

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

PATRICK WATSON,

Plaintiff,

vs.

CIVIL ACTION
No. 04-3285-GTV

FBI AGENT, et al.,

Defendants.

ORDER

This matter is before the court on plaintiff's motion to alter or amend judgment (Doc. 6).

A motion to alter or amend filed pursuant to Rule 59(e), Fed. R. Civ. P., is granted only in narrow circumstances. See Adams v. Reliance Standard Life Ins. Co., 225 F.3d 1179, 1186 n. 5 (10th Cir. 2000)(Rule 59(e) motions "should be granted only to correct manifest errors of law or to present newly discovered evidence").

This matter was interpreted by the court as an action filed pursuant to Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971). The court determined this matter was not filed within the two-year

limitation period that applies in this district and therefore summarily dismissed the action.

In his motion to alter or amend, plaintiff asserts that this action is filed pursuant to the Federal Tort Claims Act, and in support of his contention that this matter is timely, he submits a letter denying his administrative tort claim (Doc. 6, Attach.). The letter is dated March 5, 2004, and advises plaintiff that he may file a federal lawsuit within six months if he is dissatisfied. Plaintiff commenced this action in September 2004.

Having considered the record and the plaintiff's status as a pro se litigant, the court concludes the dismissal may be set aside.

The Federal Tort Claims Act establishes the exclusive remedy against the United States for "injury or loss of property, or personal injury or death" caused by the negligent or wrongful conduct of a government employee. 28 U.S.C. 2679(b)(1). This remedy is exclusive and generally protects government employees acting within their scope of employment from individual liability, unless their conduct violates the Constitution or federal law. 28 U.S.C. 2679(b)(1) and (2).

Based upon plaintiff's assertion that his claims arise

under the Federal Tort Claims Act, the court will substitute the United States as the sole defendant and will dismiss the individual defendants from this action.

IT IS, THEREFORE, BY THE COURT ORDERED plaintiff's motion to alter or amend judgment (Doc. 6) is granted.

IT IS FURTHER ORDERED the clerk of the court shall reopen this matter, shall substitute the United States as the sole defendant in this action, and shall issue summons to the United States.

IT IS FURTHER ORDERED the individual defendants are dismissed from this action.

Copies of this order shall be transmitted to the plaintiff and to the United States Attorney for the District of Kansas.

IT IS SO ORDERED.

Dated at Kansas City, Kansas, this 24th day of May, 2005.

/s/ G. T. VanBebber

G. T. VANBEBBER

United States Senior District Judge