

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Dickson v. United States

No. 19-40932, United States Court of Appeals for the Fifth Circuit (August 23, 2021)

SUMMARY

****Key Legal Topics:**** Federal Tort Claims Act (FTCA); discretionary function exception; intentional tort exception; law enforcement proviso; sovereign immunity; prisoner civil rights. ****Holdings:**** The Fifth Circuit held that the discretionary function exception barred the plaintiff's negligence claims against the Bureau of Prisons regarding his transfer and placement in general population, as those decisions involved judgment based on public policy. However, the court reversed dismissal of the intentional tort claims (assault, battery, false arrest, abuse of process, intentional infliction of emotional distress), ruling that under *Millbrook v. United States*, the law enforcement proviso applies based on the officer's status as a law enforcement officer, not the nature of their activities, and remanded for determination of whether the officers acted within the scope of employment.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Stephen A. Higginson; King; Higginson; Wilson
JURISDICTION	Federal
DECIDED	August 23, 2021
DOCKET	19-40932
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from the United States District Court for the Eastern District of Texas, USDC No. 1:14-CV-250. The district court granted the Government's motion to dismiss under Rules 12(b)(1) and (b)(6).
STANDARD OF REVIEW	De novo review of the district court's order granting motion to dismiss under Rule 12(b)(1) for lack of subject matter jurisdiction. (citing <i>Spotts v. United States</i> , 613 F.3d 559, 565 (5th Cir. 2010))
PRECEDENTIAL VALUE	Published
PARTIES	Bryan Kerr Dickson v. United States of America

TOPICS

- subject matter jurisdiction
- sovereign immunity
- torts
- negligence
- prisoners rights

PRACTICE AREAS

Federal Tort Claims Act

Sovereign Immunity

Prisoner Litigation

QUESTIONS PRESENTED

1. Whether the district court erred in applying the discretionary function exception to Dickson's negligence claims.
2. Whether the district court erred in applying the law enforcement proviso to Dickson's intentional tort claims.

HOLDINGS

1. The discretionary function exception applies to BOP decisions regarding transfers and classifications of prisoners, and Dickson failed to allege any violation of a nondiscretionary duty, so the district court properly dismissed the negligence claims for lack of subject matter jurisdiction.
2. Under *Millbrook v. United States*, 569 U.S. 50 (2013), the law enforcement proviso applies based on the status of the officer as a law enforcement officer, not on whether they were engaged in investigative or law enforcement activity. The district court erred in applying the outdated status-vs-activities distinction from *Cross v. United States*. Therefore, the intentional tort claims are remanded for determination of whether the officers were acting within the scope of their employment.
3. Dickson's IIED claim is not barred because the alleged conduct (encouraging suicide, disparaging remarks) is not derivative of assault or false imprisonment, so the claim does not 'arise out of' an excepted tort.

KEY QUOTATIONS

"We review de novo the district court's order granting the Government's motion to dismiss under Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction." (at 3)

"First, courts must determine whether the challenged act involves an element of judgment or choice on the part of the employee." (at 4)

"We hold that the waiver effected by the law enforcement proviso extends to acts or omissions of law enforcement officers that arise within the scope of their employment, regardless of whether the officers are engaged in investigative or law enforcement activity." (at 8)

FACTUAL BACKGROUND

Dickson, a former prisoner at USP Beaumont, alleged that BOP officials transferred him to the general population despite his fears of violence due to his child pornography convictions. He was assaulted by another inmate. After the assault, he was transferred to the SHU, where he alleged BOP denied him mental health treatment, access to law library, and other necessities, encouraged him to commit suicide, destroyed legal documents, poisoned his food, made disparaging remarks, and housed him without clothing. He attempted suicide after his request for psychological services was ignored. He was then assaulted again by another inmate in front of BOP staff who ignored it.

PROCEDURAL HISTORY

The district court dismissed Dickson's negligence and intentional tort claims for lack of subject matter jurisdiction, holding that the discretionary function exception applied to negligence claims and the law enforcement proviso did not apply to intentional tort claims.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

On remand, the district court must determine whether the BOP officials were acting within the scope of their employment when committing the alleged intentional torts, as that is a threshold jurisdictional inquiry. The district court must address the scope-of-employment question before considering any alternative motion under Rule 12(b)(6).

CASES CITED

- *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971)
- *In re Deepwater Horizon*, 857 F.3d 246, 251 (5th Cir. 2017)
- *LeMaire v. La. Dep't of Transp. & Dev.*, 480 F.3d 383, 387 (5th Cir. 2007)
- *Spotts v. United States*, 613 F.3d 559, 565 (5th Cir. 2010)
- *City of Austin v. Paxton*, 943 F.3d 993, 997 (5th Cir. 2019)
- *Castro v. United States*, 608 F.3d 266, 268 (5th Cir. 2010) (en banc)
- *United States v. Gaubert*, 499 U.S. 315, 322-23 (1991)
- *Berkovitz by Berkovitz v. United States*, 486 U.S. 531, 537 (1988)
- *Cohen v. United States*, 151 F.3d 1338, 1343 (11th Cir. 1998)
- *Patel v. United States*, 398 F. App'x 22, 29 (5th Cir. 2010) (per curiam) (unpublished)
- *Ashford v. United States*, 463 F. App'x 387, 394 (5th Cir. 2012) (per curiam) (unpublished)
- *Lopez v. U.S. Immigr. & Customs Enf't*, 455 F. App'x 427, 432-34 (5th Cir. 2011) (unpublished)
- *St. Tammany Parish ex rel. Davis v. Fed. Emergency Mgmt. Agency*, 556 F.3d 307, 315 & n.3 (5th Cir. 2009)
- *Millbrook v. United States*, 569 U.S. 50, 52-53, 55, 57 (2013)
- *Cross v. United States*, 159 F. App'x 572, 575 (5th Cir. 2005) (unpublished)
- *Campos v. United States*, 888 F.3d 724, 737 (5th Cir. 2018)
- *Chapa v. United States*, 339 F.3d 388, 390 (5th Cir. 2003) (per curiam)
- *Truman v. United States*, 26 F.3d 592, 593 (5th Cir. 1994)
- *McNeily v. United States*, 6 F.3d 343, 347 (5th Cir. 1993)
- *Brennan v. Mercedes Benz USA*, 388 F.3d 133, 136 (5th Cir. 2004)
- *Humphries v. Elliott Co.*, 760 F.3d 414, 418 (5th Cir. 2014)
- *Singleton v. Wulff*, 428 U.S. 106, 120 (1976)

- *Ermuraki v. Renaud*, 987 F.3d 384, 386 (5th Cir. 2021) (per curiam)

CITED IN

- *Dickson v. United States*, *Dickson v. United States*, 11 F.4th 308, 312 (5th Cir. 2021)
- *Dickson v. United States*, *Dickson v. United States*, 11 F.4th 308, 312 (5th Cir. 2021)
- *Dickson v. United States*, *Dickson v. United States*, 11 F.4th 308, 312 (5th Cir. 2021)
- *Dickson v. United States*, *Dickson v. United States*, 11 F.4th 308, 312 (5th Cir. 2021)
- *Dickson v. United States*, *Dickson v. United States*, 11 F.4th 308, 314-15 (5th Cir. 2021)
- *Dickson v. United States*, *Dickson v. United States*, 11 F.4th 308 (5th Cir. 2021)

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