

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

MARTHA ANN HOPKINS

CASE NO. 14-704-JJB-RLB

VERSUS

KIMBERLYNN COLLINS THORNTON, ET AL.

RULING ON MOTION TO DISMISS

Defendant, United States of America, moves for this Court to dismiss all claims of Plaintiff, Martha Ann Hopkins. (Doc. 4-1). Plaintiff did not file responsive briefs for the Court to consider.

STANDARD OF REVIEW

“To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A pleading is plausible when the plaintiff pleads “factual content” that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Iqbal*, 129 S.Ct. at 1949. “In reviewing a Rule 12(b)(6) motion, the Court must accept all well-pleaded facts in the complaint as true and view them in the light most favorable to the plaintiff.” *Davis v. Bellsouth Telecomm.*, 2012 WL 2064699, at *1 (M.D. La. June 7, 2012) (citing *Baker v. Putnal*, 75 F.3d 190, 196 (5th Cir. 1996)).

FACTUAL ALLEGATIONS

Plaintiff filed suit in state district court against Defendant, Kimberlynn Collins Thornton. Plaintiff alleged that Defendant’s negligent acts and/or omission caused injuries to the Plaintiff. Upon determining that Thornton was an employee of the United State Postal Service at the time of the alleged negligent conduct, Defendant removed the action to federal court and moved to

substitute the United States as a Defendant. The United States now seeks to dismiss this suit based on Plaintiff's failure to exhaust requisite administrative remedies under the provisions of the Federal Tort Claims Act (FTCA).

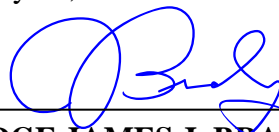
DISCUSSION

The exclusive remedy for the allegedly negligent or wrongful conduct of federal employees arising under theories of common law tort is an action against the United States under FTCA, 28 U.S.C. §§ 1346 and 2671 *et seq.* Hannah v. United States, 523 F.3d. 597, 601 (5th Cir. 2008). Because the United States is the proper party defendant under the FTCA, Plaintiff improperly filed suit against Thornton. 28 U.S.C. § 2679. Additionally, Plaintiff did not exhaust his administrative remedies, as required under the FTCA, prior to filing this suit. 28 U.S.C. § 2675(a). An action against the United States shall not be instituted unless the claimant has first filed an administrative claim with the appropriate federal agency. 28 U.S.C. § 2675(a). There is no indication that Plaintiff filed an administrative claim with the appropriate federal agency.

CONCLUSION

This Court has considered Defendant's Motion to Dismiss. There are sufficient facts pled to establish that Plaintiff's claim is subject to the FTCA and requisite administrative remedies were not exhausted prior to filing suit. The United States' Motion to Dismiss is **GRANTED**.

Signed in Baton Rouge, Louisiana, on January 20, 2015.



**JUDGE JAMES J. BRADY
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**