

NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

2007-5173

RUTH K. KITETA,

Plaintiff-Appellant,

v.

UNITED STATES,

Defendant-Appellee.

Ruth K. Kiteta, of New York, New York, pro se.

Robert J. Branman, Attorney, Tax Division, United States Department of Justice, of Washington, DC, for defendant-appellee. With him on the brief were Richard T. Morrison, Acting Assistant Attorney General, and Thomas J. Clark, Attorney.

Appealed from: United States Court of Federal Claims

Judge Thomas C. Wheeler

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2007-5173

RUTH K. KITETA

Plaintiff-Appellant,

v.

UNITED STATES,

Defendant-Appellee.

Appeal from the United States Court of Federal Claims in 06-CV-486, Judge Thomas C. Wheeler.

DECIDED: February 6, 2008

Before RADER, SCHALL , and PROST, Circuit Judges.

PER CURIAM.

DECISION

Ruth K. Kiteta appeals the Order of the United States Court of Federal Claims that dismissed her tax refund suit pursuant to Court of Federal Claims Rule (“RCFC”) 41(b) for failure to prosecute. Kiteta v. United States, No. 06-486T (Fed. Cl. July 20, 2007). We affirm.

DISCUSSION

I.

On June 27, 2006, Ms. Kiteta filed suit in the Court of Federal Claims seeking the refund of allegedly overpaid federal income taxes. On July 20, 2007, the Court of Federal Claims dismissed her suit pursuant to RCFC 41(b) for failure to prosecute. The court did so after Ms. Kiteta failed to respond to the government's motion for summary judgment and the court's order to show cause why her suit should not be dismissed for failure to prosecute. Id.

II.

We have jurisdiction over Ms. Kiteta's appeal pursuant to 28 U.S.C. §1295(a)(3). Pursuant to RCFC 41(b), the Court of Federal Claims may dismiss a case on its own motion "[f]or failure of the plaintiff to prosecute or to comply with these rules or any order of the court." We review a dismissal pursuant to RCFC 41(b) for an abuse of discretion. Kadin Corp. v. United States, 782 F.2d 175, 176 (Fed. Cir. 1986).

We see no abuse of discretion by the Court of Federal Claims in this case. The government moved for summary judgment on April 5, 2007. On July 3, 2007, after Ms. Kiteta had failed to respond to the motion, the court issued an order to show cause why Ms. Kiteta's suit should not be dismissed for failure to prosecute. Ms. Kiteta was required to respond to the show cause order on or before July 17, 2007. When she failed to do so, the court dismissed her suit. Under these circumstances, the court did not abuse its discretion in dismissing Ms. Kiteta's suit. Id. (RCFC 41(b) dismissal for untimely response to an order to show cause was within court's discretion).

On appeal, Ms. Kiteta states that she did not respond to the summary judgment motion and the order to show cause because she suffers from what she describes as “a seizure brain illness” and because, during the relevant period of time, she was experiencing the side effects of certain medication she was taking. In making this assertion, she relies upon documents that she attempted to file with the Court of Federal Claims on July 30, 2007, after her suit was dismissed. The court did not accept the documents for filing, and they are thus not properly part of the record on appeal. However, even assuming the documents were properly before the Court of Federal Claims and this court on appeal, they do not support Ms. Kiteta’s claim that she was unable to respond to the summary judgment motion and the order to show cause. The documents do not constitute evidence establishing that, during the period April 5, 2007, through July 17, 2007, Ms. Kiteta was incapacitated to such an extent that she could not respond to the summary judgment motion or the order to show cause or could not request additional time for doing so.

For the foregoing reasons, the Order of the Court of Federal Claims dismissing Ms. Kiteta’s tax refund suit is affirmed.