

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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No. 19-30526  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit  
**FILED**  
November 22, 2019  
Lyle W. Cayce  
Clerk

JAY HOLT FULMER; CHRISTINA MACDONALD,

Plaintiffs-Appellants

v.

UNITED STATES OF AMERICA,

Defendant-Appellee

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
USDC No. 2:17-CV-15943

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Before WIENER, HAYNES, and COSTA, Circuit Judges.

WIENER, Circuit Judge.\*

Plaintiffs-Appellants Jay Holt Fulmer and Christina MacDonald (“Plaintiffs”) are, respectively, the surviving spouse and daughter of the late Catherine Fulmer (“Decedent”), who died at her home on March 19, 2015. Her autopsy listed her cause of death as “invasive, poorly to moderately differentiated ductal carcinoma of the right breast with metastases to right

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

No. 19-30526

axillary lymph nodes, left breast, periaortic lymph nodes, neck lymph nodes, mesentery, liver and right lung.”

Plaintiffs asserted federal jurisdiction under the Federal Tort Claims Act (“FTCA”) to file their Louisiana tort suit in federal court. In it they alleged that they had suffered damages caused by the negligent acts and omissions of a medical doctor and a nurse practitioner. They contended that those persons had failed to prevent, diagnose, and treat Decedent’s breast cancer.

Plaintiffs sought to introduce Maxwell L. Axler, M.D. as their expert witness. The Government filed an opposition to Dr. Axler, questioning his qualifications to testify as an expert under the particular circumstances of this case. The Government also filed a Motion for Summary Judgment, seeking dismissal of this action. As noted by the district court, “[t]he Government’s sole ground for asserting summary judgment is that, without an expert, Plaintiffs cannot sustain their burden of proof.” In its detailed and exhaustive, 16-page opinion (“ORDER & REASONS”) of May 6, 2019, the district court patiently explained why it was (1) granting the Government’s motion to exclude Dr. Axler and (2) dismissing all of Plaintiffs’ claims with prejudice.

We have now reviewed the appellate record of this action, including the briefs of the parties, the relevant evidence in the record, and the district court’s comprehensive opinion. As a result, we are satisfied that the district court properly excluded Dr. Axler as an expert witness and correctly granted the Government’s Motion for Summary Judgment. We therefore affirm the district court’s JUDGMENT of even date with its ORDER & REASONS.

AFFIRMED.