United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
November 4, 2026
Thomas B. Plunkett, III
Clerk

No. 26-50253

KOSHY MATHEWS MATHAI,

Plaintiff—Appellant,

versus

UNITED STATES OF AMERICA,

Defendant—Appellee.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 6:24-CV-612

Before DUNCAN, ENGELHARDT, and RAMIREZ, *Circuit Judges*.

PER CURIAM:[*]

Koshy Mathews Mathai appeals the dismissal for lack of subject matter jurisdiction of his claim under the Federal Tort Claims Act for intentional infliction of emotional distress. We AFFIRM.

[*] This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

I

A

Mathai applied for a position as a pain management physician at the Central Texas Veterans' Association Healthcare System (CTVAHS), an agency of the federal government, and it offered him the job. The offer included a $25,000 per year recruitment incentive for the first two years of employment. In a telephone call, Mathai told CTVAHS's chief of staff, Olawale Fashina, that he would not accept the job offer unless he continued to receive the incentive beyond the first two years. Fashina responded that "he could not promise [Mathai] that," but the recruitment incentive typically continued as a retention incentive. Two days later, Mathai emailed Fashina to confirm the terms of the offer, stating:

> I am putting my faith in your good word that after the first two years, the $25,000 per year may typically be continued by way of retention bonus, although you cannot contractually commit to this in the setting/structure of the recruitment bonus as per any initial employment offer. If you feel that I have misunderstood anything at all, please let me know.

Fashina did not respond.

Mathai accepted the job. Shortly after he started, the pain management section of CTVAHS was "realigned" to a different service division. This realignment changed his job responsibilities. After the first two years, he did not receive an incentive.

B

Mathai sued the United States under the Federal Tort Claims Act (FTCA), 28 U.S.C. § 1346(b), for intentional infliction of emotional distress. He alleged that Fashina's failure to respond to his email induced him to accept the job offer, which caused the emotional harm he later suffered from

"professional entrapment within a misaligned role." The United States moved to dismiss the case, in relevant part, for lack of subject matter jurisdiction based on sovereign immunity, arguing that Mathai's claim arose from a misrepresentation, so it fell outside the limited waiver of immunity in the FTCA.[1]

A magistrate judge recommended that Mathai's claim be dismissed under FED. R. CIV. P. 12(b)(1) for lack of subject matter jurisdiction. Over Mathai's timely objection, the district court adopted the recommendation in full and dismissed the case without prejudice.

II

"We review a district court's grant of a 12(b)(1) motion to dismiss *de novo*, 'applying the same standard used by the district court.'" *Reule v. Jackson*, 114 F.4th 360, 364 (5th Cir. 2024) (quoting *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001)). The appellant "bear[s] the burden of proving, by a preponderance of the evidence, that the court has subject matter jurisdiction." *Id.*

III

Mathai argues that the district court erred by finding the claim arose from a misrepresentation and that he properly pled a tort claim for which the United States has waived immunity. His listed issues fall into three main contentions: (1) the district court misconstrued his complaint by treating the non-award of the retention incentive as the "gravamen" of the claim; (2) Fashina's failure to respond to his email was an "operational omission" that

[1] The United States also moved for dismissal based on insufficient service of process and failure to state a claim.

violated federal policy; and (3) that operational omission is a tort distinct from any alleged misrepresentation and is not barred by sovereign immunity.

"Generally, the United States enjoys sovereign immunity from suit unless it has specifically waived immunity." *Jeanmarie v. United States,* 242 F.3d 600, 602 (5th Cir. 2001). The FTCA was enacted "as a limited waiver" of immunity, making the United States "liable in tort for certain damages caused by the negligence of any employee of the Government." *Johnston v. United States*, 85 F.3d 217, 218-19 (5th Cir. 1996). It "preserves the Government's immunity from suit for 'any claim arising out of . . . misrepresentation, deceit, or interference with contract rights,'" however. *Millbrook v. United States*, 569 U.S. 50, 52 (2013) (quoting 28 U.S.C. § 2680(h)).

The FTCA's "broad" misrepresentation exception "bars any claim arising out of a misrepresentation—even if the conduct underlying the claim may also constitute a tort not barred by section 2680(h)." *Life Partners Inc. v. United States*, 650 F.3d 1026, 1032 (5th Cir. 2011). To determine whether a claim arises out of a misrepresentation, this court asks "whether 'the chain of causation' from the alleged negligence to the injury depends upon a misrepresentation by a government agent." *Id.* (quoting *Commercial Union Ins. Co. v. United States,* 928 F.2d 176, 179 (5th Cir. 1991)).[2] This analysis "focus[es] on the conduct upon which the plaintiff's claim is based," not the plaintiff's "choice of pleading." *Id.* (quoting *Truman v. United States*, 26 F.3d 592, 594 (5th Cir. 1994)).

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[2] This circuit follows a two-step inquiry to determine whether a FTCA claim involving misrepresentation is barred, asking: (1) whether the plaintiff's claim depends on a misrepresentation; and (2) "whether Congress has nonetheless waived sovereign immunity independently of the FTCA." *Life Partners*, 650 F.3d at 1032. Mathai does not allege any waiver except the FTCA.

The district court found that Mathai's claim arose out of a misrepresentation:

> While the plaintiff attempts to extricate this case from a misrepresentation claim, the underlying chain of events makes this impossible. The plaintiff claims (1) that the defendant's employee represented to him that he was likely to receive a retention incentive, (2) that he did not reply to the plaintiff's email confirming this representation, (3) that the plaintiff relied on this, leading him to (4) accept a job offer that (5) caused him emotional distress. The plaintiff's email only existed to confirm Dr. Fashina's earlier, allegedly inaccurate representation regarding the retention incentive. Absent that representation, the plaintiff would have had no reason to send an email confirmation, and Dr. Fashina's failure to reply would have no effect on his decision to accept CTVAHS's job offer. An alleged misrepresentation is central to the conduct upon which this claim is based and so the Court finds that the misrepresentation exemption applies.

Mathai contends that the core conduct underlying the claim is Fashina's failure to respond to his email, which he characterizes as an "operational omission" rather than a misrepresentation, citing agency policies requiring a prompt response to correspondence. According to his complaint, however, he asked Fashina to respond only if Mathai had "misunderstood anything." "[T]he chain of causation . . . depends upon a misrepresentation" because no response was necessary unless Fashina's previous statements about the retention incentive were inaccurate, and absent Fashina's "failure to communicate," Mathai's injury would never have occurred.[3] *See Life Partners*, 650 F.3d at 1031; *Metro Life Ins. Co. v.*

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[3] Mathai acknowledges this causation, explaining "[t]he requested relief is for severe emotional-distress injury caused by . . . the pre-employment bypass of mandatory correspondence- accountability procedures."

Atkins, 225 F.3d 510, 512 (5th Cir. 2000). This is not a case where misrepresentation is "merely collateral" to "the performance of an operational task." *Atkins*, 225 F.3d at 512. Misrepresentation is, rather, "the essential act that spawned the damages" because only an initial misrepresentation by Fashina would trigger his obligation to respond. *Id.* (quoting *Saraw Partnership v. United States,* 67 F.3d 567, 570 (5th Cir. 1995)).

The district court did not err by holding that Mathai's claim arose from a misrepresentation and is therefore barred by sovereign immunity. The judgment of the district court is AFFIRMED.