FILED
United States Court of Appea
Tenth Circuit

July 8, 2022

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

ERIKA JACOBS,

Plaintiff - Appellant,

v.

OKLAHOMA TAX COMMISSION,

Defendant - Appellee.

No. 21-6170
(D.C. No. 5:21-CV-00055-C)
(W.D. Okla.)

ORDER AND JUDGMENT*

Before **MATHESON**, **BACHARACH**, and **MORITZ**, Circuit Judges.

Erika Jacobs, proceeding pro se, appeals from the district court's dismissal of her suit against the Oklahoma Tax Commission (OTC). Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

Ms. Jacobs was a part-year resident of Oklahoma in 2018 and 2019. She filed tax returns and paid Oklahoma income taxes for both years. But the OTC disagreed with her calculations of what she owed, asserting that (1) for the 2018 tax year, she

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* After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Appendix A

owed an additional $25, and (2) for the 2019 tax year, she was not entitled to the $209 refund she claimed, and she owed another $134.

Ms. Jacobs filed suit against the OTC in federal court, complaining that the OTC had recalculated her taxes. For relief, she asked the court to order the OTC to issue her a $209 refund for the 2019 tax year and to declare her taxes paid in full for the 2018 tax year. Pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), the district court dismissed the suit without prejudice because "[a]t its core, [the] case challenge[d] a determination of her tax liability by the State of Oklahoma," R. at 30, and therefore it was barred by the Tax Injunction Act (TIA), 28 U.S.C. § 1341.

We review the dismissal order de novo. *See Chamber of Com. of U.S. v. Edmondson*, 594 F.3d 742, 760-61 (10th Cir. 2010) (de novo review of applicability of TIA); *Kay v. Bemis*, 500 F.3d 1214, 1217 (10th Cir. 2007) (de novo review of dismissal under § 1915(e)(2)(B)(ii)). Because Ms. Jacobs proceeds pro se, we construe her filings liberally. *See Diversey v. Schmidly*, 738 F.3d 1196, 1199 (10th Cir. 2013).

Ms. Jacobs asserts the district court erred in dismissing her suit because (1) the court had federal-question jurisdiction under 28 U.S.C. § 1331, and (2) the action was not barred by the TIA. But the TIA may apply even where a complaint suggests federal-question jurisdiction. *See Brooks v. Nance*, 801 F.2d 1237, 1239 (10th Cir. 1986) ("Basing a complaint upon alleged violation of civil rights . . . or of the Federal Constitution will not avoid the prohibition contained in Section 1341."

(internal quotation marks omitted)). Because Ms. Jacobs' second argument is dispositive of the appeal, we need not address her first argument.

The TIA provides that "[t]he district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State." 28 U.S.C. § 1341. This provision "erects a broad barrier to the jurisdiction of federal courts." *Chamber of Com.*, 594 F.3d at 761; *see also Marcus v. Kan. Dep't of Revenue*, 170 F.3d 1305, 1309 n.2 (10th Cir. 1999) ("In accordance with . . . Supreme Court precedents, we treat the Tax Injunction Act as a bar to federal jurisdiction over cases involving the enjoinment, suspension, restraint, levy, or collection of taxes imposed by states."). And the TIA bars not only injunctive relief, but also declaratory relief and damages suits regarding state tax matters. *See Marcus*, 170 F.3d at 1309; *Brooks*, 801 F.2d at 1239.

Ms. Jacobs' complaint requests that the district court order the OTC to issue her a refund for the 2019 tax year and to declare her tax liabilities as paid in full for the 2018 tax year. Thus, the suit plainly seeks to enjoin or restrain the assessment, levy, and collection of Oklahoma income tax from Ms. Jacobs for those tax years. Further, this court previously has determined that Oklahoma's state courts provide a plain, speedy and efficient remedy for tax disputes. *See Hill v. Kemp*, 478 F.3d 1236, 1253-54 (10th Cir. 2007) ("We have heard no convincing reason to suppose that Oklahoma fails to provide its citizens sufficient process for challenging its tax laws; very much to the contrary."); *Cities Serv. Gas Co. v. Okla. Tax Comm'n*, 656 F.2d

584, 587-88 (10th Cir. 1981) (concluding that Oklahoma's judicial remedy for tax disputes sufficed to support application of the TIA). Accordingly, the TIA deprived the district court of jurisdiction to hear the case.

We affirm the district court's dismissal of Ms. Jacobs' complaint.

Entered for the Court

Nancy L. Moritz
Circuit Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

ERIKA JACOBS,	)	
	)	
Plaintiff,	)	
vs.	)	Case Number CIV-21-55-C
	)	
OKLAHOMA TAX COMMISSION,	)	
	)	
Defendant.	)	

ORDER

Plaintiff, appearing pro se and in forma pauperis, filed the present action raising various claims all related to her dispute with the State of Oklahoma regarding personal income taxes for the years 2018 and 2019. Plaintiff alleges wrongdoing by employees of the Oklahoma Tax Commission which resulted in her allegedly owing more state tax than she actually owes.

Pursuant to the directives of 28 U.S.C. § 1915, the Court has reviewed the allegations of the Complaint. Of particular relevance is subpart (e)(2) of § 1915, which states:

> Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that–
>
> (A) the allegation of poverty is untrue; or
>
> (B) the action or appeal–
>
> (i) is frivolous or malicious;
>
> (ii) fails to state a claim on which relief may be granted; or
>
> (iii) seeks monetary relief against a defendant who is immune from such relief.

The Court is mindful that Haines v. Kerner, 404 U.S. 519 (1972), requires a liberal construction of pro se complaints. However, the Court is not required to imagine or assume facts in order to permit a complaint to survive. Hall v. Bellmon, 935 F.2d 1106, 1109-10 (10th Cir. 1991). Applying these standards, the Complaint must be dismissed under § 1915(e)(2)(B)(ii), as it fails to state a claim for relief. At its core, Plaintiff's case challenges a determination of her tax liability by the State of Oklahoma. The Tax Injunction Act, 18 U.S.C. § 1341, divests this Court of jurisdiction to consider Plaintiff's claims. See Marcus v. Kan. Dep't of Revenue, 170 F.3d 1305, 1309 (10th Cir. 1999).

Accordingly, pursuant to the provisions of 28 U.S.C. § 1915(e)(2)(B)(ii), Plaintiff's Complaint (Dkt. No. 1) is DISMISSED without prejudice.

IT IS SO ORDERED this 23rd day of November 2021.

ROBIN J. CAUTHRON
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

ERIKA JACOBS,	)	
	)	
Plaintiff,	)	
vs.	)	Case Number CIV-21-55-C
	)	
OKLAHOMA TAX COMMISSION,	)	
	)	
Defendant.	)	

JUDGMENT OF DISMISSAL WITHOUT PREJUDICE

Upon consideration of the pleadings filed herein, and the Court's Order filed this date, this case is dismissed without prejudice.

DATED this 23rd day of November 2021.

ROBIN J. CAUTHRON
United States District Judge

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