

August 12, 2003

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III
Clerk

No. 02-41400
Summary Calendar

ERIC C. SAMPSON,

Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA; UNIVERSITY OF TEXAS MEDICAL
BRANCH, Galveston Division; J. YUMAN, Correctional Officer;
DANTE ROWELY, Inmate; ROBERT HORTON, Correctional Officer,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:99-CV-478

Before JOLLY, SMITH, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Eric C. Sampson, Federal prisoner # 11669-058, has appealed the district court's orders dismissing his civil rights and Federal Tort Claims Act ("FTCA") claims against the United States of America and its contract health care provider, the University of Texas Medical Branch ("UTMB"). See FED. R. CIV. P. 12(b)(6).

The United States is immune from suit except as it waives its sovereign immunity. See FDIC v. Meyer, 510 U.S. 471, 475

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

(1994). "This Court has long recognized that suits against the United States brought under the civil rights statutes are barred by sovereign immunity." Affiliated Professional Home Health Care Agency v. Shalala, 164 F.3d 282, 286 (5th Cir. 1999). "Moreover, Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), provides a cause of action only against government officers in their individual capacities." Id. (parallel citations omitted).

Subject to certain exceptions, the FTCA waives the United States's sovereign immunity and permits a person injured by a Government employee acting within the scope of his employment to seek tort damages against the United States. See 28 U.S.C. §§ 2674 & 1346(b). The FTCA waiver does not encompass federal constitutional torts and does not extend to negligent acts of independent contractors such as UTMB. See Linkous v. United States, 142 F.3d 271, 275 (5th Cir. 1998); Davis v. United States, 961 F.2d 53, 57 (Cir. 1991).

The district court concluded that UTMB is immune from suit under the Eleventh Amendment. See University of Texas Medical Branch at Galveston v. Mullins, 57 S.W.3d 653, 657 (Tex. App. 2001) ("It is undisputed that UTMB is a governmental entity entitled to assert sovereign immunity."). Sampson argues only that UTMB acted under color of state law and, accordingly, is subject to suit under 42 U.S.C. § 1983. The question whether a state agency acted under color of state law is not pertinent to

the question whether that agency is immune from suit as all state agencies act under color of state law.

AFFIRMED.