

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

BARBARA DOLAN et al.,  
Plaintiffs

CIVIL ACTION

v.

THE UNITED STATES POSTAL  
SERVICE et al.  
Defendants

NO. 02-7891

MEMORANDUM and ORDER

McLaughlin, J.

March 17, 2003

The plaintiffs, Barbara and Michael Dolan have **sued** the United States and the United States **Postal** Service ("USPS") under the Federal Tort Claims Act ("FTCA"). Barbara Dolan alleges that she suffered injuries when she tripped and fell on mail that was **negligently** placed on a porch by a USPS employee. Her husband, Michael Dolan, alleges that he has been deprived **of** the consortium of his **wife** because of her injuries. Pending before the Court is the defendants' motion to dismiss under Federal Rule of Civil Procedure 12(b)(1) **for** lack of subject-matter jurisdiction **or** in the alternative, for summary judgment. The Court will grant the motion.

The facts of this case, in the light most favorable to **the** plaintiffs, are as follows.' On August 25, 2001, Mrs. Dolan was **on** the premises **of** 308 Tyson Avenue. **An employee** of the USPS placed letters, packages, and periodicals on the porch **of** the residence. **Mrs.** Dolan slipped and **fell** on the mail. **As a** result **of** the fall, Mrs. Dolan suffered injuries. Compl. at ¶¶ 7-8.

The plaintiffs concede in their opposition to the defendants' motion that the USPS is not a proper defendant under the FTCA. See Pl. Opp'n at 9. With respect to Mrs. Dolan's suit against the **United** States, the question is whether leaving the **mail** on the porch was a negligent transmission of the mail within the meaning of the FTCA exception that bars suits arising out **of** negligent transmission of the mail.

As **a** general rule, the United States cannot be sued unless Congress explicitly waives its sovereign immunity. The question of whether the government enjoys sovereign immunity **is** one **of** subject-matter jurisdiction. United States v. Bein, 214 F.3d 408, 412 (3d Cir. 2000).

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<sup>1</sup> In analyzing a motion to dismiss for lack of subject-matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1), the Court must "treat the allegations of the complaint as true and afford the plaintiff(s) the **favorable** inferences to be drawn from the complaint." NE Hub Partners, L.P. v. CNG Transmission Corp., 239 F.3d 333, 341 (3d Cir. 2001) (citations omitted).

The **FTCA** waives the government's sovereign immunity when government employees act negligently within the scope of their official duties. 28 U.S.C. § 1346(b); see Cestonaro v. United States, 211 F.3d 749, 753 (3d Cir. 2000). There are several enumerated exceptions to the FTCA's waiver of sovereign immunity that are listed in 28 U.S.C. § 2680. The exception relevant **in** the present **case is** 28 U.S.C. § 2860(b), which states that the FTCA does not apply to "any claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matters."

In construing an exception to the FTCA's waiver of sovereign immunity, the proper role for a court is "to identify those circumstances which are within the words and reasons of the exception - no less and no more." Kosak v. United States, 465 U.S. 848, 854 n.9 (1984). The starting point for interpreting an exception to the **FTCA** is the actual language of the statute. After determining what the language at issue means, a court may also examine: (1) the context of the exception; (2) the legislative history of the exception; and (3) Congress's general purposes in creating exceptions to the FTCA. The general purposes of **the** FTCA exceptions are **to** ensure that certain governmental activities not be disrupted **by** the threat of damages suits, to avoid exposure of the United States to excessive or

fraudulent claims, and to not extend the **FTCA** to suits for which adequate remedies are already available. See id. at 853, 855-56, 858 & n.16.

Evidence outside of the actual language **of** an exception to the FTCA is not used to define the exception. Instead, a court may look to outside evidence to ensure that a court's construction **of** an exception **is** not undercut by any indication that Congress intended the **exception** to apply more narrowly. See id. at 858 n.16.

Whether the plaintiffs' suit is barred turns **on** the meaning of "negligent transmission" within the meaning **of** Section 2680(b). "Transmission" is the "act, process or instance **of** transmitting." Webster's Ninth New Collegiate Dictionary at 1254. "Transmit" means "to send or convey from one person **or** place to another." See Black's Law Dictionary 1505 (7th ed. 1999). In the context of delivering letters or postal matter, the process **of** conveying from one person or place to another starts when **the** USPS receives the letter **or** postal matter and ends when **the** USPS **delivers** the letter or postal matter.

Negligently placing mail on a porch falls squarely within the plain meaning of "negligent transmission" as that term **is** used in Section 2680(b). Transmission of the mail was not complete until the USPS employee placed the mail on the porch.

The plaintiff's accident arose out of the USPS employee's alleged negligence in placing the mail on the porch. As such, Mrs. Dolan's suit is barred by Section 2680(b) because it arose out of negligent transmission of the mail.

There is no indication that Congress intended "negligent transmission" to be read more narrowly. The context of "negligent transmission" is that it is part of a statutory provision eliminating the government's waiver of sovereign immunity for conduct related to certain postal operations. Nothing about placing "negligent transmission" within an exception to the FTCA's waiver of sovereign immunity for conduct related to certain postal operations undercuts the Court's interpretation of Section 2680(b).

As noted by other courts, the legislative history of Section 2680(b) shows that the purpose of the section was to prevent the courts from dealing with a landslide of lawsuits generated from unavoidable mishaps incident to the ordinary, accepted operations of the USPS. See Suchomaicz v. United States, 465 F. Supp. 474, 476 (E.D. Pa. 1979); Birnbaum v. United States, 436 F. Supp. 967, 974 (E.D.N.Y. 1977); see also Hearings Before Senate Committee on Judiciary on S. 2690, 76th Congress, 3d Sess. 38 (1940) (testimony of A. Holtzoff, Special Assistant to the Attorney General of the United States). There is nothing

**out** of the ordinary about a USPS employee delivering the mail or placing the mail on the porch instead of in the mailbox. **Mrs.** Dolan's accident was incident to the USPS employee placing the mail on the porch. Because the USPS employees do not monitor **how** mail they deliver **is** retrieved by patrons of the USPS, mishaps related to the retrieval of the mail are unavoidable.

Finding Mrs. **Dolan's** suit to be barred by **Section** 2680(b) is consistent with **Congress's** general **purposes** in creating **FTCA** exceptions. Allowing the government to **be** held liable for accidents stemming from the delivery **of** the mail **would** pose **a** threat **of** disrupting the governmental activity of ensuring that the millions of pieces **of** mail handled **by** the USPS are delivered efficiently. The type **of claim** brought **by** the plaintiff also has the potential to expose the United States **to** liability for excessive **or** fraudulent claims as there are likely to **be no** witnesses to observe the events after the completion of delivery.

The plaintiffs **have not** cited, **nor** is the Court aware **of**, any cases interpreting Section 2680(b) to allow the type of claim brought by Mrs. Dolan. The **only** cases cited by the parties interpreting **Section** 2680(b) **in** the context of a person suing the government because **of** injuries suffered as **a** result of slipping on negligently placed letters **or** postal matter are Bono v. United

States, 145 F. Supp. 2d 441 (D.N.J.2001) and Hunt v. United States, No. 01-2462, 2002 WL 553736 (D. Kan. Apr. 4, 2002). In both cases, the **courts** interpreted Section 2680(b) to preclude the type of suit brought by the present plaintiff. The Court agrees with these other courts that the **type** of claim brought by Mrs. Dolan is barred under Section 2680(b) because the claim arose out of negligent transmission of the mail.

The plaintiffs' reliance on Suchomaicz v. United States, 465 F. Supp. 474 (E.D. Pa. 1979), for a more restrictive interpretation of "negligent transmission" is misplaced. In Suchomaicz, six children were **burned** by firecracker assembly kits delivered by the USPS after the government had obtained several injunctions against the maker of the firecracker assembly kits enjoining him from sending the kits through the mail. The Suchomaicz plaintiffs' claim was not barred by the Section 2680(b) exception because it was an allegation that the USPS was negligent **in** not failing to stop the mail altogether, and not a claim that the USPS was negligent in the transmission of the mail. Id. at 476-77.

Unlike the plaintiffs in Suchomaicz, the plaintiffs in the present case are not arguing that the USPS was negligent in failing to stop the **mail from being delivered**. Instead, the plaintiffs argue that the USPS was **negligent** in how it delivered

the mail. Negligent delivery of the mail falls within the definition of negligent transmission of the mail.

Despite the plaintiffs' assertions to the contrary, construing Section 2680(b) to bar the plaintiffs' suit does not result in the purposes of the FTCA being frustrated. In Kosak, the Supreme Court noted that one of the principal purposes of the FTCA was to waive sovereign immunity for injuries resulting from automobile accidents in which employees of the USPS were at fault. To ensure that it did not bar a suit by a person injured in an auto accident where a USPS employee was at fault, Congress carefully delineated what type of suit Section 2680(b) barred. Because the negligent handling of motor vehicles was **not** listed in Section 2680(b), the Supreme Court reasoned that **by** implication a suit based on negligent handling **of** a motor vehicle was not excepted. Kosak, 465 U.S. at 855. Negligent transmission of the mail, as opposed to negligent handling of a motor vehicle, was explicitly included in Section 2680(b). As negligent transmission of the mail includes negligent delivery of the mail, the plaintiffs' suit is barred by the words of **Section 2680(b)**.

Mr. Dolan's loss of consortium claim is wholly **derivative from his wife's tort claim**. Because Barbara Dolan's claim is barred, Michael Dolan's wholly derivative loss of

consortium claim **is necessarily** dismissed. See Murray v. Commercial Union Ins. Co., 782 F.2d 432, 437-38 (3d Cir. 1986).

**An appropriate order follows.**

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<b>Plaintiffs</b>	:	
	:	
v.	:	
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THE UNITED STATES POSTAL	:	NO. 02-7891
<b>SERVICE</b> et al.	:	
Defendants	:	

ORDER

AND NOW, this 17<sup>th</sup> day of March, 2003, upon consideration of the defendants' Motion to **Dismiss** or in the Alternative, for Summary Judgment (**Docket** No. 5), and the plaintiffs' opposition thereto, IT IS HEREBY ORDERED that the motion **is** GRANTED for **the** reasons set forth in a memorandum of **today's date**. This case **is** hereby **dismissed**.

BY THE COURT:

  
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MARY A. MCLAUGHLIN, J.