

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 06-5115

September Term, 2005

06cv00250

Filed On: September 20, 2006

[992809]

Victoria L. Schu,
Appellant

v.

Metropolitan Police Department of the District of
Columbia, et al.,
Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BEFORE: Ginsburg, Chief Judge, and Garland and Kavanaugh,
Circuit Judges

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the brief filed by the appellant. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). It is

ORDERED AND ADJUDGED that the district court's order dismissing appellant's complaint without prejudice for lack of subject matter jurisdiction be affirmed. The Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b), 2671, et seq., constitutes a limited waiver of the United States' sovereign immunity and makes the federal government liable for certain torts of its employees which are committed within the scope of their employment. Claimants must, however, meet the jurisdictional prerequisite of filing an administrative complaint with the appropriate agency before filing suit in district court, see 28 U.S.C. §§ 2675(a), 2679(d)(5), and appellant failed to demonstrate she exhausted her administrative remedies with respect to her claim against the FBI by first presenting that claim to the FBI. Accordingly, appellant's claim against the FBI was properly dismissed without prejudice. See Simpkins v. District of Columbia Government, 108 F.3d 366, 371 (D.C. Cir. 1997) (dismissal for failure to exhaust is without prejudice). The district court also properly determined that appellant's claims against officials of the District of Columbia properly lie, if anywhere, in the District of Columbia courts rather than in federal court.

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Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam