NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted May 2, 2024*
Decided May 8, 2024

Before

DIANE S. SYKES, *Chief Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

JOSHUA P. KOLAR, *Circuit Judge*

No. 23-2415

ROBERT H. ALAND,
Plaintiff-Appellant,

v.

UNITED STATES DEPARTMENT OF THE INTERIOR, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 22-cv-5821

Joan B. Gottschall,
Judge.

ORDER

Robert Aland sued the U.S. Department of the Interior, its Secretary Deb Haaland, the U.S. Fish and Wildlife Service (FWS), and its Director Martha Williams, alleging that Williams does not meet the qualifications under 16 U.S.C. § 742b(b) to hold

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* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

her office. Aland sought a declaratory judgment, *see* 28 U.S.C. §§ 2201-02, that Williams illegally holds her office. The district judge granted the defendants' motion to dismiss Aland's complaint for lack of subject-matter jurisdiction, and Aland appeals. Because the judge correctly ruled that Aland lacks a private right of action, we affirm.

In his complaint, Aland, an environmentalist and retired lawyer, alleged that Williams holds the office of FWS Director in violation of § 742b(b). That statute, which created the position, states that "[n]o individual may be appointed as the Director unless he is, *by reason of scientific education and experience*, knowledgeable in the principles of fisheries and wildlife management." 16 U.S.C. § 742b(b) (emphasis added). Aland asserts that Williams, who is a lawyer, lacks scientific education and experience, and her legal education and experience do not meet the statute's requirement. The defendants moved to dismiss Aland's complaint for lack of subject-matter jurisdiction—arguing that Aland lacked standing and he lacked any federal cause of action—and for failure to state a claim. *See* FED. R. CIV. P. 12(b)(1), (b)(6).

The district judge granted the defendants' motion to dismiss for lack of subject-matter jurisdiction. The judge expressed skepticism that Aland had standing but declined to decide, finding it clear that he had no federal claim: although Aland alleged the violation of a federal statute, 16 U.S.C. § 742b(b), he also needed a federal cause of action for jurisdiction to exist under 28 U.S.C. § 1331. And neither § 742b(b), the Declaratory Judgment Act, nor § 1331 itself provided that cause of action. The judge relied on our decision in *E. Cent. Ill. Pipe Trades Health & Welfare Fund v. Prather Plumbing & Heating, Inc.*, 3 F.4th 954 (7th Cir. 2021) to support this reasoning. The judge dismissed the suit and gave Aland leave to file an amended complaint.

Instead, Aland filed several motions. First, Aland asked the judge to reconsider the dismissal, but she declined. Aland then asked the judge to certify the jurisdictional question for an interlocutory appeal. *See* 28 U.S.C. § 1292(b). The judge refused but allowed Aland the opportunity to file an amended complaint or a second motion for reconsideration based on the recent decision in *Axon Enter., Inc. v. Fed. Trade Comm'n*, 598 U.S. 175 (2023) (holding that district court had federal-question jurisdiction over constitutional challenges to tenure protection for agencies' administrative law judges). Aland unsuccessfully moved for reconsideration again. Because Aland had advised the judge that he wished to stand on his complaint's jurisdictional allegations, the judge dismissed his suit and entered final judgment. Aland appeals the dismissal, which we review de novo. *Sherwood v. Marchiori*, 76 F.4th 688, 693 (7th Cir. 2023).

A glance at the complaint reveals multiple jurisdictional problems with Aland's federal suit. One is lack of Article III standing: Aland did not demonstrate a concrete and particularized injury that makes him individually suited to bring this sort of claim. *See TransUnion LLC v. Ramirez,* 594 U.S. 413, 423–31 (2021). Another, as the district judge concluded, is that Aland lacks a claim arising under federal law. (As ever, the district judge had leeway to choose among threshold grounds for dismissing the case. *See Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 431 (2007)).

Aland contests the district judge's conclusion, but his arguments are unavailing. First, suggesting that a federal court has jurisdiction under § 1331 whenever the plaintiff alleges the violation of a federal statute, Aland argues that the district judge misinterpreted *Prather Plumbing* and created an obstacle to subject-matter jurisdiction that contravenes the purpose of § 1331. But the judge correctly applied the law. We have said repeatedly that § 1331 "does not itself provide a right of action." *Prather Plumbing & Heating, Inc.*, 3 F.4th at 961 (citing *Int'l Union of Operating Eng'rs, Loc. 150, AFL-CIO v. Ward*, 563 F.3d 276, 281 (7th Cir. 2009)); *see also Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368, 377 (2012). When the substantive basis of a claim, like Aland's, is a federal statute, the "general grant of federal question jurisdiction contained in § 1331 … is not enough" to secure jurisdiction; there must be a right to sue to enforce the statute. *See Int'l Union of Operating Eng'rs*, 563 F.3d, 281–82 (citing *Nat'l R.R. Passenger Corp. v. Nat'l Ass'n of R.R. Passengers*, 414 U.S. 453, 456 (1974)). Therefore, even though Aland states that his claim alleging violations of § 742b(b) "arises squarely under federal law," that alone is insufficient. "[T]he fact that a federal statute has been violated and some person harmed does not automatically give rise to a private cause of action in favor of that person." *Cannon v. Univ. of Chi.*, 441 U.S. 677, 688 (1979). Instead, "private rights of action to enforce federal law must be created by Congress." *Alexander v. Sandoval*, 532 U.S. 275, 286. (2001).

Therefore, we must determine whether Congress intended to create a cause of action to enforce § 742b(b). *See Touche Ross & Co. v. Redington*, 442 U.S. 560, 568 (1979). Our analysis begins with the language of the statute. *See id.* By its terms, § 742b(b) establishes the FWS within the Department of the Interior; creates the position of Director of the FWS; grants the President the power to appoint the Director with the advice and consent of the Senate; and sets forth the requirements to be the Director. *See* 16 U.S.C. § 742b(b). The statute does not purport to create a right to sue to enforce its provisions; indeed, it does not even prohibit any conduct. *See id.*; *see also Touche Ross & Co.*, 442 U.S. at 569. Aland acknowledged as much in the district court.

Nor can a private right of action be implied here. Aland does not point to anything in the language of § 742b(b), the statutory structure, or some other source that suggests congressional intent to create a private cause of action. *See Thompson v. Thompson*, 484 U.S. 174, 179–80 (1988) (explaining how to identify congressional intent to create implied cause of action). And when Congress does not impliedly or expressly confer a cause of action to enforce a statute, "courts may not create one" even if, as Aland contends, doing so would be desirable as a policy matter. *Alexander*, 532 U.S. at 286–87 (collecting cases).

Finally, Aland suggests that § 742b(b), works in combination with the Declaratory Judgment Act to create a right of action. But the operation of the Act is procedural only—it does not impliedly repeal or modify jurisdictional requirements or create a right of action. *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 671–72 (1950); *see also Alarm Detection Sys., Inc. v. Orland Fire Prot. Dist.*, 929 F.3d 865, 871 n.2 (7th Cir. 2019) (declaratory relief requires predicate cause of action). In arguing otherwise, Aland cites our decision in *Union Pacific Railroad Co. v. Regional Transportation Authority*, 74 F.4th 884 (7th Cir. 2023), but that case illustrates why his argument is incorrect. A railroad company sought a declaration that it could cease providing rail services. We noted that the district court had subject-matter jurisdiction under § 1331 because 49 U.S.C. §§ 11704(b) and (c)(1) expressly create a private right to sue. *Union Pac. R.R. Co.*, 74 F.4th at 886; *see also Mims*, 565 U.S. at 376–77 (jurisdiction under § 1331 based on claim created by 47 U.S.C. § 227(b)(3)). The Declaratory Judgment Act was irrelevant to the question of jurisdiction. The same is true here. Nothing authorizes a federal court to hear the claim Aland brings.

We have considered Aland's additional arguments and his supplemental filings since the close of briefing; none merits further discussion.

AFFIRMED