

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

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Lyle W. Cayce
Clerk

No. 25-40183

HOWARD LAWRENCE ELLSWORTH, III; THERESA LYNN
ELLSWORTH,

Plaintiffs—Appellants,

versus

DALLAS TEXAS DEPARTMENT OF VETERAN AFFAIRS; PLANO
TEXAS DEPARTMENT OF VETERAN AFFAIRS; UNITED STATES OF
AMERICA,

Defendants—Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:23-CV-710

Before HIGGINBOTHAM, HO, and DOUGLAS, *Circuit Judges*.

PATRICK E. HIGGINBOTHAM, *Circuit Judge*:

The plaintiffs appeal the dismissal of their medical-malpractice claims under the Federal Tort Claims Act (FTCA). We AFFIRM, albeit on other grounds.

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I

Healthcare professionals employed by the Department of Veterans Affairs (VA) treated Howard Ellsworth for diabetes from 2016–2022. In February 2020, Ellsworth reported elevated A1C levels, extreme thirst, excessive urination, and nighttime incontinence. He complained of poor treatment to his doctor, asserting he would not have such symptoms if the doctor had “do[ne] his job the right way” and “actually act[ed] like a doctor.”

Two years passed. Ellsworth submitted a complaint to the Office of the Inspector General in March 2022, alleging staff at the Dallas and Plano VA facilities failed to properly diagnose and treat his diabetes. He raised similar allegations in a Standard Form-95 (SF-95) filed that July with the Office of the General Counsel, listing himself as the “claimant” and his wife, Theresa, as a witness and property owner. The inspector general found no wrongdoing in June 2022, and the general counsel denied the SF-95 in March 2023. The general counsel’s denial letter informed Mr. Ellsworth of his right to seek redress in district court within six months.

The Ellsworths filed this suit *pro se* under the FTCA in August 2023, alleging the VA’s medical personnel provided Mr. Ellsworth with negligent medical care that caused his kidney disease.¹ The government moved to dismiss the second amended complaint under FED. R. CIV. P. 12(b)(1) and (6).

In June 2024, Mrs. Ellsworth filed her own SF-95, noting she held Mr. Ellsworth’s power of attorney. The VA denied her claim, finding (1) it contained the same allegations as her husband’s previously denied SF-95,

¹ 28 U.S.C. § 1346(b)(1).

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and (2) the agency lacked jurisdiction over her claim because the couple had already elected a judicial remedy.

In March 2025, the magistrate judge recommended the district court (1) dismiss Mrs. Ellsworth's claims under Rule 12(b)(1) for failure to exhaust administrative remedies, (2) dismiss the Ellsworths' claims under Rule 12(b)(6) as barred by the statute of limitations, and (3) deny their request for leave to amend as futile.² The plaintiffs filed objections. The district court adopted the memorandum and recommendation in full, dismissing the case with prejudice. The plaintiffs timely appealed *pro se*. We have jurisdiction under 28 U.S.C. § 1291.

II

We review a dismissal for lack of subject-matter jurisdiction *de novo*.³ In doing so, we “may rely on the complaint, undisputed facts in the record, and the court’s resolution of disputed facts.”⁴ We also review a dismissal for failure to state a claim *de novo*, asking whether the complaint “contain[s] sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’”⁵ *Pro se* litigant filings are “liberally construed.”⁶

² The plaintiffs also alleged various VA regulatory violations and a *Bivens* claim. The magistrate judge recommended the court dismiss the former for lack of subject-matter jurisdiction based on sovereign immunity and the latter for failure to state a claim. The plaintiffs have abandoned these claims on appeal.

³ *Fugedi v. Initram, Inc.*, 150 F.4th 690, 692 (5th Cir. 2025).

⁴ *Morris v. Thompson*, 852 F.3d 416, 419 (5th Cir. 2017).

⁵ *Butler v. S. Porter*, 999 F.3d 287, 292 (5th Cir. 2021) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

⁶ *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (citation omitted).

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We review a denial of leave to amend for abuse of discretion.⁷ Although leave “should [be] freely give[n] . . . when justice so requires,” the district court may deny leave if the “amended complaint would fail to state a claim upon which relief could be granted.”⁸

III

On appeal, the plaintiffs assert (1) Mrs. Ellsworth satisfied the exhaustion requirement, (2) Mr. Ellsworth’s claims are not time-barred, and (3) dismissal should have been without prejudice. We take each issue in turn.

A

First, we address exhaustion, as it is a jurisdictional prerequisite to reaching the VA’s Rule 12(b)(6) challenge to Mrs. Ellsworth’s claims. A plaintiff seeking money damages for injuries caused by government-employee negligence must first present the claim to the appropriate federal agency and receive a written denial.⁹ Failure to exhaust administrative remedies is a jurisdictional bar under the FTCA.¹⁰

The government argues Mrs. Ellsworth failed to exhaust her administrative remedies before filing suit because the VA was not on notice of her intent to bring personal-capacity claims.¹¹ In Mr. Ellsworth’s

⁷ *McKinney v. Irving Indep. Sch. Dist.*, 309 F.3d 308, 312 (5th Cir. 2002).

⁸ FED. R. CIV. P. 15(a)(2); *Stripling v. Jordan Prod. Co. LLC*, 234 F.3d 863, 872–73 (5th Cir. 2000).

⁹ 28 U.S.C. § 2675(a).

¹⁰ See *McNeil v. United States*, 508 U.S. 106, 111–12 (1993); *Coleman v. United States*, 912 F.3d 824, 834 (5th Cir. 2019) (collecting cases).

¹¹ The government concedes Mr. Ellsworth properly exhausted his administrative remedies before filing suit, and we agree. Mr. Ellsworth filed written complaints to the inspector general and general counsel explaining the nature of his alleged injuries and demanding a sum certain. The former denied his claim in August 2022 and the latter in

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administrative claims, his wife is listed as a witness and an owner of property damaged by his incontinence. The narratives describe her as his spouse, detail her logistical involvement in his medical care, and itemize the damages to their shared property. The personal injuries alleged and damages sought, however, are largely particular to Mr. Ellsworth. The administrative claims do not name Mrs. Ellsworth as a victim, claimant, or personal representative, nor do they bear her signature.

Relying on out-of-circuit precedent and a decision from the Eastern District of Louisiana, the magistrate judge “found that merely being listed on a form . . . is insufficient to establish that the claimant’s spouse independently presented the claim to the appropriate Federal agency.”¹² Accordingly, the magistrate judge concluded Mr. Ellsworth “is the only one who submitted a claim to the [VA] that was finally denied” and Mrs. Ellsworth “has not brought any cause of action against the Government” as “each claim is solely based on [Mr. Ellsworth’s] allegations of the treatment and care he received.”

We have yet to address this issue squarely, and district courts in this circuit have taken different approaches. Some hold that just listing a spouse on an administrative claim fails to give the government notice of a derivative claim.¹³ This strict-presentment approach aligns with the general rule that

March 2023. The general counsel’s denial letter started the six-month clock to appeal the VA’s decision, and Mr. Ellsworth timely filed suit in August 2023.

¹² See *Champagne v. United States*, 573 F. Supp. 488, 493 (E.D. La. Oct. 20, 1983); *Heaton v. U.S.*, 383 F. Supp. 589, 590–91 (N.Y. 1974).

¹³ These cases typically involve loss of consortium, which Texas law recognizes as a separate and independent cause of action held by either spouse arising from the other spouse’s negligent injury. *Whittlesey v. Miller*, 572 S.W.2d 665, 668 (Tex. 1978); see, e.g., *Walker v. United States*, 471 F. Supp. 38, 41–42 (M.D. Fla. 1978), *aff’d*, 597 F.2d 770 (5th Cir. 1979) (in loss-of-consortium case, “one spouse may not presume that his or her own independent claim is automatically raised or implied in the administrative claim of the other

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provisions abrogating the federal government's sovereign immunity must be construed narrowly in favor of the sovereign.¹⁴ Other courts apply a more relaxed standard, holding a plaintiff's failure to file a separate administrative claim or comply with all procedural requirements does not necessarily bar her relief under the FTCA.¹⁵ These cases emphasize the remedial purpose of the

spouse. . . . [O]ne spouse may not rely on the administrative claim of another spouse.”); *Wilke v. United States*, No. 1:07cv465 LG-JMR, 2009 WL 590450, at *1-3 (S.D. Miss. Mar. 5, 2009) (dismissing wife's derivative loss-of-consortium claim where husband listed wife as spouse on his personal-injury administrative claim but wife did not sign it or separately assert loss-of-consortium); *Storey v. United States*, No. 3:16-CV-00194-NBB-RP, 2017 WL 3396405, at *2 (N.D. Miss. Aug. 8, 2017) (same); *Poynter v. United States*, 55 F. Supp. 2d 558, 564 (W.D. La. 1999) (same); see also *Chickaway v. United States*, 823 F. Supp. 2d 452, 455-57 (S.D. Miss. 2011) (dismissing father's derivative claim arising from son's wrongful-death injuries because administrative claim filed by decedent's mother did not mention father, despite the fact that father was a wrongful-death statutory beneficiary under state law). Courts outside this circuit have held similarly. See, e.g., *Pipkin v. U.S. Postal Serv.*, 951 F.2d 272, 273 (10th Cir. 1991) (wife's failure to assert an administrative claim for loss of consortium apart from her husband's administrative claim deprived court of subject-matter jurisdiction).

¹⁴ *Gomez-Perez v. Potter*, 553 U.S. 474, 491 (2008).

¹⁵ See, e.g., *Lightell v. United States*, No. CIV.A. 86-4338, 1987 WL 15954, at *1 (E.D. La. Aug. 19, 1987) (holding that although wife was not listed as claimant on form submitted by husband, form provided adequate notice of her loss-of-consortium claim because her address was listed and the government received a copy of complaint from related lawsuit where wife raised loss-of-consortium claim); *Forrest v. United States*, No. CV 16-2405, 2016 WL 4080908, at *1-2 (E.D. La. Aug. 1, 2016), *on reconsideration in part*, No. CV 16-2405, 2016 WL 9560201 (E.D. La. Dec. 2, 2016) (government had sufficient notice of son's claim, although he was not listed on mother's wrongful-death claim filed on his father's behalf and he did not file a separate claim, because the amount sought was great enough to alert the government to multiple claimants); *Eskine v. United States*, No. CV 95-1364, 1995 WL 495903, at *1-2 (E.D. La. Aug. 18, 1995) (characterizing the FTCA's notice requirement as “minimal” and holding wife's failure to file separate administrative claim did not divest the court of jurisdiction over her claim because her husband's SF-95 identified her as a claimant and specified her loss-of-consortium damages); *Champagne*, 573 F. Supp. at 490-94 (holding that although not all plaintiffs signed the SF-95, agency had notice of their wrongful-death claims because all were listed as claimants); *Green v. United States*, No. CIV.A. 02-616, 2003 WL 1733520, at *2-5 (E.D. La. Mar. 31, 2003), *on reconsideration*, No. CIV.A. 02-616, 2003 WL 21500553 (E.D. La.

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FTCA's "minimal" notice requirements, as they are "meant to benefit claimants and in no way are designed to preclude them from their day in court. . . . [They] are intended to lessen the court case load through fair settlement, not procedural default."¹⁶

In sum, where courts have found jurisdiction lacking, the administrative complaint typically names the spouse but contains no additional facts alerting the government to the spouse's independent claims or injuries. Conversely, courts have maintained jurisdiction where the administrative complaint provides *some* notice of the spouse's derivative claim, *i.e.*, listing the spouse's address, seeking a large sum in a wrongful-death suit, naming the spouse as claimant, or detailing the spouse's independent injuries in the body of the claim. In any case, "[t]he purpose of the FTCA's administrative-presentment requirement is to allow the federal agency promptly to investigate and, if appropriate, settle claims."¹⁷ That requirement is satisfied when the plaintiff, in writing, (1) "brings to the Government's attention facts sufficient to enable it thoroughly to investigate its potential liability and to conduct settlement negotiations" and (2) places

June 24, 2003) (claimant's failure to name his 11 siblings as claimants on the SF-95 did not bar siblings' wrongful-death claims because government was on notice of additional claimants given the large damages sought); *see also* 28 C.F.R. § 14.4(a)(3) (authorizing the government to request additional information from the claimant in response to wrongful-death claims).

¹⁶ *Pleasant v. United States ex rel. Overton Brooks Veterans Admin. Hosp.*, 764 F.3d 445, 450 (5th Cir. 2014) (quotations and citation omitted); *see also Adams v. United States*, 615 F.2d 284, 288 (5th Cir. 1980), *decision clarified on denial of reh'g*, 622 F.2d 197 (5th Cir. 1980) (notice requirement "provid[es] for more fair and equitable treatment of private individuals and claimants when they deal with the Government or are involved in litigation with their Government").

¹⁷ *Pleasant*, 764 F.3d at 449.

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a value on the claim.¹⁸ And whether that requirement is met is necessarily a fact-specific inquiry.

Here, the plaintiffs assert in briefing that Mrs. Ellsworth has suffered “her own distinct injury: emotional distress and loss of consortium.” But nothing in Mr. Ellsworth’s administrative claims suggest his wife has suffered such an injury or intends to pursue her own loss-of-consortium claim. The only facts specific to Mrs. Ellsworth and relevant to emotional damages or loss of consortium are her involvement in scheduling Mr. Ellsworth’s medical care; that alone is insufficient to put the agency on notice that she suffered emotional distress and loss of consortium.¹⁹

It may be said, however, that the agency was on notice of Mrs. Ellsworth’s claim for property damages, as she was listed as a “property owner” on the SF-95 and the narrative details precise damages of \$28,030.09 to the couple’s mattress, washer and dryer, and linens at the address listed as their home. Indeed, we have described the FTCA’s notice requirement as “minimal,” requiring only “the skeletal facts of the claim sufficient to enable the agency to investigate.”²⁰ Under Texas law, the

¹⁸ *Id.*

¹⁹ The plaintiffs emphasize Mrs. Ellsworth has had power of attorney since March 2022, but the SF-95 does not mention this fact. In any case, the fact that Mrs. Ellsworth may, as her husband’s power of attorney, *submit* a claim on his behalf does not put the agency on notice of Mrs. Ellsworth’s *individual* claims. 28 C.F.R. § 14.3(b) (“A claim for personal injury may be presented by the injured person . . . or legal representative.”).

²⁰ *See Adams*, 615 F.2d at 289, 292 (“Congress deemed this minimal notice sufficient to inform the relevant agency of the existence of a claim. . . . A federal court’s power to adjudicate a tort claim brought against the United States depends solely on whether the claimant has previously complied with the minimal requirements of the statute.” (citing 28 U.S.C. § 2675)); *Martinez v. United States*, 728 F.2d 694, 696 (5th Cir. 1984).

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property at issue here is owned by Mr. and Mrs. Ellsworth in equal parts.²¹ So the SF-95's explanation of the damage to the Ellsworths' shared property, along with listing Mrs. Ellsworth as a property owner, puts the government on notice of property-damage claims for both spouses. With a generous gloss, Mr. Ellsworth's SF-95 sufficiently put the agency on notice of *some* claim belonging to his wife, albeit for property damage, not for loss-of-consortium or emotional damages.²²

But other problems await. We conclude the district court erred in finding Mrs. Ellsworth failed to exhaust her administrative remedies but find dismissal proper under Rule 12(b)(6), as we will explain.

B

The Ellsworths' claims are time-barred. The FTCA's statute of limitations provides "[a] tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues."²³ Claim accrual occurs at the time of the plaintiff's injury or, in the medical-malpractice context, when the plaintiff has the information necessary to discover "both his injury and its

²¹ See *Farmers Tex. Cnty. Mut. Ins. Co. v. Okelberry*, 525 S.W.3d 786, 793 (Tex. App.—Houston [14th Dist.] 2017, no pet.) (explaining presumption under Texas law that all property, other than separate property, acquired by either spouse during the marriage is community property).

²² But see *Whittlesey*, 572 S.W.2d at 669 ("[I]t cannot be said that the character of the deprived spouse's recovery for loss of consortium is community property. . . . [R]ecovery for personal injuries in Texas . . . is the separate property of that spouse."). Moreover, Mrs. Ellsworth's attempt to file her own SF-95 ten months after initiating this lawsuit changes nothing. The FTCA's plain language requires a claimant present her claims in writing *before* filing suit. 28 U.S.C. § 2401(b); see *Cook v. United States ex rel. U.S. Dept. of Labor*, 978 F.2d 164, 166 (5th Cir. 1992) (submission of an administrative claim is "a jurisdictional *prerequisite* to filing suit" (emphasis added)).

²³ 28 U.S.C. § 2401(b).

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cause.”²⁴ In the latter case, the plaintiff “need not know the legal or medical significance of an act or an injury for the cause of action to accrue.”²⁵ Instead, the plaintiff need only possess “knowledge of facts that would lead a reasonable person (a) to conclude that there was a causal connection between the treatment and injury or (b) to seek professional advice, and then with that advice, to conclude that there was a causal connection between the treatment and injury.”²⁶

Mr. Ellsworth presented his administrative claim to the VA on March 10, 2022, at the earliest (complaint filed with inspector general) or July 21, 2022, at the latest (SF-95 filed with general counsel).²⁷ Yet he argues his claim accrued in June 2022—between the submission of two administrative complaints with identical allegations—when he received a diagnosis of kidney disease. The government argues Mr. Ellsworth’s claim accrued much earlier than June 2022—in September 2019, at the earliest, when he became aware that his “treatment must not be working properly” and “told [the doctor] to stop being a piece of s--- doctor, stop neglecting my care, and to provide proper care,” or in February 2020, at the latest, when Mr. Ellsworth knew of his increased A1C levels, thirst, urination, and nighttime incontinence, and told his doctor that he believed the doctor’s poor quality of care had caused his symptoms.

²⁴ *Johnson v. United States*, 460 F.3d 616, 621 (5th Cir. 2006) (quoting *United States v. Kubrick*, 444 U.S. 111, 120 (1979)).

²⁵ *MacMillan v. United States*, 46 F.3d 377, 381 (5th Cir. 1995).

²⁶ *Id.* (citation omitted).

²⁷ The record is unclear on the precise date Mr. Ellsworth filed his SF-95. Mr. Ellsworth’s SF-95 is signed April 27, 2022, but it bears a “2022 Jul 28” stamp by the Office of General Counsel and a handwritten received date of “8/8/22.” The plaintiffs allege Mr. Ellsworth submitted the form on July 21, 2022, in the second amended complaint.

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The district court agreed with the government, and so do we. Mr. Ellsworth claims his doctor admitted that he misdiagnosed him in September 2019, after Mr. Ellsworth had “cussed him out for his unprofessional standards” and “his gross negligence . . . by refusing to properly test and diagnose” him. Mr. Ellsworth asserts he urinated uncontrollably and had nighttime incontinence by February 2020, and had enough sense of his injury and its cause to confront his doctor and demand better care. Mr. Ellsworth may not have known the full significance of his symptoms at that time, *i.e.*, kidney disease, but he (1) was aware of his symptoms, (2) sought professional advice in response, and (3) expressed his opinion that the poor treatment had caused his state.²⁸

It follows that Mr. Ellsworth’s claim accrued in February 2020 and limitations ran in February 2022.²⁹ As he filed his administrative complaint in March 2022 at the earliest, Mr. Ellsworth’s claims are time-barred. These time limits are jurisdictional; the district court did not err in granting dismissal under Rule 12(b)(6).³⁰ The limitations period also bars Mrs. Ellsworth’s property-damage claim, as it accrued the same time as her husband’s claims in February 2020, when their property was damaged by his excessive urination.

C

Finally, we turn to whether the district court abused its discretion in denying leave to amend and dismissing this suit with prejudice. Rule 15 is a liberal standard that favors leave, but that preference has no purchase when

²⁸ See *MacMillan*, 46 F.3d at 381.

²⁹ 28 U.S.C. § 2401(b) (barring claim under FTCA if not brought within two years of accrual).

³⁰ *Flory v. United States*, 138 F.3d 157, 159 (5th Cir. 1998).

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amendment cannot cure the defect.³¹ Mr. Ellsworth filed his administrative complaint over two years after his injury accrued, and Mrs. Ellsworth's claims are derivative of his personal-injury claims. And the plaintiffs have already twice amended their complaint—once as a matter of course, and the other after the government filed its first motion to dismiss.³²

* * *

Although the district court erred in dismissing Mrs. Ellsworth's claims on exhaustion grounds, we AFFIRM the dismissal of her and Mr. Ellsworth's claims.

³¹ See *Stripling*, 234 F.3d at 872–73.

³² See *United States ex rel. Willard v. Humana Health Plan of Tex. Inc.*, 336 F.3d 375, 387 (5th Cir. 2003) (“[L]eave to amend properly may be denied when the party seeking leave has repeatedly failed to cure deficiencies by amendments previously allowed and when amendment would be futile.”).