

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7258
Summary Calendar

EVERETT LEWIS and ADDIE B. LEWIS,

Plaintiffs-Appellants,

versus

UNITED STATES, SOUTH TERRY WATER
ASSOCIATION, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the
Southern District of Mississippi
(CA-J-91-0622(W)(N))

(May 17, 1994)

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

This appeal presents a dispute over an easement to property in Hinds County, Mississippi, that has been magnified in an effort to turn it into a federal court lawsuit. The district court dismissed the plaintiffs' complaint and we affirm.

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

I

Almost eight years ago, the plaintiffs heard heavy equipment on their property and learned that the water association of which they were members, South Terry Water Association ("STWA"), was excavating a water line across their property. Although the plaintiffs had apparently executed an easement to STWA, the parties disagree as to whether the water line was placed on that easement. In any event, the plaintiffs allege that they suffered monetary loss to their property as a result of the excavation for the water line and that, in a continuation of their conflict with STWA, the water service to their home was terminated. They also complain that STWA has failed to comply with various corporate formalities in its operations since 1966, to the plaintiffs' detriment. After STWA initiated a state court action to reform the easement, the plaintiffs filed this suit in federal court seeking a writ of mandamus against the United States and monetary damages against the STWA and certain of its officers.

The district court dismissed the plaintiffs' complaint, and the plaintiffs have appealed.

II

In the trial court, the federal defendants¹ moved for dismissal of the plaintiffs' complaint, asserting that the district court lacked subject matter jurisdiction under 28 U.S.C. § 1361 because mandamus relief was not available under the plaintiffs' allegations. The plaintiffs opposed this motion, but the district court granted the motion, holding that it lacked subject matter jurisdiction to consider the claims asserted by the plaintiffs.

In considering the plaintiffs' challenge to the dismissal of their claims against the federal defendants, we must first review carefully the nature of the claims made against those defendants.

In their complaint, the plaintiffs asserted that they were entitled to mandamus requiring the federal defendants "to perform the public duties imposed on the agents by federal and state statute, and the regulations promulgated thereunder." The plaintiffs assert that, because one or more of the federal defendants lent money to STWA, it assumed a "public duty" to ensure that STWA complied with all applicable laws.² This request for

¹The style of the complaint lists the United States as the only federal defendant, but the text of the complaint includes allegations against the Farmers Home Administration and the United States Department of Agriculture. For brevity, we refer to all of these defendants as the "federal defendants."

²The plaintiffs alleged that the federal defendants failed to satisfy this duty in a variety of ways. For example, the plaintiffs alleged that the Mississippi officers of the federal defendants were negligent in failing to "enforce the federal and state statutes, and the regulations relative to the STWA"; that the officers of the Farmers Home Administration "negligently and

mandamus is the only claim asserted against these defendants, and the plaintiffs expressly disavow seeking any monetary damages from the federal defendants.

We review the district court's dismissal under Rule 12(b)(1) de novo. Benton v. United States, 960 F.2d 19, 21 (5th Cir. 1992). All of the allegations of the complaint are taken as true, and we will not affirm unless it appears beyond doubt that the plaintiffs can prove no set of facts in support of their claim that would entitle them to relief. Id.

Mandamus under section 1361 is only available in extraordinary situations where the plaintiff clearly asserts that the federal defendant has a ministerial duty that is "so plainly prescribed as to be free from doubt." Giddings v. Chandler, 979 F.2d 1104, 1108 (5th Cir. 1992). The duty must be owed to the plaintiff and must arise from another statute or from the United States Constitution. Id. Further, mandamus is "not available when review by other means is possible." Bywater Neighborhood Association v. Tricarico, 879 F.2d 165, 169 (5th Cir. 1989).

The Lewises have not alleged that the federal defendants had a nondiscretionary duty to oversee the installation of the water line, to require compliance with state corporate laws or to take

carelessly approved" a grant without properly investigating whether the STWA had properly elected officers; and that the officers of the Farmers Home Administration refused to take action to correct the allegedly "illegal" conduct of the STWA and were condescending and critical of the plaintiffs.

any other action. At best, their allegations of the existence of any particular duty are vague and conclusory and clearly insufficient to defeat any motion to dismiss. Moreover, the Lewises have not alleged that they have exhausted all other avenues of relief. Accordingly, taking the plaintiffs' allegations as true, it is clear beyond doubt that they have not alleged any set of facts in support of their claim that would entitle them to relief.

On appeal, the Lewises also argue that the district court had subject matter jurisdiction under 28 U.S.C. § 1331 based on their claim of an uncompensated taking in violation of the United States Constitution. This allegation, however, was made against the STWA defendants and not the federal defendants. Indeed, the plaintiffs specifically stated that they were not seeking monetary damages against the federal defendants. Further, because the Lewises have not sought compensation from the state for the alleged taking, their taking claim is not ripe, and the district court was without jurisdiction to consider it. Williamson County Regional Planning Commission v. Hamilton Bank, 473 U.S. 170 (1985); Samaad v. City of Dallas, 940 F.2d 925, 936 (5th Cir. 1991).

For these reasons, the district court properly granted the federal defendants' motion to dismiss and we affirm.

III

The Lewises next assert that the district court improperly dismissed their 42 U.S.C. § 1983 claims against the STWA

defendants.³ According to their brief on appeal, their section 1983 claim against the STWA defendants is based on the taking of property allegedly in violation of the United States Constitution. As stated supra, the plaintiffs have not alleged that they have unsuccessfully sought compensation from the state. Accordingly, their claim is not ripe, and the district court was without jurisdiction to consider this claim. Samaad v. City of Dallas, 940 F.2d 925 (5th Cir. 1992).⁴

³In connection with this dismissal, the Lewises have filed with this Court a motion to correct and modify the record on appeal by striking the response of defendants to plaintiffs' motion for summary judgment and the motion to dismiss filed by the state defendants, asserting that those documents were never served on counsel for the Lewises. The certificate of service contained on those documents reflects that a copy was served on the Lewises' counsel. Further, approximately two weeks after those documents were filed, the Lewises' counsel filed a motion to strike those particular documents, as well as several more filed by the state defendants at the same time on the ground that they were not filed timely. In the motion to strike, the Lewises specifically stated that the motion to dismiss was "redundant, immaterial . . . and grossly misstates the facts and the law" but said nothing to suggest that their counsel had not been properly served. The reference to the specific titles of the documents as well as to the substance of the motion to dismiss can only be interpreted to mean that the Lewises' counsel had a copy of those documents when he prepared his motion to strike. By order entered November 13, 1992, the district court denied the motion to strike, but the Lewises' counsel nonetheless failed to make any response or reply to the documents filed by the state defendants. The Lewises therefore had ample notice that the state defendants had moved to dismiss and had responded to the motion for summary judgment, and the Lewises' motion to correct or modify the record on appeal is denied.

⁴Having determined that the district court was without jurisdiction to consider this claim, we need not review the district court's dismissal for failure to state a claim.

IV

Finally, the Lewises argue that the district court should have retained jurisdiction of their state law claims under 28 U.S.C. § 1367(c). The decision whether the retain jurisdiction of state law claims after dismissing all of the federal claims rests with the sound discretion of the district court. Noble v. White, 996 F.2d 797 (5th Cir. 1993). The district court did not abuse its discretion and we affirm.

V

For the reasons set forth above, the judgment of the district court is

A F F I R M E D.