

**UNITED STATES COURT OF APPEALS**  
**FOR THE FIFTH CIRCUIT**

---

No. 95-50922  
Summary Calendar

---

CATHY PULLEN; BRUCE PULLEN;  
FREDERICK ALLAN PULLEN,

Plaintiffs-Appellants,

versus

UNITED STATES OF AMERICA,

Defendant-Appellee.

---

Appeal from the United States District Court  
For the Western District of Texas  
(EP-95-CV-139)

---

August 21, 1996

Before POLITZ, Chief Judge, DAVIS and DENNIS, Circuit Judges.

PER CURIAM:\*

Bruce and Cathy Pullen and their major son Frederick Allan (Shields) Pullen appeal an adverse summary judgment in their Federal Tort Claims Act complaint against the United States for injury sustained by Frederick Allan while a patient at

---

\* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

the William Beaumont Army Medical Center during the year 1973. The government challenged subject matter jurisdiction on the grounds that the Pullens failed to file an administrative complaint within two years of the accrual of their cause of action, that their judicial complaint was not filed within six months of rejection of that complaint, and that their claim is barred by 28 U.S.C. § 2401(b). The Pullens counter that the government concealed the true cause of Frederick's injury; thus limitations were tolled until the summer of 1991 when they learned of the concealment. They therefore immediately filed an administrative complaint followed timely by the instant action.

The court treated the government's motion to dismiss as a motion for summary judgment and granted same, finding no basis for the claimed concealment. The Pullens filed a timely Rule 59(e) motion which challenges the validity of the underlying summary judgment and turns on the court's resolution thereof. Our *de novo* review of the record reflects no error in the trial court's ruling and, on the facts as found, authorities cited, and analysis made by the trial judge in his Memorandum Opinion and Order signed August 30, 1995 and filed and entered September 5, 1995, the appealed rulings are AFFIRMED.