

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

MORLAI YILLAH and	:	CIVIL ACTION
SHIRLEY YILLAH, H/W,	:	
	:	NO. 98-2842
Plaintiffs,	:	
	:	
v.	:	
	:	
UNITED STATES OF AMERICA,	:	
ALBAN F. VENTOUR, and	:	
ALDEN R. COOPER,	:	
	:	
Defendants.	:	

MEMORANDUM

BUCKWALTER, J.

September 24, 1998

Presently before this Court is Defendant United States of America's Motion to Dismiss (Docket No. 4) pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6). For the reasons discussed below, Defendant's motion is GRANTED with prejudice.

I. BACKGROUND

Plaintiffs Morlai Yillah and Shirley Yillah brought this action against Defendants United States of America, Alban F. Ventour, and Alden R. Cooper pursuant to the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 2671-2680. "Alden R. Cooper" is apparently a fictitious

name for Mr. Ventour, who is a United States Department of Justice, Drug Enforcement Administration (“DEA”) Task Force Officer. See Def. Mem. at 1, 5.¹

On or about June 20, 1996, Mr. Ventour was operating a vehicle owned by the DEA while allegedly acting within the scope of his employment. See Compl. ¶¶ 3-4. While turning onto 30th Street from John F. Kennedy Boulevard in Philadelphia, Pennsylvania, Mr. Ventour struck a vehicle driven by Mr. Yillah. See id. Mr. Yillah alleges that, as a result of Mr. Ventour’s negligence in operating his vehicle, he suffered severe and permanent injuries. See id. ¶¶ 4-7. Mr. Yillah’s wife, Shirley Yillah, although not a participant in the accident itself, alleges a loss of consortium claim arising from the same occurrence. See id. ¶¶ 11-12.

Mr. Yillah, through retained counsel, sent notice of his potential claim to the DEA by letter dated November 25, 1996, in which claim forms necessary for agency presentment were requested. See Pl. Mem. (Exhibit B thereto). The claim form was sent to the DEA Office of General Counsel on January 8, 1997, and a follow-up letter dated February 20, 1997 was sent inquiring as to the status of the case. See Compl. ¶ 1; Pl. Mem. (Exhibit C thereto). No mention of Mrs. Yillah, her alleged injuries, or her potential claim was ever made in any of these correspondences.

The DEA Office of Chief Counsel acknowledged receipt of the claim form in a letter dated February 25, 1997. See Def. Mem. (Exhibit 3 thereto). The letter further stated:

1. The United States Code provides that in a civil action brought pursuant to the FTCA, “the United States shall be substituted as the party defendant.” 28 U.S.C. § 2679(d)(1). Although Plaintiffs have named the United States as a party defendant, they have apparently neglected to remove the individual defendants from the caption. As such, the Government’s motion will be considered to be on behalf of all the named defendants.

The administrative claim of Mr. Yillah is hereby denied. If you are dissatisfied with the denial of this claim, suit may be filed in the appropriate United States District Court not later than six months after the date of this letter.

Id.; see also Pl. Mem. (Exhibit D thereto). This letter was sent to Mr. Yillah's counsel by certified mail, as required under the applicable regulations. See 28 C.F.R. § 14.9(a). Mr. and Mrs. Yillah subsequently filed the instant action in this Court on June 2, 1998.

II. DISCUSSION

A. Standard of Review

Defendant brings this motion by way of Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction, and 12(b)(6) for failure to state a claim upon which relief can be granted. "When a motion under Rule 12 is based on more than one ground, the court should consider the 12(b)(1) challenge first because if it must dismiss the complaint for lack of subject matter jurisdiction, all other defenses and objections become moot." In re Corestates Trust Fee Litig., 837 F. Supp. 104, 105 (E.D. Pa. 1993) (Buckwalter, J.), aff'd, 39 F.3d 61 (3d Cir. 1994). Accord Bell v. Hood, 327 U.S. 678, 682 (1946) ("Whether the complaint states a cause of action on which relief could be granted is a question of law and just as issues of fact it must be decided after and not before the court has assumed jurisdiction over the controversy."); Leuthe v. Office of Fin. Inst. Adjudication, 977 F. Supp. 357, 359 (E.D. Pa. 1997) (Joyner, J.). As the basis for this Court's decision is that it lacks subject matter jurisdiction over the instant action, it is unnecessary to reach the merits of the Government's 12(b)(6) challenge.

In ruling on a motion to dismiss pursuant to Rule 12(b)(1), "a district court is not limited to the face of the pleadings. Rather, as long as the parties are given an opportunity to

contest the existence of federal jurisdiction, the court ‘may inquire, by affidavits or otherwise, into the facts as they exist.’” Armstrong World Indus., Inc. v. Adams, 961 F.2d 405, 410 n.10 (3d Cir. 1992) (quoting Land v. Dollar, 330 U.S. 731, 735 n.4 (1947)) (citations omitted).

B. Dismissal for Failure to Exhaust Administrative Remedies

The FTCA is the exclusive remedy for claims sounding in tort against federal employees acting within the scope of their employment. See 28 U.S.C. § 2679(b)(1). It operates as a limited and conditional waiver of the federal government’s sovereign immunity by providing for consent to suit in federal district court. See United States v. Orleans, 425 U.S. 807, 813 (1976); see also 28 U.S.C. § 1346(b).

The Government maintains that this Court should dismiss Plaintiffs’ claims in their entirety for failure to exhaust their administrative remedies. Procedurally, the FTCA requires plaintiffs to first present an administrative claim to the responsible agency prior to the initiation of suit:

An action shall not be instituted upon a claim against the United States for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail.

28 U.S.C. § 2675(a). Another provision details the applicable statute of limitations that serves to confer a federal district court with subject matter jurisdiction over a plaintiff’s claims:

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.

28 U.S.C. § 2401(b).

Plaintiffs' failure to adhere to the time limitations set forth in the FTCA deprives this Court of subject matter jurisdiction over their claims. "The filing of an administrative claim is a jurisdictional requirement and an absolute prerequisite to maintaining a civil action against the government under the FTCA." Valenzuela v. Thrifty Rent-A-Car, No. CIV. A. 94-7752, 1995 WL 708109, at *3 (E.D. Pa. Nov. 20, 1995) (Buckwalter, J.); accord Deutsch v. United States, 67 F.3d 1080, 1091 (3d Cir. 1995). Because the FTCA "represents a waiver of sovereign immunity, its provisions should be strictly construed." Pascale v. United States, 998 F.2d 186, 193 (3d Cir. 1993).

1. Plaintiff Morlai Yillah

Mr. Yillah's claim accrued on or about June 20, 1996 when the motor vehicle accident took place. By January 8, 1997 (well within the two-year limitations period established by 28 U.S.C. § 2401(b)), Mr. Yillah presented notice of his potential claim to the responsible agency, the DEA, in writing. Although the claim was acknowledged and denied by the DEA on February 25, 1997, Mr. Yillah waited in excess of fifteen months before filing this lawsuit. By the plain terms of the statute, this Court is unable to entertain an action commenced more than six months after the date of the final denial.

In response, Mr. Yillah pleads equitable relief from the FTCA's strict time limitations. Principally, he contends that, because the denial letter utilized "permissive" rather than "mandatory" language in informing Mr. Yillah of his statutory rights, Mr. Yillah's counsel was inadequately notified "of the absolute nature of the foreshortened limitations period." Pl. Mem. at 4. Counsel apparently relied on the Pennsylvania two-year statute of limitations applicable to personal injury claims in filing this action, and now seeks equitable tolling of the six-month limitations period. See id. at 3.

The Court finds implausible counsel's interpretation of the language in the denial letter. At least one appellate court has held the very same "permissive" language to constitute notice of a final denial. See Claremont Aircraft, Inc. v. United States, 420 F.2d 896, 897-98 (9th Cir. 1970). Federal regulations defining "final denial" also expressly utilize the same "permissive" language found in Mr. Yillah's denial letter. See 28 C.F.R. § 14.9 (a). Moreover, "[f]ederal courts invoke the doctrine of equitable tolling 'only sparingly,' and will not toll a statute because of 'what is at best a garden variety claim of excusable neglect.'" United States v. Midgley, 142 F.3d 174, 179 (3d Cir. 1998) (quoting Irwin v. Department of Veterans Affairs, 498 U.S. 89, 96 (1990)).

Even a cursory reading of the relevant statutory provisions should have alerted counsel to inquire with the DEA Office of Chief Counsel as to the actual status of the claim and whether Mr. Yillah's statutory rights were being affected. This should have been especially apparent as the denial letter was the only communication sent by certified mail to Mr. Yillah's counsel from the DEA. "It is no doubt true that there are cases in which a litigant proceeding without counsel may make a fatal procedural error, but the risk that a lawyer will be unable to

understand the exhaustion requirement is virtually nonexistent.” McNeil v. United States, 508 U.S. 106, 113 (1993).

Accordingly, Mr. Yillah’s claim is dismissed in its entirety for lack of subject matter jurisdiction.

2. Plaintiff Shirley Yillah

Mrs. Yillah’s claim, which wholly derives from her husband’s claim, also accrued on or about June 20, 1996. However, her failure to present any written notice of her claim to the DEA within the two-year limitations period set forth in 28 U.S.C. § 2401(b) is completely dispositive of her claim. The Government has confirmed this by presenting the Declaration of Bettie E. Goldman, who attests to an unsuccessful search of the DEA’s FTCA claim records of Plaintiff Shirley Yillah. See Def. Mem. (Exhibit 2 thereto). The administrative procedures outlined in 28 U.S.C. § 2675(a) must be pursued separately with respect to each claim in order for this Court to have subject matter jurisdiction over the claim. See McDevitt v. United States Postal Serv., 963 F. Supp. 482, 484 (E.D. Pa. 1997) (Joyner, J.); Ferguson v. United States, 793 F. Supp. 107, 110 (E.D. Pa. 1992) (Bartle, J.); Murray v. United States, 604 F. Supp. 444, 446 (E.D. Pa. 1985) (Shapiro, J.).

Accordingly, Mrs. Yillah’s claim is likewise dismissed in its entirety for lack of subject matter jurisdiction.

III. CONCLUSION

For the foregoing reasons, this Court lacks subject matter jurisdiction over Plaintiffs' claims and therefore, Defendant's motion is GRANTED with prejudice. An appropriate order follows.

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	:	
v.	:	
	:	
UNITED STATES OF AMERICA,	:	
ALBAN F. VENTOUR, and	:	
ALDEN R. COOPER,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 24th day of September 1998, upon consideration of Defendant United States of America's Motion to Dismiss (Docket No. 4) and Plaintiffs' response thereto (Docket No. 5), it is hereby ORDERED that Defendant's motion is GRANTED, in accordance with the accompanying memorandum. The claims of Plaintiffs Morlai Yillah and Shirley Yillah are dismissed in their entirety with prejudice.

The Clerk of Court shall mark this case CLOSED.

BY THE COURT:

RONALD L. BUCKWALTER, J.