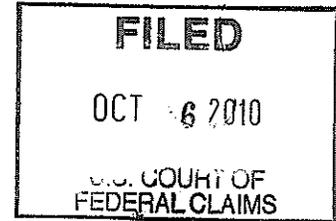


In The United States Court of Federal Claims

No. 10-312 C
(Filed October 6, 2010)
NOT FOR PUBLICATION



_____)
OWEN BRITTON TROXELLE,)
)
Plaintiff,)
)
v.)
)
THE UNITED STATES,)
)
Defendant.)
_____)

Owen Britton Troxelle, Elverson, Pennsylvania, appearing *pro se*.

Scott T. Palmer, Trial Attorney, Kirk T. Manhardt, Assistant Director, Jeanne E. Davidson, Director, Commercial Litigation Branch, Civil Division, Tony West, Assistant Attorney General, Department of Justice, Washington, D.C., for defendant.

OPINION AND ORDER

GEORGE W. MILLER, Judge

Plaintiff filed a complaint in this court on May 21, 2010 (docket entry 1), in which he moved to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a)(1). Motion to Proceed *In Forma Pauperis* (docket entry 3, May 21, 2010).¹ The Court **GRANTS** plaintiff's motion for the purpose of considering defendant's pending motion.

¹ Section 1915(a)(1) states that any federal court may authorize a civil action to proceed without prepayment of fees "by a person who submits an affidavit that includes a statement of all assets *such prisoner possesses*" and attests "that the person is unable to pay such fees." (emphasis added). Although this language seemingly could limit 1915(a)(1) to prisoners, courts have held that 1915(a)(1) allows both prisoner and non-prisoner litigants to proceed *in forma pauperis*. *Haynes v. Scott*, 116 F.3d 137, 139-40 (5th Cir. 1997) (holding that the statute applies to all applicants, including non-prisoners, but prisoners must meet the additional requirements of § 1915(a)(2)); *Floyd v. U.S. Postal Serv.*, 105 F.3d 274, 276 (6th Cir. 1997) (observing that the statute's use of the word "person"—not prisoner—indicates that all persons are permitted to seek leave to file *in forma pauperis*); see also *Moore v. United States*, 93 Fed. Cl. 411, 412 n.1 (2010).

Defendant has moved to dismiss plaintiff's complaint for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted (docket entry 5, July 20, 2010) ("Def.'s Mot."). Plaintiff did not respond to this motion. After careful consideration of plaintiff's complaint, the Court **DISMISSES** the complaint in its entirety. Plaintiff's claims against the Commonwealth of Pennsylvania and its agencies are dismissed for lack of subject matter jurisdiction. The remaining claims are dismissed for failure to state a claim upon which relief can be granted. In addition, plaintiff's claims are frivolous and must be dismissed under § 1915(e)(2)(B)(i).

I. Background

On or about February 7, 1971, plaintiff's parents "registered [plaintiff] by birth certificate" as a resident of the Commonwealth of Pennsylvania. Compl. ¶ 9. Soon after, plaintiff's parents were told that plaintiff must have a social security account and number. *Id.* ¶ 10. As a result, plaintiff's parents registered him with the Social Security Administration ("SSA") and obtained a social security number for him.² *Id.* Plaintiff alleges that this government regulation created future liabilities for him—a minor at the time—constituting involuntary servitude. *Id.* ¶¶ 9, 10. On August 18, 1999, plaintiff alleges that he lodged a security agreement with the Pennsylvania Secretary of State. *Id.* ¶ 13. Plaintiff fails to explain what this agreement pertained to or what it purported to do, but he alleges that "all known [d]efendants as well as agents were notified" of this security agreement. *Id.* Plaintiff contends that these notices were ignored. *Id.* ¶ 14. In June 2001, plaintiff claims he "post[ed] Revocation of Power of Attorney and Signature with all known agencies." *Id.* ¶ 15. Plaintiff again fails to explain what this revocation purported to do, but alleges that these notices were ignored as well. *Id.* ¶ 16.

Plaintiff asserts that his birth certificate and registration with the SSA constitute a taking of the use of his name by the United States and the Commonwealth of Pennsylvania. *Id.* ¶¶ 9-19. As a result, plaintiff believes he is entitled to just compensation for his loss. *Id.* ¶ 2. Plaintiff makes claims against the SSA, the Pennsylvania Department of Motor Vehicles, and the Pennsylvania Department of Vital Statistics for "misuse of force, authority, [and] trust as well as [the] breach of fiduciary duties."³ *Id.* ¶ 26 (capitalization altered). Plaintiff further alleges that he was "assessed" and falsely registered directly or indirectly under the Trading with the Enemy Act of 1917, although it is unclear how this affects his claims in this action. *Id.* ¶ 20.

² In his complaint, plaintiff refers to the "Social Security Department." Compl. ¶ 5. The Court assumes that plaintiff means to refer to the SSA and will refer to it as such.

³ Plaintiff's complaint refers to both the Pennsylvania Department of Motor Vehicles and the Pennsylvania Department of Vital Statistics. The Court assumes plaintiff is referring to the Pennsylvania Department of Transportation Driver and Vehicle Services ("Pennsylvania DVS") and the Pennsylvania Department of Health, Division of Vital Records ("Pennsylvania DVR") respectively and will refer to these agencies as such.

Plaintiff asks the Court to order the Commonwealth of Pennsylvania to pay him \$500,000 for “acting without license,” *id.* ¶ 69, and to order the Pennsylvania DVR to pay plaintiff \$1,349,777 for the “keeping of improper records to defraud.” *Id.* ¶ 70. In addition, plaintiff seeks \$6,176,945 for the “keeping of improper records to defraud application and use of false records on the plaintiff” from the Pennsylvania DVS. *Id.* ¶ 72. Finally, plaintiff asks the court to order the SSA to pay him \$1,349,777 for the “keeping of improper records to defraud.” *Id.* ¶ 71.

Plaintiff’s allegations are strikingly similar to those that have appeared in a number of cases basing claims on the “redemption theory.” See *United States v. Waalee*, 133 F. App’x 819, 822 n.2 (3d Cir. 2005) (describing the redemption theory); *Davis v. United States*, No. 09-862, 2010 WL 1685907, at *1, 5 (Fed. Cl. Apr. 22, 2010) (dismissing almost identical claims for lack of jurisdiction); see also *Kelly v. United States*, No. 10-165, 2010 WL 2674530, at *1-2 (Fed. Cl. June 28, 2010). According to the redemption theory, the federal government tricks people into becoming United States citizens by having individuals register for a birth certificate and social security card. *Bryant v. Wash. Mut. Bank*, 524 F. Supp. 2d 753, 759 (W.D. Va. 2007). These documents purportedly create a fictitious entity that is separate from the real person and is evidenced by the appearance of the person’s all-capitalized name on his or her birth certificate and social security card.⁴ *Id.* at 759 n.8; *Callan v. IRS*, No. 06-1024, 2007 WL 552219, at *2 (D. Ariz. Feb. 20, 2007). The theory alleges that through these documents individuals “pledge themselves and their property, through their newly created fictitious entities, as security for the national debt.”⁵ *Bryant*, 524 F. Supp. 2d at 759. According to proponents of this theory, because the actual persons are the rightful owners, the Government holds the debt in secret, individual trust accounts.⁶ *Id.* Claims based on this “theory”—that has been described as “equal parts revisionist legal history and conspiracy theory”—have been overwhelmingly unsuccessful. *Id.*; *Kelly*, 2010 WL 2674530, at *3; *Davis*, 2010 WL 1685907, at *5.

Defendant argues that plaintiff’s claims against agencies of the Commonwealth of Pennsylvania are outside the jurisdiction of this court and must be dismissed pursuant to Rule 12(b)(1) of the Rules of the Court of Federal Claims (“RCFC”). Def.’s Mot. at 5. Regarding plaintiff’s remaining claims against the SSA, defendant contends that plaintiff failed to allege a cognizable property interest that was affected by the United States’ allegedly taking the use of his name for registration and taxation purposes. *Id.* at 6. Thus, with respect to those claims, defendant argues that plaintiff failed to state a claim upon which relief can be granted. *Id.* As a final matter, defendant contends that all of plaintiff’s claims should be dismissed because the

⁴ This aspect of the redemption theory may explain the distinction plaintiff appears to draw between Owen Britton Troxelle—himself—and OWEN BRITTON TROXELLE. See Compl. ¶¶ 29, 31(a)-(b), 32(a)-(b), 34, 36, 41.

⁵ Thus, plaintiff refers on multiple occasions to “counterfeit commercial securities.” See Compl. ¶¶ 27(c), 28, 31, 32, 35, 38, 45.

⁶ Plaintiff discusses trusts on numerous occasions in his complaint. See Compl. ¶¶ 29(a)-(c).

statute that allows plaintiff to proceed *in forma pauperis* also requires the Court to dismiss claims if they are frivolous.⁷ *Id.* at 6.

II. Discussion

A. Plaintiff's Claims Against Agencies of the Commonwealth of Pennsylvania Are Beyond the Court's Jurisdiction and Must be Dismissed

Pro se plaintiffs are entitled to liberal construction of their pleadings. See *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972). Accordingly, plaintiff's pleadings will be interpreted in the most favorable light possible. *Baker v. United States*, 74 Fed. Cl. 421, 421 (2006). But like all plaintiffs, *pro se* plaintiffs must meet jurisdictional requirements. *Biddulph v. United States*, 74 Fed. Cl. 765, 767 (2006) ("*Pro se* status does not immunize a plaintiff from meeting jurisdictional requirements."); see also *Kelley v. Sec'y, U.S. Dep't of Labor*, 812 F.2d 1378, 1380 (Fed. Cir. 1987). If plaintiff fails to establish subject matter jurisdiction, then the Court must dismiss the complaint. RCFC 12(h)(3); *Pinkston v. United States*, 6 Cl. Ct. 263, 265 (1984).

This Court only possesses jurisdiction to hear claims against the United States. Tucker Act, 28 U.S.C. § 1491(a)(1). This jurisdiction is limited to claims against the federal government and does not extend to states or state agencies. *Shalhoub v. United States*, 75 Fed. Cl. 584, 585 (2007) ("When a plaintiff's complaint names . . . state agencies, rather than federal agencies, this court has no jurisdiction to hear those allegations.") (citing *Stephenson v. United States*, 58 Fed. Cl. 186, 190 (2003)); see also *United States v. Sherwood*, 312 U.S. 584, 588 (1941) ("[I]f the relief sought is against others than the United States the suit as to them must be ignored as beyond the jurisdiction of the court."). In this case, plaintiff asserts claims against the Commonwealth of Pennsylvania, the Pennsylvania DVR, and the Pennsylvania DVS. These are state agencies; thus, plaintiff's claims against these agencies are beyond the court's jurisdiction. Therefore, plaintiff's claims against the Commonwealth of Pennsylvania and its agencies are **DISMISSED** for lack of subject matter jurisdiction.

B. Plaintiff's Remaining Claims Are Dismissed Because They Fail to State a Claim Upon Which Relief Can Be Granted

Defendant moves to dismiss the remaining counts of plaintiff's complaint under RCFC 12(b)(6) for failure to state a claim upon which relief can be granted. In evaluating a motion

⁷ Plaintiff filed a complaint in the United States District Court for the Eastern District of Pennsylvania on March 30, 2009, alleging the same taking by various agencies of the Commonwealth of Pennsylvania and the United States. See *Troxelle v. United States*, 319 F. App'x 176, 178 (3d Cir. 2009). After the district court dismissed the complaint as "legally unintelligible," the United States Court of Appeals for the Third Circuit affirmed the dismissal because plaintiff's "complaint . . . lack[ed] an arguable basis in law or cognizable cause of action." *Id.* Plaintiff's petition for writ of certiorari was denied, *Troxelle v. United States*, 130 S. Ct. 445 (2009), as was his subsequent motion for a rehearing, 130 S. Ct. 825 (2009).

pursuant to Rule 12(b)(6), the Court will treat the facts alleged in plaintiff's complaint as true and will draw all reasonable inferences in plaintiff's favor. *Cary v. United States*, 552 F.3d 1373, 1376 (Fed. Cir. 2009). Nevertheless, "the complaint must allege facts 'plausibly suggesting (not merely consistent with)' a showing of entitlement to relief." *Id.* (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 557 (2007)). These facts must demonstrate a right to relief exists on more than a speculative level; in other words, the claim for relief should be plausible on its face. *Id.* (citing *Twombly*, 550 U.S. at 555). However, if the allegations in the complaint do not plausibly entitle plaintiff to relief even if true, the complaint must be dismissed. *See Twombly*, 550 U.S. at 558.

Plaintiff's claims against the United States appear to be based upon the theory that the Government has taken plaintiff's property without just compensation. Compl. ¶¶ 32(a)-(b), 47-49, 71. The Fifth Amendment of the United States Constitution provides that private property shall not "be taken for public use, without just compensation." U.S. Const. Amend. V. To succeed on a taking claim plaintiff must—as a threshold matter—establish the existence of the property interest allegedly taken. Only then can the court determine whether the Government's action constituted a taking of that property interest. *Bair v. United States*, 515 F.3d 1323, 1327 (Fed. Cir. 2008) (citing *Am. Pelagic Fishing Co. v. United States*, 379 F.3d 1363, 1372 (Fed. Cir. 2004)). Because the existence of a cognizable property interest is a necessary element of any taking claim, a plaintiff must show that he possessed such an interest in order to survive a 12(b)(6) motion.

To demonstrate the existence of a property interest, the Court examines existing rules, understandings, and background principles that are derived from federal, state, and common law sources that define the nature and scope of property rights. *Conti v. United States*, 291 F.3d 1334, 1340 (Fed. Cir. 2002) (citing *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1030 (1992)). "These existing rules often involve and define 'the citizen's relation to the physical thing, as the right to possess, use and dispose of it.'" *Conti*, 291 F.3d at 1340 (quoting *United States v. Gen. Motors*, 323 U.S. 373, 378 (1945)).

In this case, plaintiff has failed to assert any cognizable property interest. Plaintiff alleges that registering under the Trading with the Enemy Act of 1917 deprived him of use of his name. Compl. ¶¶ 20-25. Similarly, plaintiff claims that by requiring him to apply for a social security number, the SSA created a "counterfeit security" on his name. *Id.* ¶¶ 32-37. It is this counterfeit security that plaintiff says was taken from him and for which he seeks \$1.3 million in damages. *Id.* ¶¶ 47-49, 71. None of these allegations identifies any sort of cognizable property interest that could be derived from federal, state, or common law. *See Davis*, 2010 WL 1685907, at *5 (dismissing plaintiff's almost identical claims that the Government unlawfully took possession of plaintiff's property on the grounds that plaintiff failed to identify a specific property interest taken); *see also Kelly*, 2010 WL 2674530, at *1-3 (dismissing plaintiffs' tax refund claim for money linked to an account created by their birth certificates for failure to state a claim upon which relief can be granted). Without identifying a cognizable property interest, plaintiff fails the threshold inquiry, and his taking claim must likewise fail. Accordingly, plaintiff's remaining

claims are **DISMISSED** for failure to state a claim upon which relief can be granted.

C. *Plaintiff's Claims Are Frivolous and Must be Dismissed Pursuant to § 1915.*

The statute permitting plaintiffs to appear *in forma pauperis* also instructs the court to dismiss such actions if they are “frivolous.” 28 U.S.C. § 1915(e)(2)(B)(i). A claim is frivolous when it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). No basis in law or fact exists if a complaint “embraces . . . inarguable legal conclusions” or “fanciful factual allegations.” *Id.*; see also *Denton v. Hernandez*, 504 U.S. 25, 33 (1992) (holding that complaint is frivolous “when the facts alleged rise to the level of the irrational or the wholly incredible”).

In this case, plaintiff's claims lack any basis in law or in fact. Plaintiff alleges that registering for a social security number created counterfeit securities, which resulted in a taking of his identity. Compl. ¶ 32(b). This claim contains both a faulty legal conclusion and fanciful factual allegations.⁸ See *Kelly*, 2010 WL 2674530, at *2 (dismissing plaintiffs' complaint under 12(b)(6) as “purely fictitious and frivolous” when plaintiffs sought a tax refund for money allegedly in accounts linked to birth certificates). Furthermore, any additional grounds for relief plaintiff may think have been asserted in the complaint rely on the same fanciful factual allegations, which the Court concludes are frivolous. See Def.'s Mot. at 5 (noting plaintiff's brief mention of possible Fifth and Sixth Amendment claims). Although similar to a 12(b)(6) motion for failing to state a claim upon which relief can be granted, § 1915 provides a separate basis for dismissal. See *Neitzke*, 490 U.S. at 328. Because plaintiff's complaint lacks an arguable basis in either law or in fact, it is frivolous and must accordingly be **DISMISSED**.⁹

CONCLUSION

For the reasons stated above, the Court **ORDERS** that the complaint be **DISMISSED** in its entirety. Plaintiff's claims against the Commonwealth of Pennsylvania, the Pennsylvania DVS, and the Pennsylvania DVR are dismissed for lack of subject matter jurisdiction. Plaintiff's remaining claims are dismissed for failure to state a claim upon which relief can be granted. In addition, the Court dismisses all of plaintiff's claims in this action as frivolous under

⁸ As noted above, the district court that previously considered similar claims by plaintiff concluded that plaintiff's complaint was “legally unintelligible.” *Troxelle*, 319 F. App'x at 178. The Third Circuit specifically found plaintiff's “complaint . . . lack[ed] an arguable basis in law or cognizable cause of action.” *Id.*

⁹ When a court lacks subject matter jurisdiction over a claim, it may transfer that claim to another court in which the claim could have been brought if such transfer is “in the interest of justice.” 28 U.S.C. § 1631. Because the Court finds that plaintiff's claims are so lacking in merit as to be frivolous, transferring this case would be futile. See *Young v. United States*, 88 Fed. Cl. 283, 292 (2009), *appeal dismissed*, 367 F. App'x 125 (Fed. Cir. 2009).

§ 1915(e)(2)(B)(i). The Clerk is directed to enter judgment for defendant in accordance with this opinion.

Plaintiff may appeal the Court's judgment to the Court of Appeals for the Federal Circuit within sixty (60) days of the date of entry of judgment. Failure to file a timely notice of appeal will waive the right to an appeal, and the Court's order will be final.

IT IS SO ORDERED.



GEORGE W. MILLER
Judge