

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

Z.T. v. United States

No. 1:25-cv-00470-KES-SKO (E.D. Cal. July 6, 2025) · No. 1:25-cv-00470-KES-SKO · Decided July 7, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 Z.T., a minor, by and through his guardian No. 1:25-cv-00470-KES-SKO ad
litem, MACY MCCOY; MACY 12 MCCOY, an individual; and DEMMARI THOMAS, an
individual, ORDER GRANTING DEFENDANT UNITED 13 STATES OF AMERICA’S
MOTION TO Plaintiffs, DISMISS 14 v. 15 Doc. 3 UNITED STATES, and SAINT AGNES 16
MEDICAL CENTER, 17 Defendants.

18 19 Plaintiffs Z.T. (a minor proceeding through his guardian ad litem, Macy McCoy), Macy 20
McCoy, and Demmari Thomas, proceed in this medical malpractice action against the United 21
States of America and Saint Agnes Medical Center. See Doc. 1-1. This matter was originally 22
filed in Fresno County Superior Court on October 23, 2024, against Auther E. Adams, M.D., and
23 Saint Agnes Medical Center.

Doc. 1-1. The United States removed this case to federal court on 24 April 23, 2025. Doc. 1. The
United States certified that, at all times relevant to the allegations in 25 plaintiffs’ complaint, Dr.
Adams was acting within the course and scope of his employment with 26 the United States.¹
Doc. 1-2 at 3. Pursuant to that certification, the action against Dr. Adams is 27 1 At the time
relevant to this action, Dr. Adams was an employee of Clinica Sierra Vista, which 28 was a
federally supported health center pursuant to the Federally Supported Health Centers 1 “deemed
to be an action or proceeding brought against the United States.” 28 U.S.C. 2 § 2679(d)(2).

The United States is therefore substituted in as defendant for Dr. Adams. 3 The government moves
to dismiss the claims against it under Rule 12(b)(1) for lack of 4 subject matter jurisdiction,
because plaintiffs’ claims against the government are under the 5 Federal Tort Claims Act
(“FTCA”) and plaintiffs failed to exhaust their administrative remedies 6 prior to initiating this
lawsuit against the government as required by the FTCA.

Doc. 3; see also 7 28 U.S.C. §§ 1346(b), 2671 et seq. Plaintiffs did not file an opposition to the
motion. See 8 Docket. As the Court lacks subject matter jurisdiction over the claims against the
government, 9 the government’s motion to dismiss is granted.² 10 I. FACTUAL BACKGROUND
11 Plaintiffs allege that, on October 26, 2022, plaintiff Macy McCoy was admitted to “labor 12
and delivery” at St. Agnes Medical Center and that Dr. Adams, who “was working on the 13
obstetrical service for...

Saint Agnes Medical Center,” was the “admitting, attending and 14 delivering physician.” *Id.* at 12. The complaint alleges that Dr. Adams negligently delivered 15 plaintiff Z.T., resulting in Z.T. requiring extensive grafting and invasive surgery at another 16 hospital. *Id.* The complaint further alleges that the “nurses and medical personnel at Saint Agnes 17 Medical Center negligently failed to properly assist” to ensure a safe delivery of Z.T.

Id. 18 Plaintiffs McCoy and Thomas, as Z.T.’s parents, allege they are entitled to emotional distress 19 damages. *Id.* at 13. 20 Plaintiffs did not submit an administrative claim regarding these allegations to the 21 Department of Health and Human Services. Doc. 3-1 (“Christofferson Decl.”) ¶¶ 2-4.3 22 Assistance Act (“FSHCAA”), 42 U.S.C. § 233. Doc. 1-2 at 2–3.

23 2 Plaintiffs’ failure to oppose the motion to dismiss also provides an independent basis to grant 24 the motion. See Local Rule 230(c) (“A failure to file a timely opposition may... be construed by the Court as a non-opposition to the motion.”); see also *Ghazali v. Moran*, 46 F.3d 52, 53 (9th 25 Cir. 1995) (affirming district court’s dismissal of action pursuant to virtually identical local rule for failure to oppose motion to dismiss).

26 27 3 “[T]he district court may review evidence beyond the complaint” to resolve a factual jurisdictional question. *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). 28 1 II. LEGAL STANDARD 2 A defendant may move to dismiss a complaint for lack of subject matter jurisdiction under 3 Federal Rule of Civil Procedure 12(b)(1). Fed. R. Civ.

P. 12(b)(1). A Rule 12(b)(1) attack on 4 subject matter jurisdiction may be facial or factual. *Safe Air for Everyone*, 373 F.3d at 1039. “In 5 a facial attack, the challenger asserts that the allegations contained in a complaint are insufficient 6 on their face to invoke federal jurisdiction.” *Id.* “By contrast, in a factual attack, the challenger 7 disputes the truth of the allegations that, by themselves, would otherwise invoke federal 8 jurisdiction.” *Id.* When resolving a factual attack on jurisdiction, “the district court may review 9 evidence beyond the complaint without converting the motion to dismiss into a motion for 10 summary judgment.” *Id.* “The court need not presume the truthfulness of plaintiff’s allegations.” 11 *Id.* “Once the moving party has converted the motion to dismiss into a factual motion by 12 presenting affidavits or other evidence properly brought before the court, the party opposing the 13 motion must furnish affidavits or other evidence necessary to satisfy its burden of establishing 14 subject matter jurisdiction.” *Id.* 15 III.

ANALYSIS 16 “The FTCA... waives the United States’ sovereign immunity for tort actions and vests 17 the federal district courts with exclusive jurisdiction over suits arising from the negligence of 18 government employees.” D.L. by and through *Junio v. Vassilev*, 858 F.3d 1242, 1244 (9th Cir. 19 2017) (citation omitted); see also 28 U.S.C. §§ 1346(b), 2671 et seq. “Before a plaintiff can file 20 an FTCA action in federal court, however, he must exhaust the administrative remedies for his 21 claim.” D.L., 858 F.3d at 1244 (citing 28 U.S.C. § 2675(a)). “An administrative claim is deemed 22 exhausted once the relevant agency finally denies it in writing,

or if the agency fails to make a final disposition of the claim within six months of the claim's filing.” Id. (citation omitted). “The FTCA's exhaustion requirement is jurisdictional and may not be waived.” Id. (citation omitted).

The government asserts that the Court lacks subject matter jurisdiction to hear plaintiffs' claims against it due to plaintiffs' failure to exhaust their administrative remedies, citing evidence that none of the plaintiffs filed an administrative claim with the Department of Health and Human Services. See Doc. 3. 1 Plaintiffs' complaint does not allege that plaintiffs exhausted their administrative remedies 2 before filing this action.

See generally Doc. 1-1. Thus, plaintiffs' complaint appears to be 3 facially deficient in that it does not adequately allege subject matter jurisdiction. Additionally, 4 the government provided a sworn declaration from Mary Christofferson, an attorney in the 5 General Law Division, Office of the General Counsel, Department of Health and Human Services 6 (“HHS”), that plaintiffs have not filed an administrative claim with HHS regarding their 7 allegations against Dr. Adams.

Christofferson Decl. ¶¶ 2-4. The burden therefore shifted to 8 plaintiffs to “furnish affidavits or other evidence necessary to satisfy [their] burden of establishing 9 subject matter jurisdiction.” *Safe Air for Everyone*, 373 F.3d at 1039. Plaintiffs did not oppose 10 the motion to dismiss, nor have they provided any evidence that they have exhausted their 11 administrative remedies.

Plaintiffs have failed to carry their burden, and the claims against the 12 government must be dismissed for lack of subject matter jurisdiction. 13 The sole basis for removal of this action to federal court was the United States's removal 14 pursuant to 28 U.S.C. § 1346(b). Plaintiffs' remaining claims against defendant Saint Agnes 15 Medical Center arise under state law, and there is no indication that the parties satisfy diversity 16 jurisdiction requirements.

As the United States is dismissed by this Order, the Court remands the 17 remaining claims to the Fresno County Superior Court. 18 IV. CONCLUSION 19 Accordingly: 20 1. The United States is substituted as a defendant in this action for Auther E. Adams, 21 pursuant to 28 U.S.C. § 2679(d) (2).

The Clerk of Court shall terminate Auther E. 22 Adams as a defendant on the docket and shall substitute in the United States. 23 2. The United States's motion to dismiss the claims against it, Doc. 3, is granted for lack 24 of subject matter jurisdiction. 25 3.

The remaining claims against Saint Agnes Medical Center are remanded to the Fresno 26 County Superior Court; 27 4. The Clerk of Court shall mail a copy of this Order to the clerk of the Fresno County 28 Superior Court; and 1 5.

The Clerk of Court is directed to close this case. 2 3 4 | ISSO ORDERED. _ 5 Dated: _ July 6, 2025 4h ‘ UNITED STATES DISTRICT JUDGE 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23

24 25 26 27 28

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