

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jun 13, 2019

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

NOELLE C. JAMES, Individually, and as
Attorney in Fact for THEADA MARIE
GIBBINS, an Incapacitated Person,
KENNETH W. GIBBINS, PAMELA
JONES, MERRY ANNE NORDBERG,
and KIM L. BAILEY,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,
Defendant.

NO. 1:15-cv-03186-SAB

**ORDER DENYING MOTION TO
DISMISS**

Before the Court is Defendant's Rule 12(b)(1) Motion to Dismiss Claims of Mrs. Gibbins's Adult Children, ECF No. 25. The motion was heard without oral argument. Defendant requests the Court dismiss Plaintiffs' loss of parental consortium claims, arguing that Washington common law does not recognize such a claim when it is brought by adult children for an injury to an elderly parent. The Court disagrees and finds Washington common law permits this type of claim.

BACKGROUND

Plaintiff Theada Marie Gibbins ("Mrs. Gibbins") alleges that she was a patient at Community Health of Central Washington, d/b/a Central Washington

ORDER DENYING MOTION TO DISMISS ^ 1

1 Family Medicine (“CHCW”), a community health center funded by the Secretary
2 of Health and Human Services. ECF No. 1. Mrs. Gibbins alleges that on or about
3 October 24, 2013, she was at CHCW when a physician ordered that she be
4 administered an influenza vaccination. Mrs. Gibbins alleges she suffered a severe
5 adverse reaction to the vaccination.

6 Mrs. Gibbins claims that the October 24, 2013 influenza vaccination should
7 not have been administered because she had previously experienced an adverse
8 reaction to the same vaccination several years prior. Mrs. Gibbins alleges her
9 medical records at CHCW reflected that she was allergic to, and was known to
10 have an adverse reaction from, the administration of the influenza vaccination.
11 Thus, Mrs. Gibbins alleges CHCW, its contractors, physicians, and/or other
12 licensed or certified health care practitioners were negligent because they knew or
13 should have known that Mrs. Gibbins was susceptible to another adverse reaction
14 if administered a subsequent influenza vaccination. Mrs. Gibbins went on to
15 achieve a good overall recovery from her adverse reaction to the vaccination.

16 Mrs. Gibbins, her husband Kenneth Gibbins, and their four adult daughters,
17 Noelle C. James (individually and as “attorney in fact for Mrs. Gibbins”), Pamela
18 Jones, Merry Anne Nordberg and Kim L. Bailey, filed administrative FTCA
19 claims with the Department of Health and Human Services (HHS). HHS denied
20 Plaintiffs’ claims, concluding Plaintiffs’ claims were preempted by the National
21 Vaccine Injury Compensation Program (“NVICP”).

22 Following the denial of their administrative claims, Plaintiffs filed suit
23 against the United States of America in the Eastern District of Washington on
24 October 20, 2015. ECF No. 1. Mrs. Gibbins FTCA claim was based in medical
25 negligence, while the remaining family members’ claims were based on loss of
26 consortium.

27 Mrs. Gibbins’s claims were recently resolved by the United States Court of
28 Federal Claims. ECF No. 13. Thus, the claims that remain pending in this matter

1 are Plaintiffs’ alleged loss of spousal and parental consortium. Defendant seeks
2 dismissal of the loss of parental consortium claims brought by Mrs. Gibbins’ adult
3 daughters.

4 **STANDARD**

5 “Federal courts are courts of limited jurisdiction.” *Kokkonen v. Guardian*
6 *Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). “Once challenged, the party
7 asserting subject matter jurisdiction has the burden of proving its existence.”
8 *Robinson v. United States*, 586 F.3d 683, 685 (9th Cir. 2009) (citing *Rattlesnake*
9 *Coal. v. E.P.A.*, 509 F.3d 1095, 1102 n.2 (9th Cir. 2007)).

10 “Absent a waiver of sovereign immunity, courts have no subject matter
11 jurisdiction over cases against the [federal] government.” *Munns v. Kerry*, 782
12 F.3d 402, 412 (9th Cir. 2015) (citing *Kaiser v. Blue Cross of Cal.*, 347 F.3d 1107,
13 1117 (9th Cir. 2003)). The FTCA provides a limited waiver of the sovereign
14 immunity of the United States for torts committed by federal employees acting
15 within the scope of their employment. 28 U.S.C. § 1346(b)(1); *Gonzalez v. U.S.*,
16 814 F.3d 1022, 1026-27 (9th Cir. 2016). Under the FTCA, the United States has
17 waived its sovereign immunity with regard to tort liability, “under circumstances
18 where the United States, if a private person, would be liable to the claimant in
19 accordance with the law of the place where the act or omission occurred.” 28
20 U.S.C. § 1346(b)(1); *F.D.I.C. v. Meyer*, 510 U.S. 471, 477 (1994).

21 **DISCUSSION**

22 Defendant argues Plaintiffs’ loss of parental consortium claims should be
23 dismissed because Washington common law does not recognize a loss of parental
24 consortium claim brought by adult children for the injury to an elderly parent. This
25 Court disagrees.

26 The Washington Supreme Court first recognized a child’s right to bring a
27 loss of parental consortium claim in 1984. *Ueland v. Reynolds Metal, Co.*, 103
28 Wn.2d 131, 140 (1984). The Washington Supreme Court held that “a child has an

1 independent cause of action for loss of the love, care, companionship and
2 guidance of a parent tortiously injured by a third party.” *Id.* In reaching its
3 decision, the Court acknowledged that other courts around the country limited the
4 loss of parental consortium claims to minor children dependent on the injured
5 parent. *Id.* at 139. The Court explicitly rejected this limitation, finding that
6 “[a]lthough minors are the group most likely to suffer real harm due to a
7 disruption of the parent-child relationship, we leave this for the jury to consider in
8 fixing damages. This is consistent with our view in wrongful death actions of
9 allowing a child to recover for loss of parental consortium beyond the period of
10 minority.” *Id.* at 139-40 (citation omitted).

11 The Court finds that, based on the above-cited language, the Washington
12 Supreme Court appears to recognize a parental loss of consortium claim brought
13 by adult children. In this case, adult children bring a claim for loss of the “love,
14 care, companionship and guidance of a parent tortiously injured by a third party.”
15 *Ueland*, 103 Wn.2d at 140. Whether these Plaintiffs have suffered harm due to any
16 alleged disruption of the parent-child relationship, is an issue for the jury to
17 consider in fixing damages. *Id.* at 139-40.

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1 Accordingly, **IT IS ORDERED:**

- 2 1. Defendant's Rule 12(b)(1) Motion to Dismiss Claims of Mrs.
3 Gibbins's Adult Children, ECF No. 25, is **DENIED**.

4 **IT IS SO ORDERED.** The District Court Clerk is hereby directed to enter
5 this Order and to provide copies to counsel.

6 **DATED** this 13th day of June 2019.



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12 Stanley A. Bastian
13 United States District Judge
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