

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

|                                  |   |   |
|----------------------------------|---|---|
| <b>PARTHENIA E. FIELDS,</b>      | ) |   |
|                                  | ) |   |
| <b>Plaintiff,</b>                | ) | <b>Civil Action No. 7:01CV00644</b>       |
|                                  | ) |   |
| <b>v.</b>                        | ) | <b><u>MEMORANDUM OPINION</u></b>          |
|                                  | ) |   |
| <b>UNITED STATES OF AMERICA,</b> | ) | <b>By: Samuel G. Wilson</b>               |
|                                  | ) | <b>Chief United States District Judge</b> |
| <b>Defendant.</b>                | ) |   |

In this action Plaintiff Parthenia E. Fields (“Fields”) seeks \$117 from Defendant United States of America for the wrongful towing of her car. This action is before the court on the United States’ motion to dismiss for lack of subject matter jurisdiction. Since Fields has not exhausted her administrative remedies under the Federal Tort Claims Act, 28 U.S.C. § 2675(a), the court will grant the United States’ motion to dismiss.

**I.**

Fields is an employee of the Social Security Administration’s Office of Hearings and Appeals in Roanoke, Virginia (“SSA”). Fields alleges that, on June 18, 2001, Rebecca Brown Sartor (“Sartor”) and Frances R. Scott (“Scott”), both employees of the SSA in Roanoke, caused her car to be “wrongfully” towed. On August 1, 2001, Fields filed a Warrant in Debt in the General District Court for the Commonwealth of Virginia, alleging that Sartor and Scott owed her \$117 (\$75 for credit and \$42 for cost), not including interest.

The United States filed a Notice of Removal and Substitution of the United States as the named Defendant for Sartor and Scott, pursuant to the Federal Tort Claims Act (“FTCA”), 28

U.S.C. § 2679, because Sartor and Scott were acting within the scope of their employment at the time they allegedly caused Fields' car to be wrongfully towed. On August 27, 2001, the court granted the United States' motions and dismissed the state law claims against Sartor and Scott because the exclusive remedy for the claim is an action against the United States.

The United States filed a motion to dismiss for lack of subject matter jurisdiction alleging that Fields had not met the jurisdictional requirements under the FTCA. Specifically, the United States claimed that Fields did not present an administrative claim to the SSA, and even if she had, the SSA had not issued a written denial of her claim and six months had not passed without the agency making a final disposition of her claim. Fields, however, claims that she submitted a written notice of her claim to an agent of the SSA on three separate occasions, and that the SSA refused to investigate her claim.

## II.

The Federal Tort Claims Act provides that an "action shall not be instituted upon a claim against the United States for money damages" unless the claimant has first exhausted her administrative remedies. 28 U.S.C. § 2675(a). A claimant has exhausted her administrative remedies when she has "presented the claim to the appropriate Federal agency" and the agency has "finally denied" her claim in writing. *Id.* "The failure of an agency to make final disposition of a claim within six months after it is filed shall . . . be deemed a final denial of the claim." *Id.* This is a jurisdictional requirement and the court is required to dismiss the action if it finds that the claimant has not exhausted her administrative remedies. *See McNeil v. United States*, 509 U.S. 106, 113 (1993); *Plyler v. United States*, 900 F.2d 41, 42 (4th Cir. 1990).

Even if Fields properly presented her claim to the SSA, the SSA did not send her a written

denial of her claim. Furthermore, assuming that Fields presented her claim to the SSA on June 18, 2001, the date her car was towed, this action was instituted before six months had passed without the agency making a final disposition of her claim. Therefore, Fields did not exhaust her administrative remedies, and the court must dismiss this action for lack of subject matter jurisdiction.

Fields argues that the SSA has ignored her claim and that it would be inefficient for the court to dismiss this action now only to have it reappear on the docket after the six month period proscribed in § 2675(a) has passed. However, the court assumes that the SSA will promptly deal with Fields' claim. Also, in McNeil, the Supreme Court disapproved of the practice in some district courts of permitting suits to stay on the docket pending the consideration of a claimant's administrative claim. McNeil, 500 U.S. at 110, 113. Since Fields failed to meet the jurisdictional prerequisite of § 2675(a), the court must dismiss the action because the court lacks subject matter jurisdiction. The court did not have jurisdiction over the action when it was removed to federal court, and the court cannot obtain jurisdiction by simply not acting on the motion to dismiss until the six months has elapsed. See Plyler, 900 F.2d at 42. Although this may not be the most efficient result, the court must abide by the jurisdictional limits set by Congress. "[I]n the long run, experience teaches that strict adherence to the procedural requirements specified by the legislature is the best guarantee of evenhanded administration of the law." McNeil, 500 U.S. at 113.

### **III.**

The court finds that Fields has not exhausted her administrative remedies under the FTCA.

Accordingly, the court grants the United States' motion to dismiss. An appropriate order will be entered this day.

**ENTER:** This \_\_\_\_ day of November, 2001

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CHIEF UNITED STATES DISTRICT JUDGE

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| <b>Plaintiff,</b>                | ) | <b>Civil Action No. 7:01CV00644</b>       |
|                                  | ) |   |
| <b>v.</b>                        | ) | <b><u>FINAL ORDER</u></b>                 |
|                                  | ) |   |
| <b>UNITED STATES OF AMERICA,</b> | ) | <b>By: Samuel G. Wilson</b>               |
|                                  | ) | <b>Chief United States District Judge</b> |
| <b>Defendant.</b>                | ) |   |

In accordance with the court's Memorandum Opinion entered this day, it is **ORDERED** and **ADJUDGED** that the United States' motion to dismiss for lack of subject matter jurisdiction is **GRANTED**. It is further **ORDERED** that this case be stricken from the docket of the court.

**ENTER:** This \_\_\_\_\_ day of November, 2001.

\_\_\_\_\_  
CHIEF UNITED STATES DISTRICT JUDGE