

remedies prior to filing suit against them, and also has failed to state a claim for negligent supervision, his claims against them should be dismissed.

Mr. Hickman has not filed any opposition to HUD's Motion.

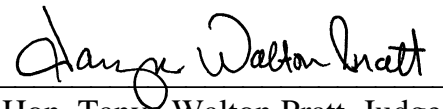
II. DISCUSSION

As an initial matter, the Court notes that although HUD addresses Mr. Hickman's failure to file a notice under the Federal Tort Claim Act ("FTCA") as a 12(b)(1) motion, "the Seventh Circuit Court of Appeals has instructed that whether a plaintiff has exhausted administrative remedies which are a prerequisite to suit . . . 'does not implicate federal subject matter jurisdiction and is better addressed under Rule 12(b)(6) than Rule 12(b)(1).'" *Grant v. U.S. Dep't of Hous. & Urban Dev.*, No. 1:13-CV-0084-JMS-TAB, 2013 WL 2285568, at *1 (S.D. Ind. May 23, 2013) (quoting *Waters v. Anonymous Hosp. A*, No. 1:10-cv-00983-LJM-MJD, 2011 WL 1458161, at *1 (S.D. Ind. 2011) (citing *Palay v. United States*, 349 F.3d 418, 424 (7th Cir. 2003))). Further, HUD has relied on matters outside of the pleadings, therefore, the Court will treat HUD's motion as one for summary judgment under Rule 12(d). *See id.*

The FTCA requires a claimant to seek administrative review prior to filing an action against the United States by filing a notice with the appropriate federal agency. 28 U.S.C. § 2675(a). HUD presented the declaration of Miniard Culpepper, stating that Mr. Hickman has not filed a claim for injury or damages with HUD. Because Mr. Hickman failed to file a response to HUD's Motion, the Court accepts this fact as undisputed and finds that Mr. Hickman has failed to satisfy the requirements of the FTCA. Therefore, the Court **GRANTS** HUD's Motion (Dkt. 15), and all claims asserted against HUD are **DISMISSED with prejudice**.

SO ORDERED.

Date: 04/11/2014



Hon. Tanya Walton Pratt, Judge
United States District Court
Southern District of Indiana

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