

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

DIANA NAYOKPUK, individually and)
as parent of ASHLEY NAYOKPUK,)
a minor,)
)
Plaintiff,) 2:09-cv-0009 JWS
)
vs.) ORDER AND OPINION
)
UNITED STATES OF AMERICA,) [Re: Motions at Dockets 13 and 22]
)
Defendant.)
_____)

I. MOTIONS PRESENTED

At docket 13, plaintiff Diana Nayokpuk, individually and as parent of Ashley Nayokpuk, a minor, moves for a ruling on the law of the case. At docket 20, defendant United States of America (“the government”) opposes the motion. Plaintiff Nayokpuk replies at docket 21. Oral argument was requested at docket 22, but it would not assist the court. Accordingly, the motion at docket 22 is **DENIED**.

II. BACKGROUND

On November 19, 2009, plaintiff Diana Nayokpuk filed a complaint against the government pursuant to the Federal Tort Claims Act (“FTCA”), 28 U.S.C. § 2674. Ms. Nayokpuk’s complaint alleges in pertinent part that medical personnel employed by the Alaska Native Medical Center (“ANMC”) and the Norton Sound Regional Hospital (“NSRH”) “breached the applicable standards of care and were negligent in providing

medical care to plaintiff Ashley Nayokpuk,” Ms. Nayokpuk’s minor daughter.¹ The complaint further alleges that the “negligence of these care providers includes . . . the failure to timely transport and medivac Ashley, the failure to diagnose and treat her illnesses, and the failure to coordinate and manage her care, which proximately caused her catastrophic damages.”²

III. DISCUSSION

Under the FTCA, the “United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages.”³ The FTCA further provides that the United States shall be liable for torts “in accordance with the law of the place where the act or omission occurred.”⁴ Here, Alaska provides the applicable law.

Ms. Nayokpuk requests the court for a ruling that: 1) pursuant to AS 09.55.549(f), “the caps on noneconomic damages contained in AS 09.55.549 will not apply if Plaintiffs prove that their damages resulted from an act or omission that constitutes reckless or intentional misconduct,” 2) Alaska law determines what constitutes reckless or intentional conduct for purposes of AS 09.55.549; and 3) plaintiffs’ burden of proof is a preponderance of the evidence. The government opposes Ms. Nayokpuk’s request for the above rulings of law on the grounds that application of AS 09.55.549(f) is “punitive in nature” and punitive damages may not be awarded against the government in a FTCA action.⁵

Having reviewed Ms. Nayokpuk’s complaint, the court declines to decide Ms. Nayokpuk’s request for a ruling of law because her complaint does not contain any

¹Doc. 1 at p. 4.

²*Id.*

³28 U.S.C. § 2674.

⁴28 U.S.C. § 1346(b).

⁵Doc. 20 at p. 5.

allegations to support a claim of reckless or intentional misconduct. The complaint alleges only that the involved medical personnel were negligent in providing medical care to plaintiff Ashley Nayokpuk.⁶

IV. CONCLUSION

For the reasons set out above, plaintiff's motion at docket 13 for a ruling on law of the case is **DENIED without prejudice**.

DATED at Anchorage, Alaska, this 25th day of March 2011.

/s/ JOHN W. SEDWICK
UNITED STATES DISTRICT JUDGE

⁶See, e.g., *Bunting v. United States*, 884 F.2d 1143, 1145-47 (9th Cir. 1989)(citing *Leavitt v. Gillaspie* 443 P.2d 61, 65 (Alaska 1968)(quoting Restatement (Second) of Torts § 500 comment (g) (1965)).