

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

THERESA WRIGHT and JEROME  
WRIGHT, JR.,

PLAINTIFFS,

v.

UNITED STATES OF AMERICA,

DEFENDANT.

CIVIL ACTION

No. 06-5162

**MEMORANDUM/ORDER**

April 3, 2007

Plaintiffs Theresa Wright and her husband Jerome Wright, Jr. bring this action against the United States of America under the Federal Tort Claims Act (“FTCA”), codified at 28 U.S.C. §§ 2671-2680. In their complaint, plaintiffs allege that, on November 27, 2004, Theresa Wright was injured in a motor vehicle collision with an employee of the United States Postal Service (“USPS”). Docket # 1 at ¶ 5. Plaintiffs further allege that (1) the accident was caused by “the carelessness, recklessness and negligence of the defendant, United States of America, acting by and through its employee,” *id.* at ¶ 8; (2) the employee was “acting within the course and scope of her employment, in her capacity as an employee of the [USPS], and operating a vehicle owned by the [USPS],” *id.* at ¶¶ 5-7; and (3) the accident caused Jerome Wright, Jr. to be “deprived of the services, society, companionship, and consortium of his wife,” *id.* at ¶

19. The United States now moves this court to dismiss plaintiffs' action pursuant to Federal Rule of Civil Procedure 12(b)(1) (lack of subject matter jurisdiction). Docket # 11 at 3-4. For the reasons given below, the court will grant the motion.

### **A. The Federal Tort Claims Act**

“[A]n action against the United States under the FTCA provides the exclusive remedy for nonconstitutional torts based on the ‘negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment.’” *Couden v. Duffy*, 446 F.3d 483, 498 n.10 (3d Cir. 2006) (quoting 28 U.S.C. § 2679(b)(1)). However, as the Supreme Court has noted, “[t]he FTCA bars claimants from bringing suit in federal court until they have exhausted their administrative remedies.” *McNeil v. United States*, 508 U.S. 106, 113 (1993).

Thus, before bringing suit under the FTCA, a plaintiff must (1) present an administrative claim to the appropriate Federal agency within two years after the claim accrues and (2) allow the agency six months to consider this claim. *See* 28 U.S.C. § 2401(b) (providing that “[a] tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented”); *Id.* at § 2675 (“The failure of an agency to make final

disposition of a claim within six months after it is filed shall . . . be deemed a final denial of the claim for purposes of this section.”); *Pascale v. United States*, 998 F.2d 186, 192-93 (3d Cir. 1993) (“As long as a claimant files an administrative claim within two years of its accrual and the agency does not send notice of final denial, the claimant may wait indefinitely before filing suit.”). This requirement applies to each FTCA claimant, including a spouse claiming for loss of consortium. *See, e.g., Pennsylvania v. National Ass'n of Flood Insurers*, 520 F.2d 11, 23 (3d Cir. 1975) (“[B]efore the jurisdiction of the courts may be invoked, each [FTCA] claimant must submit an independent and separate claim to the appropriate administrative agency for review and possible settlement.”); *McNiff v. Asset Management Specialists, Inc.*, 337 F.Supp.2d 685, 692 (E.D.Pa. 2004) (“The jurisdictional requirements of the Federal Tort Claims Act are not met where an individual suing for loss of consortium fails to file his or her own separate administrative claim, even if the spouse has already filed an administrative claim.”).

## **B. Standard of Review**

Rule 12(b)(1) challenges can take the form of a facial or factual attack to jurisdiction.

Facial attacks . . . contest the sufficiency of the pleadings, and the trial court must accept the complaint's allegations as true. In contrast, a trial court considering a factual attack accords plaintiff's allegations no presumption of truth. In a factual attack, the court must weigh the evidence relating to jurisdiction, with discretion to allow affidavits, documents, and even limited evidentiary hearings.

*Turicentro, S.A. v. American Airlines Inc.*, 303 F.3d 293, 300 n.4 (3d Cir. 2002) (internal citation omitted).

The United States bases its 12(b)(1) motion on “the failure of the plaintiffs to exhaust administrative remedies as required by the FTCA.” Docket # 11 at 2. This amounts to a factual attack on subject matter jurisdiction insofar it “concerns not an alleged pleading deficiency, but rather the actual failure of [plaintiffs] . . . to comport with the jurisdictional prerequisites” of the FTCA. *United States ex rel. Atkinson v. Pennsylvania Shipbuilding Co.*, 473 F.3d 506, 514 (3d Cir. 2007). Accordingly, I evaluate the United States’ motion to dismiss on the basis of all the evidence before me, and do not accord plaintiffs’ allegations any presumption of truth.

### **C. Discussion**

Theresa Wright’s accident occurred on November 27, 2004. Therefore, under the FTCA, plaintiffs had until November 27, 2006 to submit their administrative claims to the USPS.

The United States alleges that Jerome Wright, Jr. “never filed an administrative claim and, as over two years has elapsed since the date of the accident, his claim is now time barred.” *Id.* In support of this allegation, the United States has submitted a declaration from Richard Tezner, who is responsible for processing tort and accident claims made against the USPS—as well as maintaining the records of such claims—in

the district where the accident occurred. Tezner Decl., Exh. A, Docket # 11 at ¶¶ 2-3. Tezner declares that he has “reviewed the tort claim files” in his custody, *id.* at ¶ 4, and found “no record of Jerome Wright, Jr. having filed an administrative claim with the [USPS],” *id.* at ¶ 6. Plaintiffs offer no evidence to the contrary. Accordingly, I conclude that Jerome Wright, Jr. has failed to exhaust his administrative remedies, and that this court has no subject matter jurisdiction over his claim.

Plaintiffs assert that Theresa Wright’s claim “was presented to the [USPS] . . . more than six months before institution of this action” and that the USPS has “failed to make a final disposition within that time.” Compl. ¶ 4. However, the United States has offered evidence establishing that Theresa Wright submitted her claim on October 31, 2006, Exh. B, Docket # 11 at 1 (letter submitting claim to Tezner); and that the USPS filed her claim on November 7, 2006. Based on a filing date of November 7, 2006, the USPS has until May 7, 2007 to evaluate Theresa Wright’s administrative claim.<sup>1</sup> Thus, the FTCA bars Theresa Wright from bringing a civil suit on this claim until the earlier of (1) May 7, 2007 or (2) such time as her administrative claim has been “ finally denied by

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<sup>1</sup> Plaintiffs do not challenge the evidence presented by the United States. Instead, they contend that “the government’s argument for dismissal need be considered only after the parties have seriously explored settlement of the underlying claims at issue.” Docket # 12 at 2. However, federal courts—being courts of limited jurisdiction—have an obligation to (1) inquire into whether they possess subject matter jurisdiction over a plaintiff’s claim and (2) dismiss that claim in the event that jurisdiction does not exist. *See, e.g., Desi’s Pizza, Inc. v. City of Wilkes-Barre*, 321 F.3d 411, 420 (3d Cir. 2003) (making this observation and citing other cases). Thus, the issue of subject matter jurisdiction is always appropriately before this court.

the agency in writing and sent by certified or registered mail.” 28 U.S.C. § 2675.

Because Wright filed her FTCA before May 7, 2007—and before the USPS denied her administrative claim—I conclude that her FTCA claim is not properly before this court.

### **Conclusion**

And now, upon consideration of the United States’s Motion for Dismissal for Lack of Subject Matter Jurisdiction (Docket # 11), it is hereby **ORDERED** that:

- (1) The United States’s Motion for Dismissal for Lack of Subject Matter Jurisdiction (Docket # 11) is **GRANTED**.
- (2) The claims of plaintiff Theresa Wright are **DISMISSED WITHOUT PREJUDICE**.
- (3) The claims of plaintiff Jerome Wright, Jr. are **DISMISSED WITH PREJUDICE**.

BY THE COURT:

/s/ Louis H. Pollak

Pollak, J.