

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

GAIL MUMME,)	
)	
Plaintiff)	
)	
v.)	Docket no. 00-CV-104-B
)	
UNITED STATES OF AMERICA,)	
)	
Defendant)	

ORDER DISMISSING PLAINTIFF’S LOSS OF CONSORTIUM CLAIMS

SINGAL, District Judge

Before the Court is Defendant’s Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) (Docket #9).¹ Also pending is Plaintiff’s Motion to Vacate (Docket #14) an endorsement order whereby this Court granted Defendant a time extension to file a reply brief (Docket #13). Appearing pro se, Plaintiff has brought claims for loss of consortium and loss of enjoyment of life based on the tort claims of her husband, Christian Mumme, against the United States under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671—2680. (See Docket no. 00-CV-103-B-S.)²

Today, this Court has issued an Order dismissing her husband’s tort claims against the Government because the United States acted within the discretionary function immunity of the Federal Tort Claims Act, 28 § 2680(a). (See Order Dismissing Plaintiff’s Claims, Jan. 22, 2001 (Docket no. 00-CV-103-B-S).) Plaintiff’s claims for

¹ Plaintiff filed tort claims against the Department of Labor and Secretary of Labor Alexis Herman. Because Plaintiff’s claims sound in tort, she should have filed suit against the United States. See 28 U.S.C. § 2679; United States v. Smith, 499 U.S. 160, 173 (1991). Therefore, the Court sua sponte replaces Herman and the Labor Department with the United States as the sole named defendant.

loss of consortium and loss of enjoyment of life rely on the success of her husband's tort claims. See, e.g., Berniger v. Meadow Green-Wildcat Corp., 945 F.2d 4, 9 n.4 (1st Cir. 1991). Because the Court dismisses her husband's tort claims for lack of subject matter jurisdiction, the Court must also dismiss Plaintiff's claims. See Stewart v. United States, 486 F. Supp. 178, 185 (C.D. Ill. 1980) (dismissing loss of consortium claim against United States because Government's actions were discretionary functions).

Also, Plaintiff objects to and moves to vacate the Court's order extending the time limit for Defendants to file a reply brief. First, it was only fair to extend Defendants' time to file a reply brief because the Court previously had extended the deadline for Plaintiff to file a response brief. (See Order, Nov. 29, 2000 (Docket #11).) Second, even though the Court permitted Defendants to file a reply brief late, they never did so. Third, because the Court herein has decided the issue of Defendants' Motion to Dismiss, the Motion to Vacate is moot.

Therefore, the Court hereby GRANTS Defendants' Motion to Dismiss. The Court dismisses Plaintiff's claims with prejudice. The Court DENIES Plaintiff's Motion to Vacate the endorsement order extending Defendants' time to file a response brief.

SO ORDERED.

GEORGE Z. SINGAL
United States District Judge

Dated this 29th day of January, 2001.

² Plaintiff's husband has filed two other actions with this Court. Docket no. 00-CV-96-B is a suit to obtain documents pursuant to the Privacy Act, 5 U.S.C. § 552a. The Court previously dismissed his other suit, Docket no. 00-CV-98-B, a decision currently on appeal.

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