Marshall failed to respond to Defendant’s motion by September 21, 2009. Instead, on September 22, 2009, Ms. Marshall requested a second enlargement of time in order to continue seeking legal counsel. (Pl.’s Second Mot. for Enlargement of Time 1.) The Court denied Ms. Marshall’s motion on the same date, but permitted her to file a response forthwith if accompanied by a motion for leave to file out of time. (Order, September 22, 2009.) To date, Ms. Marshall has not responded to Defendant’s motion to dismiss.

## Discussion

### A. Standard of Review

“Subject matter jurisdiction must be established before the Court may proceed to the merits of any action.” Bearingpoint, Inc. v. United States, 77 Fed. Cl. 189, 193 (2007) (citing Steel Co. v. Citizens for a Better Env’t, 523 U.S. 83, 88-89 (1998)). “The party asserting

the Court’s jurisdiction bears the burden of proof on jurisdictional issues.” Id. (citation omitted).

When considering a motion to dismiss for lack of subject matter jurisdiction pursuant to RCFC 12(b)(1), 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)). Plaintiff bears the burden of establishing by a preponderance of the evidence the facts sufficient to invoke the Court’s jurisdiction. Reynolds v. Army & Air Force Exch. Serv., 846 F.2d 746, 748 (Fed. Cir. 1988) (citations omitted). In determining whether 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)).

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). Thus, *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). Further, there is no duty for a court to create any claims that are not spelled out in a plaintiff’s pleading. Scogin v. United States, 33 Fed. Cl. 285, 293 (1995) (citation omitted).

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

Defendant contends that Ms. Marshall’s complaint does not articulate a claim within the Court’s jurisdiction. (Def.’s Mot. to Dismiss 2.) The Court agrees. Under the Tucker Act, the Court of Federal Claims 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).

Even giving the most generous deference to Ms. Marshall's *pro se* status, Ms. Marshall's allegations that she has or is being "tortured, terrorized, or assaulted," (Compl. 1), or that her telephone conversations and mail have been intercepted by unknown federal officials do not articulate claims within this Court's jurisdiction. Nor are Plaintiff's claims that unnamed Kentucky officials have taken or are attempting to take her grandchildren within this Court's purview. Ms. Marshall's allegations of fraud and harassment sound in tort. This Courts lacks jurisdiction over claims sounding in tort, including fraud. See Brown v. United States, 105 F.3d 621, 623 (Fed. Cir. 1997). Therefore, this Court does not have jurisdiction to entertain Ms. Marshall's tort and fraud claims.

Further, it appears that Ms. Marshall is alleging a civil rights claim against state and federal officials. (Compl. 1.) 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). Because Ms. Marshall's complaints either sound in tort or are civil rights allegations, the Court lacks jurisdiction to consider her complaint and therefore dismissal is appropriate.

In issuing this decision, and based solely on the allegations made by Ms. Marshall, the Court notes that Ms. Marshall's personal perceptions of injury and intervention by government representatives likely are not subject to redress in our judicial system. Useful assistance might better be obtained from someone in another profession. While the Court is not familiar with Ms. Marshall's personal circumstances, any of Ms. Marshall's family, friends or acquaintances, or an appropriate charitable entity, are encouraged to offer her a helping hand.

#### Conclusion

Based upon the forgoing, Defendant's motion to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1) is GRANTED. The Clerk is directed to DISMISS Plaintiff's complaint without prejudice.

IT IS SO ORDERED.

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THOMAS C. WHEELER  
Judge