

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
KENTUCKY, CENTRAL DIVISION

Ashley v. United States

Civil Action No. 5:25-344-DCR (E.D. Ky. Apr. 23, 2026) · No. Civil Action No. 5:25-344-DCR · Decided April 23, 2026

SUMMARY

The Eastern District of Kentucky partially granted and partially denied the United States’ Rule 12(b) (1) motion to dismiss an FTCA negligence action arising from a veteran’s mental health treatment and alleged sexual relationship with a VA therapist. The court held that the alleged sexual relationship fell outside the therapist’s scope of federal employment under Kentucky law, but that independent allegations concerning diagnosis, psychotherapy, and medication management could proceed at that stage. The opinion was issued as a Memorandum Opinion and Order by District Judge Danny C. Reeves.

CASE DETAILS

COURT	United States District Court for the Eastern District of Kentucky, Central Division
WRITING FOR THE COURT	Danny C. Reeves
JURISDICTION	United States District Court for the Eastern District of Kentucky, Central Division
DECIDED	April 23, 2026
DOCKET	Civil Action No. 5:25-344-DCR
DISPOSITION	other
PROCEDURAL POSTURE	The United States moved under Federal Rule of Civil Procedure 12(b) (1) to dismiss Ashley's Federal Tort Claims Act negligence action for lack of subject-matter jurisdiction based on sovereign immunity and the alleged conduct's falling outside the scope of federal employment.
STANDARD OF REVIEW	On a facial Rule 12(b)(1) challenge, the court considers the complaint's allegations as true, and the plaintiff bears the burden of establishing subject-matter jurisdiction. The court treats a Rule 12(b) (1) motion as a threshold jurisdictional inquiry.
PRECEDENTIAL VALUE	unpublished federal district court memorandum opinion; persuasive value only

PARTIES

Randy Ashley v. United States of America

TOPICS

motions to dismiss subject matter jurisdiction medical malpractice professional negligence
civil procedure

PRACTICE AREAS

Federal Tort Claims Act federal jurisdiction medical malpractice professional negligence
sovereign immunity

QUESTIONS PRESENTED

1. Whether the Federal Tort Claims Act waives sovereign immunity and provides subject-matter jurisdiction over negligence allegations based on a therapist's romantic and sexual relationship with a patient.
2. Whether Ashley's separately alleged negligent diagnosis, psychotherapy, and medication-management claims arose from conduct within the scope of authorized federal employment and therefore could proceed at the pleading stage.

HOLDINGS

1. The court lacks subject-matter jurisdiction over Ashley's negligence claim to the extent it is based on the alleged sexual relationship between Ashley and Dr. Hershberger because that conduct was outside the scope of employment under Kentucky law and was not covered by the FTCA's waiver of sovereign immunity.
2. Ashley sufficiently alleged independent negligence claims involving diagnosis, psychotherapy, and medication management that were not subject to dismissal at this stage because they arose from authorized medical care and were not shown on the face of the complaint to fall outside the scope of employment.

KEY QUOTATIONS

“As a matter of law, a therapist’s sexual relationship with a patient falls outside the scope of employment.”

“Based on the foregoing authority, the Court lacks subject-matter jurisdiction over the negligence claim to the extent it is based on the sexual relationship between Ashley and Dr. Hershberger.”

FACTUAL BACKGROUND

Randy Ashley received mental-health treatment at the Lexington Veterans Affairs Medical Center from 2020 through 2022. He alleged that providers failed to diagnose and manage bipolar disorder and impulse-control or sex-addiction conditions, improperly diagnosed borderline personality disorder, and mismanaged medications and psychotherapy. After Ashley's treatment with Dr. Allie Hershberger ended, Hershberger allegedly initiated a

romantic and sexual relationship with him and continued inappropriate communications. Ashley brought an FTCA negligence claim against the United States based on both the clinical care and the sexual relationship.

PROCEDURAL HISTORY

Ashley filed an administrative tort claim with the Department of Veterans Affairs on November 13, 2023, and filed this action on September 25, 2025. The United States moved to dismiss under Rule 12(b)(1). The district court granted the motion in part and denied it in part, dismissing the claim to the extent it was based on the therapist's sexual relationship while allowing independently alleged negligent diagnosis, psychotherapy, and medication-management claims to proceed.

DISPOSITION

other

CASES CITED

- Kokkonen v. Guardian Life Insurance Co. of America, 511 U.S. 375, 377 (1994)
- Bender v. Williamsport Area School District, 475 U.S. 534, 541 (1986)
- Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 94-95 (1998)
- RMI Titanium Co. v. Westinghouse Electric Corp., 78 F.3d 1125, 1134 (6th Cir. 1996)
- Rogers v. Stratton Industries, 798 F.2d 913, 915 (6th Cir. 1986)
- DLX, Inc. v. Kentucky, 381 F.3d 511, 516 (6th Cir. 2004)
- Allen v. United States, 83 F.4th 564, 567 (6th Cir. 2023)
- Mynatt v. United States, 45 F.4th 889, 894 (6th Cir. 2022)
- FDIC v. Meyer, 510 U.S. 471, 475 (1994)
- Laible v. Lanter, 91 F.4th 438, 445 (6th Cir. 2024)
- Papa John's International, Inc. v. McCoy, 244 S.W.3d 44, 51 (Ky. 2008)
- Patterson v. Blair, 172 S.W.3d 361, 369 (Ky. 2005)
- Scottsdale Insurance Co. v. Flowers, 513 F.3d 546, 566-68 (6th Cir. 2008)
- Osbourne v. Payne, 31 S.W.3d 911, 915 (Ky. 2000)
- American General Life & Accident Insurance Co. v. Hall, 74 S.W.3d 688, 692 (Ky. 2002)