In the United States Court of Federal Claims

NOT FOR PUBLICATION
No. 05-726C
(Filed February 5, 2007)

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*
KEITH RUSSELL JUDD, *
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Plaintiff, *
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v. *
*
THE UNITED STATES, *
*
Defendant. *
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* *

ORDER

On January 12, 2007, the Court issued an order returning six documents to plaintiff for failure to comply with Rule 5.3(d) of the Rules of the United States Court of Federal Claims ("RCFC"). Mister Judd had neglected to include two copies of each document he had submitted for filing.

On January 29, 2007, the Clerk's office received three separate documents from the plaintiff, which plaintiff entitled as follows:

> 1) "Supplemental Authority in Support of December 18, 2005, Rule 59(e) Motion, Filed by Mail Box Rule; and December 24, 2005, Rule 60(b) Motion Filed by Mail Pursuant to Fed. R. App. P., Rule 4(a)(4)(A) Ren[d]ering Notice of Appeal Ineffective";
> 2) "Motion for Correction or Modification of the Record on Appeal No. 06-5047"; and
> 3) "Supplemental Brief in Support of Timely Filed Motions under Fed. R. App. P., Rule 4(a)(4); RCFC 59(e) and 60(b), within 10-days."

Mister Judd did not include the requisite two copies of any of these documents, which therefore fail to comply with RCFC 5.3(d). The Clerk is directed to return these three documents to plaintiff.

On January 30, 2007, the Clerk's office received back from Mr. Judd two of the documents which had been returned to him under the order of January 12, 2007: the "Motion for Relief from Judgment" and the "Brief in Support of Timely Motion to Alter or Amend December 9, 2005, Dismissal under Fed. R. App. P., Rule 4(a)(4)(iv) and Fed. R. App. P., Rule

4(a)(4)(B)(i)." These documents now complied with RCFC 5.3(d), as two copies of each were included, along with the original. That same day, the Clerk's office received an original and two copies of Mr. Judd's "Motion to Restore Lost or Destroyed Motions under Fed. R. App. P., Rule 4(a)(4)(A)." The next day -- January 31, 2007 -- the Clerk's office received an original and two copies of "Plaintiff's Affidavit in Support of Dates of Mailing Rule 59(e) & Rule 60(b) Motions on December 18, 2005 & December 24, 2005; Fed. R. App. P., Rule 4(a)(4)." On February 2, 2007, the Clerk's office received another original copy of Mr. Judd's "Supplemental Brief in Support of Timely Filed Motions under Fed. R. App. P., Rule 4(a)(4); RCFC 59(e) and 60(b), within 10-days," this time accompanied by two copies.

The documents received on January 30, 2007, January 31, 2007, and February 2, 2007 were not filed by the Clerk, because the previous week -- on January 22, 2007 -- the Court received and filed Mr. Judd's "Amended Notice of Appeal Pursuant to Fed. R. App. P., Rule 4(a)(4)(B(iii)." This amended notice of appeal is unusual for many reasons. In the first place, it purports to have an "attached order amending judgment." But no order was attached to the "Amended Notice" -- for good reason, as no such order has issued. The *judgment* in this matter -- that the Court lacks subject matter jurisdiction over Mr. Judd's complaint -- has not been amended. The "Amended Notice" references the Court's December 11, 2006 order, which merely removed the ban on filing papers received from Mr. Judd (previously ordered on December 9, 2005), as he has paid the overdue filing fee in this case. Mister Judd incorrectly implies, however, that this order "allow[ed] the December 18, 2005, Motion to Alter or Amend Judgment and December 25, 2005 [sic], Motion for Relief From Judgment." No order has issued "allowing" these motions.

And, perhaps most oddly, the "Amended Notice" appears not to be an attempt to appeal anything, but rather an attempt to *retract the appeal that has already been decided against Mr. Judd.* Thus, the plaintiff, under the heading "JUDGMENT IS STILL NON-FINAL FOR APPEAL," references the motions he allegedly mailed on December 18, 2005 and December 24, 2005. Mister Judd contends that the Federal Circuit, which denied his appeal on June 28, 2006, never had jurisdiction because the motions under RCFC 59 and 60 that he allegedly submitted made his initial notice of appeal ineffective. But Mr. Judd -- whose history of filing frivolous lawsuits was summarily recounted in the Court's December 9, 2005 order -- did not timely file any RCFC 59 or 60 motions. He claims to have mailed these motions on December 18, 2005 and December 24, 2005. But on *December 17*, 2005, he mailed his notice of appeal of the Court's December 9, 2005 order. He was aware, then, before allegedly submitting the two motions, that the Court had banned further filings until he paid the filing fee. Since the filing fee did not accompany the motions, they would not have been filed, and thus -- *even if he mailed the motions when he alleges to have done so* -- no timely motions were or could have been pending while his appeal was being considered by the Federal Circuit. His failure to pay the filing fee would have prevented the motions from being filed, even if they had been received by the Clerk.

Although it is hard to discern from the various papers he has submitted, it appears that Mr. Judd is contending either one of two things: that his time to file motions under RCFC 59 or

60 was tolled while he was banned from filing in our court; or, that the RCFC 59 and 60 motions which he allegedly mailed on December 18 and 24, 2005, should be deemed filed as of those dates. Neither contention is correct. The judgment in this case has not been kept in suspended animation until Mr. Judd decided to pay his filing fee. Judgment was entered, the appeal was taken, and Mr. Judd lost. He cannot reverse that decision by belatedly paying the filing fee.

One could easily get the impression that Mr. Judd is intentionally attempting to manufacture the appearance of procedural issues in order to vex our court. If, despite the unusual "Amended Notice of Appeal," the Court were to file the most recent documents submitted by Mr. Judd, one can imagine that he will then argue that the judgment has thereby been amended or set aside. The Court, then, will make it very clear to Mr. Judd: the filing of the documents received on January 30, January 31, and February 2, 2007, does not constitute a reopening of his case or the setting aside of the judgment in this matter.

Despite Mr. Judd's history of pursuing frivolous litigation, the Court will assume that he is proceeding in good faith in submitting documents in this closed matter, and is merely confused about court procedures. The Court concludes that the only practical manner in which to resolve the matter of his frequent submissions is to accept these documents for filing. Accordingly, the Clerk is directed to file the five documents that were received from Mr. Judd on January 30 and 31 and February 2:

1) "Motion for Relief from Judgment";
2) "Brief in Support of Timely Motion to Alter or Amend December 9, 2005, Dismissal under Fed. R. App. P., Rule 4(a)(4)(iv) and Fed. R. App. P., Rule 4(a)(4)(B)(i)";
3) "Motion to Restore Lost or Destroyed Motions under Fed. R. App. P., Rule 4(a)(4)(A)";
4) "Plaintiff's Affidavit in Support of Dates of Mailing Rule 59(e) & Rule 60(b) Motions on December 18, 2005 & December 24, 2005; Fed. R. App. P., Rule 4(a)(4)"; and
5) "Supplemental Brief in Support of Timely Filed Motions under Fed. R. App. P., Rule 4(a)(4); RCFC 59(e) and 60(b), within 10-days."

Mister Judd's "Motion to Restore Lost or Destroyed Motions" is **DENIED**. Whether or not he mailed the two motions on December 18 and December 24, 2005 is irrelevant to these proceedings. As was discussed above, motions would not have been filed if received by our Clerk, because the Court's December 9, 2005 order barred any filings until Mr. Judd paid the filing fee in this case. He did not and would not have had any motions pending during the time of his appeal, as the filing fee was not received until December 2006.

Mister Judd's motion under RCFC 59 is **DENIED**. In the first place, the motion was not filed within ten days of entry of judgment, as is required under RCFC 59(b) and 59(e). Mister Judd's argument that the ban on filings until he paid his filing fee was a condition that made the Clerk's office inaccessible, while creative, incorrectly construes RCFC 6(a). The clerk's office remained physically accessible, and could have filed documents submitted by Mr. Judd if he had

just paid the filing fee required of parties seeking to make demands on our court's resources. Second, plaintiff's motion is lacking in merit. Mister Judd does not address the binding authority of *Kania v. United States*, 650 F.2d 264, 268 (Ct. Cl. 1981) and *Sanders v. United States*, 252 F.3d 1329, 1335 (Fed. Cir. 2001). It is clear, as the Federal Circuit held in affirming the Court's December 9, 2005 order, that Mr. Judd's pretrial diversion agreement contains no express terms providing for money damages, and thus our Court has no jurisdiction over his breach of contract claim. And third, the Court also rejects Mr. Judd's argument -- contained in one of the documents returned to him for failure to comply with RCFC 5.3(d) -- that the Federal Circuit decision in *Ragard v. United States*, 439 F.3d 1378, 1380 (Fed. Cir. 2006), has any bearing on this matter. Our Court had jurisdiction in *Ragard* because a money-mandating statute -- the Military Pay Act, 37 U.S.C. § 204 -- was implicated by the alleged breach. *See id.* at 1380 (explaining that plaintiff sought reinstatement and back pay). No statute entitles Mr. Judd to a payment of money if his pretrial diversion agreement, which lacks a term providing for money damages, is breached. Moreover, the Court notes that the Federal Circuit denied Mr. Judd's appeal more than three months *after* it issued the decision in *Ragard*. Mister Judd can hardly contend that the *Ragard* reflects a subsequent change in controlling law.

Plaintiff's motion under RCFC 60 is also **DENIED**. Mister Judd's allegation that he is suffering from "a serious mental illness," Pl.'s Mot. for Relief from J. at 1, while credible, has no bearing on the question of this Court's jurisdiction. His claim of material errors in fact and law are without merit. Without question, the pretrial diversion agreement lacks any express term promising money damages, *see* App. to Def.'s Mot. to Dismiss, and the precedents of *Kania* and *Sanders* are controlling. Mister Judd argues, no doubt sincerely, that he seeks to have *Kania* overruled. *See* Pl.'s Mot. for Relief from J. at 6-10. But he has already failed in that endeavor. *See Judd v. United States*, No. 06-5047 (Fed. Cir. June 28, 2006).

Mister Judd has provided no valid ground for relief from, or for an alteration of, the judgment in this case. His motions are thus **DENIED**.

IT IS SO ORDERED.

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VICTOR J. WOLSKI
Judge