

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

D.B., A MINOR, BY AND THROUGH)	
HIS NEXT FRIEND AND MOTHER)	
ANTOINETTE LUNDY,)	
)	
Plaintiff,)	
)	
v.)	No. 17-cv-02806-SHM-cgc
)	
SHELBY COUNTY HEALTH CARE)	
CORPORATION AND UNITED STATES)	
OF AMERICA,)	
)	
Defendants.)	

ORDER GRANTING UNITED STATES OF AMERICA'S MOTION FOR SUMMARY
JUDGMENT

Plaintiff brings this medical malpractice action against the United States of America as substitute party (the "Government") and Shelby County Health Care Corporation ("SCHCC"). (D.E. No. 38.) Plaintiff sues the Government under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b) and 2671, et seq., (the "FTCA"). Plaintiff sues SCHCC for medical malpractice under Tennessee law. Before the Court is the Government's Motion for Summary Judgment (the "Motion"), filed on May 28, 2020. (D.E. No. 76.) Plaintiff has responded, the Government has replied, Plaintiff has filed a sur-reply, the Government has filed a sur-sur-reply, and the Motion is ripe

for consideration. (D.E. Nos. 80, 87, 93, 97.) For the following reasons, the Motion is GRANTED.

I. Background

D.B., Plaintiff Antoinette Lundy's minor child, on whose behalf she brings this action, sustained injuries because of allegedly negligent conduct during his delivery on May 2, 2014. (Amended Complaint, D.E. No. 38 at 447-48.)¹

On April 28, 2017, pursuant to Tennessee law, Lundy notified the health care providers responsible for her and D.B.'s care that she intended to sue them. (D.E. No. 4-1 at 183-84.) Christ Community Health Services, Inc. ("CCHS") and its employees Dr. William G. Mullinax, Dr. Ellisa Rausch Krumm, and Dr. David Jordan Paslay (the "doctors") were among the parties notified. (Id.) On or before May 19, 2017, the United States Department of Health and Human Services ("HHS") sent a letter to Lundy. (D.E. No. 16-2 at 381.) HHS informed Lundy that it had learned of her intent to sue CCHS employees, that those employees might have been federal employees at the time they provided care, and that, if so, the FTCA would be her exclusive remedy against them. (Id.)

On August 22, 2017, Lundy sued CCHS, the doctors, and SCHCC for medical malpractice in Tennessee state court. (D.E.

¹ Unless otherwise noted, all pin cites for record citations are to the "PageID" page number.

No. 4-1 at 176.) Lundy served CCHS through its registered agent on September 1, 2017. (D.E. No. 4 at 173.) CCHS notified the Government of Lundy's suit on September 20, 2017. (Id. at 172.) The Government filed a response on September 27, 2017. (D.E. No. 4-1 at 327-28.) In its response, the Government said it had not yet determined whether CCHS and the doctors were federal employees when they cared for Lundy and D.B. and, as a result, did not yet know whether federal law would require the Government to enter a substitution of party. (Id.) On October 13, 2017, while her case was pending in state court, Lundy filed an FTCA administrative claim against the Government. (D.E. No. 20 at 393.)

CCHS removed to this Court on November 3, 2017, under 42 U.S.C. § 233(1)(2). (D.E. No. 4.) On December 6, 2017, after determining that CCHS and the doctors were federal employees at all relevant times, the Government moved to substitute itself as defendant in place of CCHS and the doctors. (D.E. No. 12 at 361-62.) The Court granted the Government's motion on December 11, 2017. (D.E. No. 15.) The next day the Government filed a motion to dismiss for lack of jurisdiction, noting that Lundy had failed to exhaust her administrative remedies as required by the FTCA. (D.E. No. 16 at 370.) The Court granted the Government's motion on February 16, 2018, dismissing the case against the Government without prejudice. (D.E. No. 29.)

On June 28, 2018, Lundy filed a motion for leave to amend her Complaint to add the Government as a defendant. (D.E. No. 35.) She represented that she had completed the FTCA administrative claims process and received a final determination denying her claim. (Id. at 427.) The Court granted Lundy's motion. (D.E. No. 36.) Lundy filed her Amended Complaint on July 19, 2018, naming the Government and SCHCC as defendants. (D.E. No. 38.)

On October 30, 2018, the Government filed a Motion to Dismiss. (D.E. No. 58.) The Government contended that Tennessee's health care liability statute of repose deprived the Court of jurisdiction over the Government. (Id. at 696); Tenn. Code Ann. §§ 29-26-116(a)(3) and 29-26-121(c).

The Court denied the Government's motion because Lundy's initial complaint had been filed before the deadline imposed by the statute of repose, the initial complaint had been dismissed for reasons not extinguishing her right of action, and the amended complaint had been filed within one year of the order of dismissal, which satisfied Tennessee's savings statute. (D.E. No. 61 at 740-41.)

On May 28, 2020, the Government filed the instant Motion. (D.E. No. 76.) The Government argues that Lundy failed to satisfy the FTCA's two-year statute of limitations for filing an administrative claim with the federal agency, (Id. at 783),

which would “forever bar[]” her claim against the Government, 28 U.S.C. § 2401(b). D.B. was injured on May 2, 2014, and the Government contends that the latest date the statute of limitations could have begun to run was May 19, 2014, the date D.B. was released from the hospital. (D.E. No. 76 at 793.) The Government contends that the two-year statute of limitations for filing an administrative claim had run by May 19, 2016, and that Plaintiff did not file an administrative claim until October 13, 2017. (Id. at 793-94.) Plaintiff agrees that the statute of limitations had run before she filed her administrative claim, but argues that the statute should be equitably tolled. (See Pl.’s Resp., D.E. No. 80 at 858.)

II. Jurisdiction

The Court has federal-question jurisdiction over Lundy’s claim against the Government. Under 28 U.S.C. § 1331, United States district courts have original jurisdiction “of all civil actions arising under the Constitution, laws, or treaties of the United States.” This action was removed under 42 U.S.C. § 233(1)(2), and the Court has original and exclusive jurisdiction under 42 U.S.C. § 233(g)(1)(A).

The Court has supplemental jurisdiction over Lundy’s claim against SCHCC under 28 U.S.C. § 1367(a). That claim derives from a “common nucleus of operative fact” with Lundy’s claim against the Government. United Mine Workers of Am. v. Gibbs,

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