

US TAX COURT
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APPENDIX G

SYM



US TAX COURT
eFILED

APR 09 2018

WILLIAM J. MOONEY,
Petitioner,

ELECTRONICALLY FILED

v.

Docket No. 2429-18

COMMISSIONER OF INTERNAL REVENUE,
Respondent

RESPONDENT'S MOTION TO DISMISS FOR LACK OF
JURISDICTION AND TO IMPOSE A PENALTY UNDER I.R.C. 6673.

CERTIFICATE OF SERVICE

CERTIFIED TRUE COPY
STEPHANIE A. SERVOS, CLERK
BY: Stephanie A. Servos
DEPUTY CLERK

UNITED STATES TAX COURT
WASHINGTON, DC 20217 **PA**

WILLIAM J. MOONEY,)	
)	
Petitioner,)	
)	
v.)	Docket No. 2429-18.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	


ORDER OF DISMISSAL FOR LACK OF JURISDICTION

On April 9, 2018, respondent filed a Motion To Dismiss for Lack of Jurisdiction and To Impose a Penalty under I.R.C. section 6673 on the ground that no notice of deficiency was issued to petitioner for the taxable years 1990 through 2017, within 150 days of the filing of this petition, that would permit petitioner to invoke the Court's jurisdiction; and on the ground that no notice of determination was issued to petitioner for the taxable years 1990 through 2017, within 30 days of the filing of this petition, that would permit petitioner to invoke the Court's jurisdiction. On April 25, 2018, petitioner filed a Response to the motion to dismiss and on May 8, 2018, petitioner filed First Supplement to Response to motion to dismiss. Both petitioner's Response and First Supplement contained only a copy of the petition filed on February 5, 2018, to commence this case. The record in this case does not contain any notice of deficiency for taxable years 1990 through 2017 or any notice of determination pertaining to taxable years 1990 through 2017. Consequently, this case must be dismissed for lack of jurisdiction.

Respondent has also moved for the imposition of a penalty under I.R.C. section 6673 against petitioner, but we will not impose such a penalty against petitioner today. Petitioner is strongly warned, however, that if petitioner should advance frivolous or groundless arguments to this Court in the future, the Court may impose a penalty of up to \$25,000.

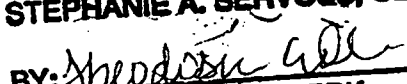
Upon due consideration, it is

ORDERED that respondent's above-described Motion, as supplemented, is granted in that this case is dismissed for lack of jurisdiction.


Maurice B. Foley
Chief Judge

ENTERED: **JUL 20 2018**

SERVED Jul 20 2018

CERTIFIED TRUE COPY
STEPHANIE A. SERVOS, CLERK
BY: 
DEPUTY CLERK

APPENDIX M

Mooney v. United States, Not Reported in Fed.Cl. (2019)

2019 WL 4052488

UNPUBLISHED

United States Court of Federal Claims.

William Joseph MOONEY and Joni
Therese Mooney, Plaintiffs,

v.

The UNITED STATES, Defendant.

No. 19-987C

(Filed: August 27, 2019)

Pro Se Complaint; Sua Sponte Dismissal for Lack of
Subject Matter Jurisdiction, RCFC 12(h)(3).ORDER

PATRICIA E. CAMPBELL-SMITH, Judge

*1 Plaintiffs William Joseph Mooney and Joni Therese Mooney filed a complaint with the court on July 9, 2019. See ECF No. 1. Also pending before the court are: (1) plaintiffs' motion for an expedited stay of judgment and stay of eviction, ECF No. 4; (2) plaintiffs' motion for an extension of time to file their reply in support of the motion for an expedited stay of judgment, ECF No. 7; and (3) plaintiffs' expedited motion on standing, ECF No. 8. Because the court lacks subject matter jurisdiction over plaintiffs' claims, the court must dismiss this case sua sponte pursuant to Rule 12(h)(3) of the Rules of the United States Court of Federal Claims (RCFC). See RCFC 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action."). The court's jurisdictional analysis is set forth below.

I. Background

Plaintiffs' complaint is 122 pages in length, with attachments that exceed 500 pages. See ECF No. 1, The

court will summarize the allegations therein to the extent that they are relevant to determining whether this court has jurisdiction to hear this case. Plaintiffs' claims appear to be a collateral attack on court proceedings before the United States District Court for the District of Minnesota. Plaintiffs allege that "NELSON, PAHL, and BRISBOIS and different agents of the United States of America and of the United States lied to" them. See id. at 13. The referenced individuals were involved with the district court case brought against plaintiffs by the Department of Justice: Judge Susan Richard Nelson and Magistrate Judge Leo I. Brisbois presided over the district court case, and Michael R. Pahl, represented the Tax Division of the United States Department of Justice on the case. See ECF No. 1-7 at 24 (docket sheet for district court case).

The government's complaint was filed against plaintiffs in the district court "to reduce federal tax and penalty assessments to judgment and enforce federal tax liens" against plaintiffs' property located in the District of Minnesota. See United States v. Mooney, et al., Case No. 16-2547, ECF No. 1. Judge Nelson ruled against plaintiffs, granting the government's motion for summary judgment and directing a monetary payment from plaintiffs for federal income tax debts and frivolous-filing penalties, along with authorizing the sale of plaintiff's property to satisfy these outstanding federal income tax liabilities. See id., ECF No. 151. Plaintiffs then filed a motion to dismiss and motion to vacate judgment. See id., ECF No. 157. On February 6, 2019, the district court denied plaintiffs' motion to dismiss and motion to vacate judgment, and ordered the authorization of the sale of plaintiffs' property. See id., ECF Nos. 171, 172.

Plaintiffs appealed the district court's decision to the United States Court of Appeals for the Eighth Circuit. See id., ECF No. 192. On May 13, 2019, plaintiffs filed a "Motion to Withdraw and Terminate this Appeal Expeditiously" in the Eighth Circuit. See United States v. Mooney, et al., Case No. 19-1533 (8th Circuit) (docketed as a motion to dismiss case). Plaintiffs' motion to withdraw states that "they are ready now to also file in the United States federal Court of Claims but have discovered ... the United States Federal Court of Claims would dismiss their New Case as the Appeal that was filed into the 8th Circuit is considered a case 'pending' under 28 U.S.C. § 1500 precluding filing into the United States Federal Court of Claims." See id. at 1. On May 15, 2019, the Eighth Circuit granted plaintiffs' motion to dismiss their appeal. See United States v. Mooney, et al., Case No. 16-2547, ECF No. 195. The Eighth Circuit's mandate was issued and entered on the district court's docket the same day. See id., ECF No. 196.

*2 The complaint before this court notes that plaintiffs "terminated the 'Appeal' to the 8th Circuit upon

discovering they two different venues was not allowed,” presumably in favor of the case now at bar. ECF No. 1 at 12. Plaintiffs allege that “[t]hey denied the Mooneys access to a bona fide Court of the United State arising under Article III Sections one and two,” *Id.* at 13. Although “they” as used in this sentence is not clearly defined, the allegations seem to reflect plaintiffs’ claim that they were denied access to the courts as a result of the lies told to plaintiffs by Judge Nelson, Magistrate Judge Brisbois, and Mr. Pahl. *See id.* Plaintiffs also accuse Judge Nelson and Mr. Pahl of misconduct in the course of the district court litigation. *See id.* at 12 (claiming that “PAHL working with NELSON are guilty of ‘Spoliation of evidence’ ”). And plaintiffs further allege that the government improperly took their property through proceedings in the “faux Article III Courts.” *See id.* at 13-14.

Plaintiffs then write, in detail, about issues such as the nature of the courts established by Article III of the Constitution of the United States, the sovereignty of individuals in this country, and tax policy, among other topics. *See generally id.* In the course of this extended discussion, plaintiffs refer to various constitutional rights, *see, e.g., id.* at 23 (referencing the Thirteenth and Fourteenth Amendments); *id.* at 26 (referencing the Seventeenth Amendment); *id.* at 33 (referencing the Sixteenth Amendment), as well as torts allegedly committed by the Internal Revenue Service and the State of Minnesota, *id.* at 119 (alleging fraud).

II. Legal Standards

A. Pro Se Litigants

The court acknowledges that pro se plaintiffs are not expected to frame issues with the precision of a common law pleading. *Roche v. U.S. Postal Serv.*, 828 F.2d 1555, 1558 (Fed. Cir. 1987). Therefore, plaintiff’s complaint has been reviewed carefully to ascertain whether, given the most favorable reading, it supports jurisdiction in this court.

B. Jurisdiction

“A court may and should raise the question of its jurisdiction *sua sponte* at any time it appears in doubt.” *Arctic Corner, Inc. v. United States*, 845 F.2d 999, 1000 (Fed. Cir. 1988) (citation omitted). The Tucker Act delineates this court’s jurisdiction. 28 U.S.C. § 1491 (2012). That statute “confers jurisdiction upon the Court

of Federal Claims over the specified categories of actions brought against the United States.” *Fisher v. United States*, 402 F.3d 1167, 1172 (Fed. Cir. 2005) (*en banc*) (citations omitted). These include money damages claims against the federal government founded upon the Constitution, an act of Congress, a regulation promulgated by an executive department, any express or implied contract with the United States, or any claim for liquidated or unliquidated damages in cases not sounding in tort. *Id.* (citing 28 U.S.C. § 1491(a)(1)).

III. Analysis

A. Lack of Subject Matter Jurisdiction

As described above, the gravamen of this complaint is plaintiffs’ dissatisfaction with the proceedings in the United States District Court for the District of Minnesota. The Tucker Act, however, does not give this court jurisdiction to consider the merits of a collateral attack on those proceedings. *See* 28 U.S.C. § 1491(a); *see, e.g., Shinnecock Indian Nation v. United States*, 782 F.3d 1345, 1352 (Fed. Cir. 2015) (“Binding precedent establishes that the Court of Federal Claims has no jurisdiction to review the merits of a decision rendered by a federal district court.”); *Vereda, Ltda. v. United States*, 271 F.3d 1367, 1375 (Fed. Cir. 2001) (“The Court of Federal Claims ‘does not have jurisdiction to review the decisions of district courts.’ ”) (quoting *Joshua v. United States*, 17 F.3d 378, 380 (Fed. Cir. 1994)). *See also Allustiarte v. United States*, 256 F.3d 1349, 1351-52 (Fed. Cir. 2001) (holding that the Court of Federal Claims lacked jurisdiction to adjudicate a takings claim based on “an allegedly improper action by a bankruptcy trustee that was approved by a Ninth Circuit bankruptcy court”). In order to challenge proceedings in a federal district court, a plaintiff must rely on “the statutorily defined appellate process.” *Shinnecock*, 782 F.3d at 1353 (citation omitted).

*3 To the extent that plaintiffs intend to allege that the actions of Judge Nelson, Magistrate Judge Brisbois, or Mr. Pahl violated their constitutional rights, jurisdiction is likewise lacking in this forum. It is well settled that violations of a plaintiff’s constitutional rights by a federal official do not fall within this court’s jurisdiction. *Brown v. United States*, 105 F.3d 621, 624 (Fed. Cir. 1997).

And finally, this court cannot consider any claims sounding in tort. *See* 28 U.S.C. § 1491(a)(1) (limiting this court’s jurisdiction to “cases not sounding in tort”). Because plaintiffs’ allegation of fraud is tortious in nature, this court is without authority to consider it. *See Kant v. United States*, 123 Fed. Cl. 614, 616-17 (2015) (declining to exercise jurisdiction over a fraud claim

because it sounded in tort); Brown, 105 F.3d at 623-624.

For these reasons, the court lacks jurisdiction over plaintiffs' claims, and their suit must be dismissed. RCFC 12(h)(3).

B. Transfer

Because plaintiffs' complaint is not within this court's jurisdiction, the court considers whether transfer to another federal court is appropriate. Transfer of cases from this court to a district court is governed by 28 U.S.C. § 1631 (2012), which states in relevant part, as follows:

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

Id. In the court's view, transfer would not serve the interests of justice in this case. Plaintiffs have already availed themselves of an appeal to the Eighth Circuit of their district court case, and subsequently made a conscious decision to abandon that effort and proceed in

this court. See ECF No. 1 at 12; see also United States v. Mooney, et al., Case No. 19-1533 (8th Circuit). The court will not use its transfer power to compensate for plaintiffs' decision.

IV. Conclusion

The complaint in this case must be dismissed on jurisdictional grounds. As such, plaintiffs' motion for an expedited stay of judgment and stay of eviction, ECF No. 4, is **DENIED** as moot; plaintiffs' motion for an extension of time to file their reply in support of the motion for an expedited stay of judgment, ECF No. 7, is **DENIED** as moot; and plaintiff's expedited motion on standing, ECF No. 8, is **DENIED** as moot.

The clerk's office is directed to **ENTER** final judgment for defendant **DISMISSING** plaintiffs' complaint for lack of subject matter jurisdiction, without prejudice.

IT IS SO ORDERED.

All Citations

Not Reported in Fed.Cl., 2019 WL 4052488, 124 A.F.T.R.2d 2019-5641

APPENDIX N

Mooney v. United States, Not Reported in Fed.Cl. (2019)

2019 WL 4861104

Only the Westlaw citation is currently available.

UNPUBLISHED

United States Court of Federal Claims.

William Joseph MOONEY and Joni
Therese Mooney, Plaintiffs,
v.
The UNITED STATES, Defendant.

No. 19-987C

(Filed: October 2, 2019)

Motion for Reconsideration.

ORDER

PATRICIA E. CAMPBELL-SMITH, Judge

*1 Plaintiffs William Joseph Mooney and Joni Therese Mooney filed a complaint with the court on July 9, 2019. See ECF No. 1. On August 27, 2019, the court dismissed the complaint sua sponte for lack of jurisdiction. See ECF No. 10. On September 23, 2019, plaintiffs moved the court to reconsider its decision dismissing the complaint pursuant to Rule 59 of the Rules of the United States Court of Federal Claims (RCFC). See ECF No. 12.

I. Background¹

¹ The court explained the relevant facts underlying plaintiffs' complaint in its order dismissing the case. See ECF No. 10. In order to focus on plaintiffs' presently pending motion, those facts are not repeated here.

The court previously concluded that it lacked jurisdiction and dismissed plaintiffs' complaint for three reasons. First, the court concluded that "the gravamen of [the] complaint is plaintiffs' dissatisfaction with the proceedings in the United States District Court for the

District of Minnesota, The Tucker Act, however, does not give this court jurisdiction to consider the merits of a collateral attack on those proceedings." ECF No. 10 at 3 (citing inter alia 28 U.S.C. § 1491(a); Shinnecock Indian Nation v. United States, 782 F.3d 1345, 1352 (Fed. Cir. 2015) ("Binding precedent establishes that the Court of Federal Claims has no jurisdiction to review the merits of a decision rendered by a federal district court."). Second, the court held that it lacked jurisdiction to consider any constitutional violations allegedly committed by federal officials. See id. at 4 (citing Brown v. United States, 105 F.3d 621, 624 (Fed. Cir. 1997)). Finally, the court found that to the extent plaintiffs' intended to allege claims sounding in tort, such as fraud, jurisdiction was likewise lacking. Id. at 4 (citing 28 U.S.C. § 1491(a)(1) (limiting this court's jurisdiction to "cases not sounding in tort"); Kant v. United States, 123 Fed. Cl. 614, 616-17 (2015) (declining to exercise jurisdiction over a fraud claim because it sounded in tort); Brown, 105 F.3d at 623-24),

The court also considered whether transferring the case to a court with jurisdiction would appropriate. Because plaintiffs "have already availed themselves of an appeal to the Eighth Circuit of their district court case, and subsequently made a conscious decision to abandon that effort and proceed in this court," the court decided that it would "not use its transfer power to compensate for plaintiffs' decision." ECF No. 10 at 4-5.

Plaintiffs now move for reconsideration of this decision. See ECF No. 12.

II. Legal Standards

A. Pro Se Litigants

The court acknowledges that pro se plaintiffs are not expected to frame issues with the precision of a common law pleading. Roche v. U.S. Postal Serv., 828 F.2d 1555, 1558 (Fed. Cir. 1987). Therefore, plaintiffs' motion has been reviewed carefully to ascertain whether, given the most favorable reading, it supports the requested relief.

B. Motion for Reconsideration

Rule 59(a) governs a motion for reconsideration, and provides that rehearing or reconsideration may be granted: "(A) for any reason for which a new trial has heretofore been granted in an action at law in federal

court; (B) for any reason for which a rehearing has heretofore been granted in a suit in equity in federal court; or (C) upon the showing of satisfactory evidence, cumulative or otherwise, that any fraud, wrong, or injustice has been done to the United States.” RCFC 59(a)(1).

*2 The court, “in its discretion, ‘may grant a motion for reconsideration when there has been an intervening change in the controlling law, newly discovered evidence, or a need to correct clear factual or legal error or prevent manifest injustice.’ ” *Biery v. United States*, 818 F.3d 704, 711 (Fed. Cir. 2016) (quoting *Young v. United States*, 94 Fed. Cl. 671, 674 (2010)). Motions for reconsideration must be supported “by a showing of extraordinary circumstances which justify relief.” *Caldwell v. United States*, 391 F.3d 1226, 1235 (Fed. Cir. 2004) (quoting *Fru-Con Constr. Corp. v. United States*, 44 Fed. Cl. 298, 300 (1999), *aff’d*, 250 F.3d 762 (2000)). Such a motion, however, “may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment.” *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 485 n.5 (2008) (quoting 11 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2810.1 (2d ed. 1995)). In addition, “a motion for reconsideration is not intended ... to give an ‘unhappy litigant an additional chance to sway’ the court.” *Matthews v. United States*, 73 Fed. Cl. 524, 525 (2006) (quoting *Froudi v. United States*, 22 Cl. Ct. 290, 300 (1991)).

III. Analysis

Plaintiffs’ motion for reconsideration, together with attachments, exceeds 600 pages. The brief in support of the motion is not a model of clarity, but can be fairly described in two parts—the first, an argument about the nature and authority of federal courts; and the second, an attempt to reargue the merits of their underlying claims, which the court has previously dismissed. In an apparent

effort to address the requirements of RCFC 59, plaintiffs do assert that they “have evidence based on the Common Law Rules of New Evidence,” and proceed to quote passages addressing this “doctrine” at some length. *See* ECF No. 12 at 22-23. The court was, however, unable to identify any new evidence in plaintiffs’ filing.

Plaintiffs have failed to demonstrate an intervening change in controlling law, newly discovered evidence, or any clear error in the court’s decision dismissing the complaint. *See Biery*, 818 F.3d 704, 711. It appears, instead, that this motion falls into the prohibited category of filings in which an unhappy litigant makes an additional attempt to sway the court. *See Matthews*, 73 Fed. Cl. at 525.

IV. Conclusion

Accordingly, plaintiffs’ motion for reconsideration, ECF No. 12, is **DENIED**.

On September 26, 2019, the clerk’s office received a “Notice of Lis Pendens Filing on the Property of the Mooneys.” The filing was defective in several respects, but because the court has no jurisdiction in this matter, the clerk’s office is directed to **RETURN** plaintiff’s September 26, 2019 submission to plaintiffs, **UNFILED**. Without further order, the clerk’s office is directed to **RETURN** any future submissions received by plaintiff that are not in compliance with this court’s rules to plaintiff, **UNFILED**.

IT IS SO ORDERED.

All Citations

Not Reported in Fed.Cl., 2019 WL 4861104

APPENDIX P

Mooney v. United States, 829 Fed.Appx. 520 (2020)

126 A.F.T.R.2d 2020-6377

829 Fed.Appx. 520

This case was not selected for publication in West's
Federal Reporter.

See Fed. Rule of Appellate Procedure 32.1 generally
governing citation of judicial decisions issued on or
after Jan. 1, 2007. See also U.S.Ct. of App. Fed. Cir.

Rule 32.1.

United States Court of Appeals, Federal Circuit.

William Joseph MOONEY, Joni Therese
Mooney, Plaintiffs-Appellants

v.

UNITED STATES, Defendant-Appellee

2020-1075

Decided: October 7, 2020

Synopsis

Background: Taxpayers brought action against United States challenging prior District Court action in which the United States succeeded in reducing taxpayers' federal tax and penalty assessments to judgment and enforcing federal tax liens. The Court of Federal Claims, Patricia Elaine Campbell-Smith, J., dismissed taxpayers' complaint for lack of subject matter jurisdiction.

[Holding:] The Court of Appeals held that the Court of Federal Claims lacks jurisdiction to review the merits of a decision rendered by a federal district court.

Affirmed.

West Headnotes (2)

- [1] **Federal Courts**—Claims against United States in general
United States—In general; establishment and jurisdiction

The Court of Federal Claims lacks jurisdiction to review the merits of a decision rendered by a federal district court. 28 U.S.C.A. § 1491(a)(1).

- [2] **United States**—Parties

The Tucker Act grants the Court of Federal Claims jurisdiction over suits against the United States, not against individual federal officials. 28 U.S.C.A. § 1491(a)(1).

***521** Appeal from the United States Court of Federal Claims in No. 1:19-cv-00987-PEC, Judge Patricia E. Campbell-Smith.

Attorneys and Law Firms

William Joseph Mooney, Joni Therese Mooney, Little Falls, MN, pro se.

Richard L. Parker, Tax Division, United States Department of Justice, Washington, DC, for defendant-appellee. Also represented by Jacob Earl Christensen, Richard E. Zuckerman.

Before Lourie, Hughes, and Stoll, Circuit Judges.

Opinion

Per Curiam.

William Mooney and his wife, Joni Mooney ("the Mooneys"), appeal from a decision of the United States Court of Federal Claims (the "Claims Court") dismissing their complaint against the United States for lack of subject matter jurisdiction, *Mooney v. United States*, No. 19-987C, 2019 WL 4052488 (Fed. Cl. Aug. 27, 2019) ("*Decision I*"), and denying their motion for reconsideration. *Mooney v. United States*, No. 19-987C, 2019 WL 4861104 (Fed. Cl. Oct. 2, 2019) ("*Decision II*"). Because the Claims Court did not err in its dismissal and subsequent denial of reconsideration, we *affirm*.

Mooney v. United States, 829 Fed.Appx. 520 (2020)

126 A.F.T.R.2d 2020-6377

Background

In July 2016, the United States filed suit against the Mooneys in the United States District Court for the District of Minnesota, seeking “to reduce federal tax and penalty assessments to judgment and enforce federal tax liens” against the Mooneys’ property. *United States v. Mooney*, No. 16-cv-02547 (D. Minn. July 28, 2016), ECF No. 1 at 1. The district court ruled against the Mooneys and authorized the sale of their personal residence to satisfy their outstanding tax liabilities. *United States v. Mooney*, No. 16-cv-02547, 2018 WL 2215521, at *7 (D. Minn. May 15, 2018). In March 2019, the Mooneys appealed to the United States Court of Appeals for the Eighth Circuit but withdrew their appeal shortly thereafter. *United States v. Mooney*, No. 19-1533, 2019 WL 4296301 (8th Cir. May 15, 2019) (granting motion to dismiss).

On July 9, 2019, the Mooneys filed a complaint against the United States in the Claims Court. Appx. 32. The Mooneys appear to have alleged that the district judge and magistrate judge misled them and denied them access to the courts by falsely claiming that the District Court of Minnesota *522 was a genuine Article III court, when it was in fact an Article I Section 8 court or “faux” court that had no jurisdiction to authorize the sale of their real property. *Id.* at 38–44. In addition, the Mooneys accused the district judge and the government’s attorney of misconduct, including the creation of false documents and spoliation of evidence. *Id.* at 43–44. As relief, the Mooneys requested abrogation of the district court’s order authorizing the sale of their real property and a “real [t]rial.” *Id.* at 45.

The Claims Court dismissed the Mooneys’ case, sua sponte, for lack of subject matter jurisdiction. *Decision I*, 2019 WL 4052488, at *3. The court explained that pursuant to the Tucker Act, it had jurisdiction only over specified categories of complaints and none of the Mooneys’ stated claims fell within the confines of the Act. *First*, the court determined that the gravamen of the Mooneys’ complaint was their dissatisfaction regarding the proceedings in the District Court of Minnesota, but the Tucker Act does not confer jurisdiction upon the Claims Court to consider the merits of a collateral attack on a district court decision. *Id.* at *2. *Second*, to the extent the Mooneys intended to allege that the actions of the district judge, magistrate judge, or government attorney “violated their constitutional rights,” the court concluded that it had no jurisdiction to review complaints concerning violations of plaintiffs’ civil rights by federal officials. *Id.* at *3. *Third*, the court held that it could not consider the Mooneys’ fraud claims because it did not have jurisdiction over any claims sounding in tort. *Id.* The

Claims Court further denied the Mooneys’ motion for reconsideration pursuant to Rule 59 of the Rules of the United States Court of Federal Claims (“RCFC”). *Decision II*, 2019 WL 4861104, at *2.

The Mooneys appealed the dismissal. We have jurisdiction under 28 U.S.C. § 1295(a)(3).

Discussion

We review a dismissal by the Claims Court for lack of jurisdiction de novo. *Tex. Peanut Farmers v. United States*, 409 F.3d 1370, 1372 (Fed. Cir. 2005) (citing *Frazer v. United States*, 288 F.3d 1347, 1351 (Fed. Cir. 2002)). We review the Claims Court’s denial of a motion for reconsideration under Rule 59 for an abuse of discretion. *Renda Marine, Inc. v. United States*, 509 F.3d 1372, 1379 (Fed. Cir. 2007).

On appeal, the Mooneys assert, among other allegations previously raised in the Claims Court, that the District Court of Minnesota is not a true Article III federal court and that their complaint was not a “collateral attack” because the district court’s judgment was a “legal nullity.” Appellant Br. 35–38 (quoting *United States v. Bigford*, 365 F.3d 859, 865 (10th Cir. 2004)). In addition, the Mooneys assert that the Claims Court had jurisdiction over their claim pursuant to 28 U.S.C. § 2515(a), which states that “[t]he United States Court of Federal Claims may grant a plaintiff a new trial on any ground established by rules of common law or equity applicable as between private parties.” *Id.* at 42–43. With regard to the Claims Court’s denial of their motion for reconsideration, the Mooneys argue that the court “discount[ed]” the new evidence they raised in their motion for reconsideration, including a citation of two “[o]n-[p]oint cases,” decided decades before they filed their complaint in the Claims Court. *Id.* at 43–44.

The government responds that the Mooneys’ brief largely “rehash[es]” the collateral attacks against the district court. Appellee Br. 20–21. The government further *523 asserts that the Claims Court did not have jurisdiction over the Mooneys’ complaint pursuant to § 2515(a) because that statute “applies to requests for a new trial in cases originating in the Claims Court and over which it has jurisdiction under the Tucker Act, not in cases decided by other courts.” *Id.* at 22–23. Additionally, the government states that the Claims Court did not abuse its discretion in denying the Mooneys’ motion for reconsideration because the Mooneys’ citation of decades-old cases did not constitute newly discovered

Mooney v. United States, 829 Fed.Appx. 520 (2020)

126 A.F.T.R.2d 2020-6377

evidence. *Id.* at 26–27.

¹¹We agree with the government that the Claims Court correctly dismissed the Mooneys' case for lack of subject matter jurisdiction and did not abuse its discretion in denying the Mooneys' motion for reconsideration. The Mooneys' complaint, which largely consisted of criticisms regarding mistakes made by the district court and allegations of misdeeds by various federal officials, was, in essence, a collateral attack on the district court proceedings. Accordingly, the Claims Court correctly held that it did not have jurisdiction to review the Mooneys' case. *See* 28 U.S.C. § 1491(a)(1); *Petro-Hunt, L.L.C. v. United States*, 862 F.3d 1370, 1384–85 (Fed. Cir. 2017) (“[T]he Court of Federal Claims lacks jurisdiction to review the merits of a decision rendered by a federal district court.”) (citing *Shinnecock Indian Nation v. United States*, 782 F.3d 1345, 1352 (Fed. Cir. 2015)). Nor did the Claims Court have jurisdiction under 28 U.S.C. § 2515(a), which applies to requests for a new trial in cases originating in the Claims Court, rather than district courts. To hold otherwise would allow plaintiffs to relitigate their claims in the Claims Court if they were dissatisfied with the district court proceedings. However, the Mooneys already appealed to the Eighth Circuit, which was the proper route of appeal, but they voluntarily withdrew their appeal.

¹²To the extent that the Mooneys' complaint can be characterized as alleging violations of their constitutional rights by federal officials or sounding in tort, we further hold that the Claims Court correctly held that it lacked jurisdiction over those claims. The court's jurisdiction under the Tucker Act does not reach those types of claims. *See Brown v. United States*, 105 F.3d 621, 624 (Fed. Cir. 1997) (“The Tucker Act grants the Court of

Federal Claims jurisdiction over suits against the United States, not against individual federal officials.”) (citing 28 U.S.C. § 1491(a)); *Rick's Mushroom Serv., Inc. v. United States*, 521 F.3d 1338, 1343 (Fed. Cir. 2008) (“The plain language of the Tucker Act excludes from the Court of Federal Claims jurisdiction claims sounding in tort.”). Finally, we agree that the Claims Court did not abuse its discretion in denying the Mooneys' motion for reconsideration. The Mooneys' citation of cases decided decades before their complaint was filed in the Claims Court is not “newly discovered” evidence as required by RCFC 59. *See Howard Hess Dental Labs. Inc. v. Dentsply Int'l, Inc.*, 602 F.3d 237, 252 (3d Cir. 2010) (“[N]ew evidence in this context means evidence that a party could not earlier submit to the court because that evidence was not previously available”); *see also Biery v. United States*, 818 F.3d 704, 711 (Fed. Cir. 2016).

Conclusion

We have considered the Mooneys' remaining arguments but find them unpersuasive. For the foregoing reasons, we *affirm* the Claims Court's dismissal of this case and denial of the Mooneys' motion for reconsideration.

AFFIRMED**All Citations**

829 Fed.Appx. 520, 126 A.F.T.R.2d 2020-6377

End of Document

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NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

**WILLIAM JOSEPH MOONEY, JONI THERESE
MOONEY,**
Plaintiffs-Appellants

v.

UNITED STATES,
Defendant-Appellee

2020-1075

Appeal from the United States Court of Federal Claims
in No. 1:19-cv-00987-PEC, Judge Patricia E. Campbell-
Smith.

ON PETITION FOR REHEARING EN BANC

Before PROST, *Chief Judge*, NEWMAN, LOURIE, DYK,
MOORE, O'MALLEY, REYNA, WALLACH, TARANTO, CHEN,
HUGHES, and STOLL, *Circuit Judges*.

PER CURIAM.

O R D E R

Appellants Joni Therese Mooney and William Joseph Mooney filed a petition for rehearing en banc. The petition

was first referred as a petition for rehearing to the panel that heard the appeal, and thereafter the petition for rehearing en banc was referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

The petition for rehearing en banc is denied.

The mandate of the court will issue on January 6, 2021.

FOR THE COURT

December 30, 2020

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner
Clerk of Court

**Additional material
from this filing is
available in the
Clerk's Office.**