

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
OHIO, EASTERN DIVISION

**Beverly R. Mowry, Individually, as Executor of the Estate of David C.
Mowry, deceased, and as personal representative of the heirs and
next of kin of David C. Mowry v. United States of America**

Mowry · No. 5:25-cv-00392 · Decided January 14, 2026

SUMMARY

The United States District Court for the Northern District of Ohio granted the United States’ Rule 12(b)(6) motion to dismiss a wrongful-death action brought under the Federal Tort Claims Act and Ohio law. The court held that the claims were barred by federal claim-preclusion principles because they arose from the same accident and injuries litigated in an earlier action, and the plaintiff and beneficiaries were the same parties or in privity with the prior plaintiffs. The order was entered on January 14, 2026.

CASE DETAILS

COURT	United States District Court for the Northern District of Ohio, Eastern Division
WRITING FOR THE COURT	John R. Adams
JURISDICTION	United States District Court for the Northern District of Ohio, Eastern Division
DECIDED	January 14, 2026
DOCKET	5:25-cv-00392
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiff brought an action under the Federal Tort Claims Act and Ohio's wrongful-death statute. The United States moved to dismiss under Federal Rule of Civil Procedure 12(b)(6), arguing, among other grounds, res judicata, the FTCA judgment bar, and the one-satisfaction rule. The court granted the motion to dismiss on res judicata grounds.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court construed the record in the light most favorable to the nonmoving party and determined whether the complaint contained sufficient factual matter, accepted as true, to state a plausible claim for relief. The court also considered the judicially noticeable resolution of the prior case.

TOPICS

motions to dismiss

res judicata

wrongful death

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether res judicata in an FTCA action is governed by federal or Ohio preclusion law.
2. Whether the prior federal judgment precluded the wrongful-death claims because the actions involved the same parties or privies, the same transaction and injury, and issues that were litigated or should have been litigated in the prior action.
3. Whether the complaint stated a claim notwithstanding the defendant's Rule 12(b)(6) motion.

HOLDINGS

1. Federal common-law principles of res judicata govern the preclusive effect of a prior federal judgment in an FTCA action.
2. Res judicata barred the wrongful-death claims because the prior action resulted in a final judgment on the merits, involved the same defendant and plaintiff in her individual capacity and privies among the heirs, involved the same accident and injury, and resolved or encompassed the causation issues underlying the alleged death.
3. Res judicata may be raised and resolved on a motion to dismiss when the defense is apparent from the pleadings and properly noticeable public records.

KEY QUOTATIONS

“The preclusive effect of a federal-court judgment is determined by federal common law.” (Section III.A)

“Where two successive suits seek recovery for the same injury, a judgment on the merits operates a bar to the later suit, even though a different legal theory of recovery is advanced in the second suit.” (Section III.B)

FACTUAL BACKGROUND

On July 16, 2017, David Mowry was riding a motorcycle through an intersection when a USPS delivery truck struck him, causing severe leg injuries, infection, multiple surgeries, and kidney failure requiring dialysis. In the prior FTCA action, the court found that the USPS driver's negligence proximately caused the injuries and awarded David Mowry economic and noneconomic damages and Beverly Mowry damages for loss of consortium; the judgment was later satisfied. David Mowry died on September 7, 2023, and the complaint alleged that the accident-related infections, hypertension, diabetes, and kidney failure caused his death.

PROCEDURAL HISTORY

The action followed an earlier FTCA action arising from the same 2017 collision. In the earlier case, the court held a bench trial, found the USPS employee negligent, awarded damages for personal injury and loss of consortium, and entered a judgment later satisfied by the parties' stipulated payment. After David Mowry died in 2023, Beverly Mowry filed this wrongful-death action as executor and representative of the heirs and next of kin. The court held that the present claims were barred by claim preclusion and granted the Rule 12(b)(6) motion.

DISPOSITION

dismissed

CASES CITED

- Mowry v. United States, No. 5:19-cv-0627, 2023 WL 3069359 (N.D. Ohio Apr. 25, 2023)
- Total Benefits Planning Agency, Inc. v. Anthem Blue Cross and Blue Shield, 552 F.3d 430, 434 (6th Cir. 2008)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Blackwell v. Nocerini, 123 F.4th 479, 486-88 (6th Cir. 2024)
- Passa v. City of Columbus, 123 Fed. Appx. 694, 697 (6th Cir. 2005)
- Fillmore v. Brush Wellman, Inc., 2004 WL 527167, at *1 (N.D. Ohio Feb. 5, 2004)
- Federated Dep't Stores, Inc. v. Moitie, 452 U.S. 394, 398 (1981)
- Westwood Chemical Co. v. Kulick, 656 F.2d 1224, 1228-29 (6th Cir. 1981)
- Gardner v. U.S., 443 Fed. Appx. 70, 74 n.1 (6th Cir. 2011)
- Filice v. United States, 271 F.2d 782, 782-84 (9th Cir. 1959)
- Bowen v. U.S., 570 F.2d 1311, 1319 (7th Cir. 1978)
- Simmons v. U.S., 865 F.2d 265 (9th Cir. 1988)
- D'Ambra v. U.S., 396 F. Supp. 1180, 1181 (D.R.I. 1973)
- Johnson v. U.S., 576 F.2d 606, 610, 612 (5th Cir. 1978)
- Bazuaye v. U.S., 41 F. Supp. 2d 19, 27-28 (D.D.C. 1999)
- Donohue ex rel. Estate of Donohue v. U.S., 2006 WL 2990387, at *4 (S.D. Ohio 2006)
- Zia v. Wimmersberger, 544 F. Supp. 559, 561 (E.D. Pa. 1982)
- Taylor v. Sturgell, 553 U.S. 880, 891-95 (2008)
- Semtek Int'l Inc. v. Lockheed Martin Corp., 531 U.S. 497, 508 (2001)
- Montana v. United States, 440 U.S. 147, 153-54 (1979)
- Kane v. Magna Mixer Co., 71 F.3d 555, 560 (6th Cir. 1995)
- Keymarket of Ohio, LLC v. Keller, 483 Fed. Appx. 967, 971 (6th Cir. 2012)
- Sanders Confectionary Prods., Inc. v. Heller Financial, Inc., 973 F.2d 474, 484 (6th Cir. 1992)
- Browning v. Levy, 283 F.3d 761, 773-74 (6th Cir. 2002)
- The 81 Development Co. v. Soil and Materials Engineers, Inc., 2021 WL 868886, at *11 (W.D. Mich. Mar. 9, 2021)

- United States v. Vasilakos, 508 F.3d 401, 406 (6th Cir. 2007)
- Thompson v. Wing, 637 N.E.2d 917, 923 (Ohio 1994)
- In re New York Asbestos Litigation, 738 F. Supp. 66, 68 (E.D.N.Y. 1990)
- Dover v. U.S., 367 Fed. Appx. 651, 653-54 (6th Cir. 2010)
- Thies v. Life Ins. Co. of N. Am., 924 F. Supp. 2d 817, 820 (W.D. Ky. 2013)
- Vincent v. Warren County, Ky., 629 Fed. Appx. 735, 740 (6th Cir. 2015)
- Cemer v. Marathon Oil Co., 583 F.2d 830, 832 (6th Cir. 1978)

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