

In the United States Court of Federal Claims

No. 19-1634C
(Filed: November 12, 2019)

KEVIN BESS,
Plaintiff,
v.
THE UNITED STATES,
Defendant.

Pro Se Plaintiff; Sua Sponte Dismissal;
Subject Matter Jurisdiction; RCFC
12(h)(3); Proper Defendant; Civil Rights
Claims; In Forma Pauperis

Kevin Bess, Charleston, MO, pro se.

Sonia W. Murphy, United States Department of Justice, Washington, DC, for defendant.

OPINION AND ORDER

SWEENEY, Chief Judge

Plaintiff Kevin Bess, proceeding pro se in this matter, alleges that corrections officers at the Missouri Department of Corrections violated his civil rights. Mr. Bess seeks monetary damages and various other forms of relief, and he has also filed an application to proceed in forma pauperis. As explained below, the court lacks jurisdiction to consider Mr. Bess's claims. Thus, without awaiting a response from defendant, the court grants Mr. Bess's application to proceed in forma pauperis and dismisses his complaint.

I. BACKGROUND

Mr. Bess is currently incarcerated at the Southeast Correctional Center in Charleston, Missouri, a facility of the Missouri Department of Corrections. Ex., ECF No. 1-2 at 7. He filed his complaint on October 21, 2019. Documents filed with the complaint reflect that Mr. Bess worked in food service at the prison and was allowed a shower at the end of his shift. However, Mr. Bess alleges that a corrections officer at the prison allowed him to shower "only for a few minutes," Compl. 1, a limitation that he maintains violates his civil rights, id. at 3. Mr. Bess does not claim that this alleged violation occurred more than once.

A Conduct Violation Report dated January 17, 2019, was filed along with the complaint. Ex., ECF No. 1-2 at 7. The report indicated that Mr. Bess returned from his food service work at approximately 10:10 AM on that date, and subsequently entered the shower. Id. It further stated that although Mr. Bess "had been . . . given numerous directives over the intercom to exit the

shower and lockdown starting at 10:31 AM,” he did not exit the shower until approximately 10:49 AM. Id. Mr. Bess was cited for “fail[ure] to comply with an order.” Id. at 7-8.

Mr. Bess seeks relief in a variety of forms. For monetary relief, he seeks a lump sum of \$90,000.00. Id. at 11. He also seeks “[t]o be released [from prison] within the next year.” Id. Finally, Mr. Bess appears to seek the following as part of his compensation: (1) identification documents, such as a driver’s license, birth certificate, and social security card; (2) car registration, with license plates; (3) a one-year reservation at a St. Louis hotel; (4) a car; (5) various items of clothing and bedding; and (6) suitcases. Id.

II. LEGAL STANDARDS

A. Pro Se Plaintiffs

Pro se pleadings are “held to less stringent standards than formal pleadings drafted by lawyers” and are “to be liberally construed.” Erickson v. Pardus, 551 U.S. 89, 94 (2007) (*per curiam*) (internal citation omitted). However, the “leniency afforded to a pro se litigant with respect to mere formalities does not relieve the burden to meet jurisdictional requirements.” Minehan v. United States, 75 Fed. Cl. 249, 253 (2007); accord Henke v. United States, 60 F.3d 795, 799 (Fed. Cir. 1995) (“The fact that [the plaintiff] acted pro se in the drafting of his complaint may explain its ambiguities, but it does not excuse its failures, if such there be.”). In other words, a pro se plaintiff is not excused from his burden of proving, by a preponderance of evidence, that the court possesses jurisdiction. See Banks v. United States, 741 F.3d 1268, 1277 (Fed. Cir. 2014) (citing Reynolds v. Army & Air Force Exch. Serv., 846 F.2d 746, 748 (Fed. Cir. 1988)).

B. Subject Matter Jurisdiction

Whether the court possesses jurisdiction to decide the merits of a case is a “threshold matter.” Steel Co. v. Citizens for a Better Env’t, 523 U.S. 83, 94-95 (1998). Subject matter jurisdiction cannot be waived or forfeited because it “involves a court’s power to hear a case.” United States v. Cotton, 535 U.S. 625, 630 (2002). “Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause.” Ex parte McCardle, 74 U.S. (7 Wall) 506, 514 (1868). Therefore, it is “an inflexible threshold matter that must be considered before proceeding to evaluate the merits of a case.” Matthews v. United States, 72 Fed. Cl. 274, 278 (2006); accord K-Con Bldg. Sys., Inc. v. United States, 778 F.3d 1000, 1004-05 (Fed. Cir. 2015). Either party, or the court sua sponte, may challenge the court’s subject matter jurisdiction at any time. Arbaugh v. Y & H Corp., 546 U.S. 500, 506 (2006); see also Jeun v. United States, 128 Fed. Cl. 203, 209-10 (2016) (collecting cases).

In determining whether subject matter jurisdiction exists, the court generally “must accept as true all undisputed facts asserted in the plaintiff’s complaint and draw all reasonable inferences in favor of the plaintiff.” Trusted Integration, Inc. v. United States, 659 F.3d 1159, 1163 (Fed. Cir. 2011). However, the court has no subject matter jurisdiction over frivolous