

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 98-10616  
Summary Calendar

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CAROL MIONE CAMPBELL et al.,

Plaintiffs-Appellants,

versus

UNITED STATES OF AMERICA,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 7:97-CV-207-X

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February 11, 1999

Before KING, Chief Judge, BARKSDALE and STEWART, Circuit Judges:

PER CURIAM:\*

Carol Mione Campbell, Robert Mione, Mary Mione Rhoads, and Patricia Mione, individually and on behalf of the estates of Joseph Mione and Sylvia Mione (appellants), appeal the district court's dismissal of their claims for property damage, personal injury, and wrongful death for an automobile accident arising under the Federal Tort Claims Act. 28 U.S.C. §§ 1346(b), 2671, *et seq.* The district court dismissed for lack of subject matter jurisdiction.

The district court erred in dismissing the appellants' claims on the basis of subject matter jurisdiction. In their complaint, the appellants alleged that an employee of the United States was acting within the scope of his employment when he negligently collided head on with another vehicle, resulting in the damages brought under this claim. Based on these allegations, the appellants' complaint survives a facial inquiry on subject matter jurisdiction. *See Lewis v. Knutson*, 699 F.2d

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

230, 237 (5th Cir. 1983); *Williamson v. Tucker*, 645 F.2d 404, 415 (5th Cir. 1981). Moreover, the exceptions in *Bell v. Hood*, 327 U.S. 678, 682 (1945), do not apply under the facts of this case.

Contrary to its order, the district court does have subject matter jurisdiction to resolve the merits of this case. Accordingly the district court's order is vacated and the case remanded for further proceedings on the merits.

VACATE AND REMAND.