

# FTCA, Minority Tolling, and the Challenges of the Statute of Limitations

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The birth of a child is an opportunity for joy and excitement, as well as a little anxiety for new parents. After all, the birth process can be scary, especially given the [rising maternal mortality rate](#) in the United States. Although no parents want to deal with a medical malpractice suit as part of their post-birth plan, it is sometimes necessary to bring them the closure they deserve when the mother or baby suffers harm.

However, medical malpractice suits are complicated, especially when facing a federally funded health entity. The recent dismissal of a court case in Pennsylvania illustrates the challenges plaintiffs must address when seeking justice.

## Case Background

D'Ericka Stewart gave birth to a daughter in November 2009 at Sharon Regional Health Center in Mercer County, Pennsylvania under the care of Dr. John Gallagher, OB-GYN. According to Stewart, the negligent medical care provided by Gallagher caused her daughter to suffer a brachial plexus injury, which left her injured arm several inches shorter than her uninjured arm and has required multiple surgeries and types of physical therapy.

In 2017, Stewart filed suit against Sharon Regional Hospital and Dr. Gallagher in the Court of Common Pleas of Mercer County, PA. However, the federal government filed a motion to substitute itself as a Defendant for Dr. Gallagher, arguing that he was a federal employee acting in the scope of his job. Although he was listed on Sharon Regional Health Center's website as an OB-GYN, he was employed through Primary Health Network, a federally funded health entity.

As such, the Federal Tort Claims Act (FTCA) applied to his legal defense. The US filed a motion to dismiss Stewart's case on the basis that she hadn't exhausted her administrative remedies, a necessary step under the FTCA. Stewart responded by filing an administrative tort claim with the Department of Health and Human Services in February 2017.

However, in December 2017, the US filed a Motion to Dismiss on the grounds that her claim hadn't been filed in accordance with the FTCA's two-year statute of limitations.

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The timeliness of Stewart’s claim is at the heart of this case. Because Gallagher was considered a federal employee under the FTCA, the court imposed a two-year statute of limitations, which had passed.

Stewart’s appeal asserted that the FTCA’s statute of limitations should be equitably tolled. She was unaware that the doctor was to be treated as a federal employee and mistakenly relied on the Pennsylvania Minors’ Tolling Statute to bring her claim in state court. Under the Minors’ Tolling Statute, plaintiffs under the age of 18 have an extended statute of limitations, two years past their 18th birthday.

## **FTCA and Tolling**

The federal and state governments are broadly immune from tort liability. However, the FTCA provides some room for specific lawsuits to be brought against the U.S. government and its agencies. Procedural requirements are strict, though, and the two-year statute of limitations is generally inflexible.

There have been other similar cases in which a minor missed the FTCA’s two-year statute of limitations for filing a claim. Another [striking similar case took place in 2013](#) when a newborn suffered birth injuries at a federally funded facility. As in the Stewart case, the mother was unaware that the medical facility operated under a federal status even though it was a private enterprise. Her case was dismissed due to failure to meet the statute of limitations imposed by the FTCA.

Another often-cited example took place in 2019 when the [Ninth Circuit Federal Court of Appeals held that FTCA claims were not subject to minority tolling](#) in a case filed against the Federal Highway Administration for compensation on behalf of a child who had lost his father.

The lack of success illustrates the challenges faced by plaintiffs in these cases.

## **Third Circuit Court of Appeals Response**

Returning to the Stewart case, on June 22, the Third Circuit Court of Appeals upheld the dismissal of D’Ericka Stewart’s lawsuit. According to the three-judge panel, case law holds that state tolling statutes do not apply to the FTCA’s two-year deadline.

“Although D.J.S.-W.’s counsel deliberately delayed filing her case in reliance on Pennsylvania’s tolling statute, that law cannot save D.J.S.-W.’s untimely claim against the United States because ‘state-law tolling statutes do not apply to the FTCA’s limitations period,’” the panel stated.

## **Protecting Your Rights**

Finding a way to achieve justice in claims against federal agencies can feel like a daunting task. Having legal counsel with experience working with the nuances and complexities of lawsuits under the FTCA is imperative. If you or a loved one has faced malpractice or injury at the hands of a federal employee or agency, you have options, but time is of the essence.

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