

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

OSTERIA SMITH,)	
CYNTHIA SMITH and)	
STATE FARM INSURANCE COMPANY)	
as subrogee of OSTERIA SMITH)	
and CYNTHIA SMITH,)	
)	
Plaintiffs,)	
)	
v.)	No. 04-2042 Ml/An
)	
UNITED STATES OF AMERICA,)	
UNITED STATES POSTAL SERVICE,)	
JOHN E. POTTER, POST MASTER)	
GENERAL, UNITED STATES)	
POSTAL SERVICE,)	
and TERRICK KING,)	
)	
Defendants.)	

ORDER DIRECTING CLERK TO SUBSTITUTE UNITED STATES OF AMERICA AS
PROPER DEFENDANT IN PLACE OF UNITED STATES POSTAL SERVICE AND
JOHN E. POTTER
ORDER DENYING DEFENDANT UNITED STATES OF AMERICA'S MOTION TO
DISMISS PLAINTIFFS' COMPLAINT AS MOOT
ORDER GRANTING DEFENDANT UNITED STATES OF AMERICA'S MOTION TO
DISMISS PLAINTIFFS' AMENDED COMPLAINT

Before the Court is Defendant United States of America's motion to dismiss Plaintiffs' Amended Complaint, filed June 15, 2004. Plaintiff responded in opposition on November 8, 2004. Also before the Court is Defendant United States of America's motion to dismiss Plaintiffs' Complaint, filed March 26, 2004. Plaintiff responded in opposition on April 12, 2004. For the following reasons, the Court GRANTS Defendant's motion to dismiss

Plaintiffs' Amended Complaint and DENIES Defendant's motion to dismiss Plaintiffs' Complaint as moot.¹

I. Background

This case concerns an action for negligence brought pursuant to the Federal Tort Claims Act ("FTCA"), 28 U.S.C. § 2671 *et seq.*, and state negligence law for property damage to an automobile struck by a vehicle driven by an employee of the United States Postal Service. The owners of the automobile, Plaintiffs Osteria and Cynthia Smith ("the Smiths"), filed their original Complaint on January 26, 2004, naming the United States Postal Service and John E. Potter, Postmaster General of the United States Postal Service, as Defendants. On May 27, 2004, the Smiths filed an Amended Complaint naming State Farm Insurance Company ("State Farm") a plaintiff in this action as subrogee of the Smiths. Plaintiffs filed a Second Amended Complaint on December 10, 2004, naming Terrick King as a Defendant.

Plaintiffs seek judgment against the Defendants for \$4,328.23, costs of the action and other relief that the Court deems equitable.

¹ Nonetheless, the Court will consider Defendant's arguments in support of its motion to dismiss Plaintiffs' original Complaint to the extent they are relevant in rendering a decision on Defendant's motion to dismiss the Amended Complaint.

II. Analysis

Defendant United States of America moves to dismiss Plaintiffs' claims under the FTCA for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1).

As a preliminary matter, the Clerk of the Court is DIRECTED to substitute Defendant United States of America as the proper Defendant in place of both the United States Postal Service and John E. Potter. Allgeier v. United States, 909 F.2d 869, 871 (6th Cir. 1990) (stating that the United States is the only proper defendant in a lawsuit that alleges negligence by a federal employee).

In order to bring a tort claim against the United States, a Plaintiff must show that the United States has waived its sovereign immunity. Lundstrum v. Lyng, 954 F.2d 1142, 1145 (6th Cir. 1991). The United States has consented to being sued in tort pursuant to the terms of the FTCA. Id. A Plaintiff must exhaust administrative remedies by filing an administrative claim with the appropriate federal agency prior to bringing a suit under the FTCA.² See id. (citing 28 U.S.C. § 2675(a)). Moreover,

² The administrative exhaustion requirement of the FTCA is codified in 28 U.S.C. § 2675(a), which provides, in pertinent part:

An action shall not be instituted upon a claim against the United States for money damages for injury or loss
(continued...)

actions under the FTCA must be brought within six months after the date a Federal agency mails a notice of final denial of an administrative claim. 28 U.S.C. § 2401(b).

Defendant originally moved to dismiss the Smiths' FTCA claims for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) because the Smiths allegedly failed to exhaust administrative remedies prior to filing suit. The Smiths responded to that motion contending that they exhausted their administrative remedies because their subrogee, State Farm, timely filed an administrative claim with the United States Postal Service. After the Smiths amended their Complaint to name State Farm as a plaintiff, Defendant again moved to dismiss Plaintiffs' FTCA claims for lack of subject matter jurisdiction because State Farm did not file suit within six months after the United States Postal Service ("USPS") mailed its denial of State Farm's administrative claim on July 30, 2003.

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of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail. The failure of an agency to make final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim for purposes of this section.

28 U.S.C. § 2675(a)

The Court finds that neither the Smiths nor State Farm complied with the requirements of the FTCA. The record shows that the Smiths never filed an administrative claim with the United States Postal Service. The record further shows that although State Farm did file a timely administrative claim, it did not file a tort action against the United States within six months after its administrative claim was denied. Accordingly, the Court lacks subject matter jurisdiction over Plaintiffs' FTCA claims against the United States.

Plaintiffs contend that they have exhausted their administrative remedies pursuant to the subrogor/subrogee relationship between the Smiths and State Farm. In support of their contention, Plaintiffs rely on Wadsworth v. United States Postal Serv., 511 F.2d 64 (7th Cir. 1975).³ Wadsworth, however,

³ Wadsworth involved an FTCA action where an insured and his insurer subrogee timely filed separate administrative claims against the United States. Id. at 65. Although the insured brought suit within six months after his administrative claim was denied, the Complaint did not include the insurer as a party plaintiff. Id. The District Court denied the Plaintiff's motion to amend the complaint to add the insurer as a party plaintiff, because more than six months had elapsed since the government rejected the insurer's administrative claim. Id. at 66. The Seventh Circuit Court of Appeals reversed the decision of the District Court and held that the relation back principle in Federal Rule of Civil Procedure 15(c) and the real party in interest concept in Rule 17(a) apply to FTCA actions thereby allowing the amendment adding the insurer as a real party in interest to relate back to the filing date of the insured's complaint. Id.

Under different circumstances, the Sixth Circuit reached a similar conclusion in Executive Jet Aviation, Inc., v. United

is distinguishable from the case at bar. First, unlike the insured in Wadsworth, the Smiths did not file an administrative claim with the United States Postal Service prior to filing their FTCA suit. Therefore, in the instant case, the Court lacked subject matter jurisdiction when the Smiths filed their original Complaint. Moreover, Wadsworth concerned an insured's motion to amend to add the insurer subrogee as a party in interest. In the case at bar, State Farm has already been joined as a plaintiff.

Accordingly, the Court finds that it lacks subject matter jurisdiction with respect to Plaintiffs' FTCA action against the United States. See Shelton v. United States, 615 F.2d 713 (6th Cir. 1980) (finding insured could not pursue FTCA action because he did not file a proper administrative claim, despite the fact

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States, 507 F.2d 508 (6th Cir. 1974). In Executive Jet, the Sixth Circuit held that a plaintiff that properly exhausted administrative remedies prior to filing an FTCA claim tolled the statute of limitations with respect to the claim of the plaintiff's insurers. Id. at 515. The Plaintiff was therefore allowed to amend its administrative claim to show the insurers as joint claimants and the insurers were given the opportunity to join the lawsuit as plaintiffs. Id. The insurers in Executive Jet neither filed their own administrative claim nor joined in the insured's claim before the statute of limitations expired. Id. at 514. The Executive Jet decision, however, was limited to the facts of the case and the decision offered "no opinion about the proper result in ... cases in which the subrogor has not filed a timely and complete administrative claim." Id. at 517.

that his insurer did file a complete and timely administrative claim)⁴. Therefore, the Court GRANTS Defendant United States of America's motion to dismiss Plaintiffs' Amended Complaint and DISMISSES Plaintiffs' FTCA claims against the United States of America.

III. Conclusion

For the foregoing reasons, the Court GRANTS Defendant United States of America's motion to dismiss Plaintiffs' Amended Complaint and DENIES Defendant United States of America's motion to dismiss Plaintiffs' Complaint as moot.

So ORDERED this ___th day of February, 2005.

UNITED STATES DISTRICT JUDGE

⁴ In Shelton, the Sixth Circuit Court of Appeals also recognized the limited holding of the Executive Jet decision and declined to extend the ruling in Executive Jet to a situation where the insured/subrogor failed to file a timely and complete administrative claim. Shelton, 615 F.3d at 715.