

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

CRAIG S. SHADE,

Plaintiff,

v.

Case No. 2:22-cv-2638-MSN-tmp
JURY DEMAND

UNITED STATES OF AMERICA,

Defendant.

ORDER GRANTING MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

Before the Court is Defendant's Motion to Dismiss for Failure to State a Claim (ECF No. 10, "Motion"). Plaintiff responded in opposition (ECF No. 12), and Defendant filed a reply in support of its Motion (ECF No. 13). The matter is ripe for adjudication. For the reasons set forth below, Defendant's Motion is **GRANTED**.

BACKGROUND

Plaintiff alleges that, while he was an inmate at the Federal Correctional Institution in Memphis ("FCI Memphis"), he ruptured his Achilles tendon while playing basketball. (ECF No. 1 at PageID 1–2.) That injury occurred on December 24, 2019, and on that date "he presented to the medical infirmary," and was diagnosed with "an Achilles tendon injury." (*Id.* at PageID 2.) The Complaint, however, does not specifically allege who diagnosed Plaintiff. Plaintiff says that four days later, on December 28, 2019, Dr. J. Benitez gave a verbal order to Nurse Samuel D. Lacey to send Plaintiff to a local hospital. (*Id.*) Although not entirely clear from the Complaint, it appears that Plaintiff was not taken to a local hospital as ordered because Plaintiff next alleges

that on January 13, 2020, Dr. Benitez “noted probable left Achilles injury,” and “documented that the Plaintiff should have an urgent orthopedic consult with an MRI.” (*Id.*) The next day, Plaintiff was taken to Regional One Hospital where he received an x-ray and foot splint and was ordered to see an orthopedic doctor in one week. (*Id.*) On February 4, 2020, Plaintiff saw Dr. Allison Whittle at the “Orthopedic Clinic.” (*Id.*) Dr. Whittle told Plaintiff that “delayed presentation may make conservative treatment more difficult,” but she would begin Plaintiff’s treatment by giving him a boot with two heel lifts. (*Id.*) Dr. Whittle ordered Plaintiff to return in four weeks so that the heel lifts could be gradually removed. (*Id.*) Dr. Whittle also “concurred with the resident that Plaintiff ha[d] not really been treated appropriately for his Achilles tendon injury.” (*Id.*) Plaintiff continued to have pain and range of motion issues over the next six months, during which time he received another MRI and was given self-directed exercises to improve his range of motion. (*Id.* at PageID 2–3.) As of January 20, 2022, Plaintiff was still having decreased strength and pain; he was again seen at Regional One Health and prescribed therapy. (*Id.* at PageID 3.)

Plaintiff contends that “the United States of America, through its agents, servants and employees acting with[in] the scope of their employment,” “negligently and carelessly deviated from the standard of care required and expected” in timely diagnosing and treating Plaintiff’s Achilles tendon injury, and “was negligent in the medical care and attention rendered to the Plaintiff in failing to recognize the injury to his Achilles tendon and in obtaining appropriate evaluation and treatment of his Achilles tendon injury in a timely manner and failing to refer him for appropriate treatment; and these omissions were a failure to exercise the degree of care, skill and diligence used by medical providers in this community and/or a similar community, under the same or similar circumstances presented to the Defendant” (*Id.* at PageID 3–4.) Plaintiff alleges that Defendant’s negligence caused him to suffer serious physical injuries, including

extreme pain, emotional distress, mental anguish, and loss of normal enjoyment of life. (*Id.* at PageID 4.) Plaintiff filed his Complaint on September 20, 2022, pursuant to the Federal Tort Claims Act (“FTCA”), seeking \$350,000 in damages for his injuries.

STANDARD OF REVIEW

In deciding a motion to dismiss for failure to state a claim under Rule 12(b)(6), the court will “construe the complaint in the light most favorable to the plaintiff, accept its allegations as true, and draw all reasonable inferences in favor of the plaintiff.” *Directv, Inc. v. Treesh*, 487 F.3d 471, 476 (6th Cir. 2007); *Inge v. Rock Fin. Corp.*, 281 F.3d 613, 619 (6th Cir. 2002). Using this framework, the court determines whether the complaint alleges “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is plausible on its face if “the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556). A complaint need not contain detailed factual allegations; however, a plaintiff’s “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556). In other words, the “[f]actual allegations must be enough to raise a right to relief above [a] speculative level.” *Ass’n of Cleveland Fire Fighters v. City of Cleveland*, 502 F.3d 545, 548 (6th Cir. 2007) (quoting *Twombly*, 550 U.S. at 555). If a court decides, based on its judicial experience and common sense, that the claim is not plausible, the case may be dismissed at the pleading stage. *Iqbal*, 556 U.S. at 679. “[O]nly a complaint that states a plausible claim for relief survives a motion to dismiss.” *Iqbal*, 556 U.S. at 679; *Twombly*, 550 U.S. at 556.

DISCUSSION

Absent a waiver, the United States is immune from suit. *See United States v. Mitchell*, 445 U.S. 535, 538 (1980) (“It is elementary that the United States, as sovereign, is immune from suit save as it consents to be sued.”). The FTCA waives the United States sovereign immunity for the negligent acts or omissions of its employees that occur when the employees are acting within the scope of their employment and “under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.” 28 U.S.C. § 1346(b)(1). Thus, tort liability under the FTCA is “determined in accordance with the law of the state where the event giving rise to liability occurred.” *L. C. v. United States*, 83 F.4th 534, 550 (6th Cir. 2023) (citing *Milligan v. United States*, 670 F.3d 686, 692 (6th Cir. 2012)). Plaintiff alleges that he tore his Achilles tendon and then received negligent medical care while incarcerated at FCI Memphis in Memphis, Tennessee; Tennessee substantive law thus applies to his claims.

For a negligence claim, the plaintiff must show “(1) a duty of care owed by the defendant to the plaintiff; (2) conduct by the defendant falling below the standard of care amounting to a breach of that duty; (3) an injury or loss; (4) causation in fact; and (5) proximate or legal cause.” *Fulghum v. Notestine*, No. M202200420COAR3CV, 2023 WL 7151647, at *6 (Tenn. Ct. App. Oct. 31, 2023) (citing *Satterfield v. Breeding Insulation Co.*, 266 S.W.3d 347, 355 (Tenn. 2008)). These elements are similar to, and overlap with, those required for “health care liability actions” under the Tennessee Health Care Liability Act (“THCLA”); health care liability actions “are a specialized type of negligence claim created by statute.” *Vilas v. Love*, No. W202201071COAR3CV, 2023 WL 7040062, at *11 (Tenn. Ct. App. Oct. 26, 2023) (quoting *Smith v. Testerman*, No. E2014-

00956-COA-R9-CV, 2015 WL 1118009, *5 (Tenn. Ct. App. Mar. 10, 2015)) (cleaned up); *see Goyer v. Ashe*, No. 21-CV-2059-JTF-ATC, 2023 WL 2776732, at *5 (W.D. Tenn. Apr. 4, 2023).

As defined in the THCLA, a “health care liability action” is “any civil action, including claims against the state or a political subdivision thereof, alleging that a health care provider or providers have caused an injury related to the provision of, or failure to provide, health care services to a person, regardless of the theory of liability on which the action is based.” Tenn. Code Ann. § 29-26-101(a)(1). In a health care liability action under the THCLA, a plaintiff must prove the following three elements: (1) “the recognized standards of acceptable professional practice in the profession”; (2) “[t]hat the defendant acted with less than or failed to act with ordinary and reasonable care in accordance with such standard”; and (3) “[a]s a proximate result of the defendant’s negligent act or omission, the plaintiff suffered injures which would not otherwise have occurred.” *See* Tenn. Code Ann. § 29-26-115(a).

Here, Plaintiff’s Complaint falls short of alleging sufficient facts to state a plausible health care liability claim under Tennessee law.¹ According to his Complaint, Plaintiff’s injury was diagnosed as an Achilles tendon injury the day it occurred, and four days later, Dr. Benitez ordered Plaintiff to be taken to a local hospital. Plaintiff, however, does not allege that Dr. Benitez, or any other “health care provider,” should have sent him to a local hospital before this date or that any other aspect of Dr. Benitez’s treatment fell below the applicable standard of care. Although it appears that Plaintiff was not taken to the hospital as Dr. Benitez ordered, Plaintiff does not allege that this was due to an act or omission of Dr. Benitez or that this specific delay fell below the

¹ Although Plaintiff does not reference the THCLA, or state he is bringing a healthcare liability action in his Complaint, his response to Defendant’s motion clarifies that he’s asserting a “healthcare liability claim” pursuant to the FTCA. (*See* ECF No. 12 at PageID 46.)

applicable standard of care.² That's true for next alleged event, too, when Dr. Benitez again noted Plaintiff's Achilles injury and that he should have an urgent orthopedic consult with an MRI, but Plaintiff was taken to a local emergency room instead. Then there was a three-week delay after that until Plaintiff saw an orthopedic doctor. But again, Plaintiff does not allege the applicable standard of care or how any "health care providers" acted with less than ordinary and reasonable care in accordance with that standard. In sum, Plaintiff generally alleges that the care and treatment he received fell below the applicable standard of care, but he does not allege what the applicable standard of care was *or* how any health care provider's actions fell below that standard of care.³ Plaintiff has therefore failed to state a plausible health care liability claim under the THCLA. *See, e.g., Johnson v. United States*, No. 17-5653, 2018 U.S. App. LEXIS 7533, at *5 (6th Cir. Mar. 23,

² In his response, Plaintiff argues that Defendant breached the standard of care when it failed to diagnose and treat Plaintiff's Achilles injury "for over a month when Dr. Benitez states that it was an emergency. It is plausible that Dr. Benitez knew or should have known that it was an emergency when he first instructed Nurse to get him to the hospital for outside treatment. Nurse Lacey knew or should have known that when Dr. Benitez gave his order that it should have been followed as soon as reasonably practicable, but no action was taken increasing the unnecessary pain and suffering being experienced by the Plaintiff from an untreated injury to Achilles." (ECF No. 12 at PageID 49.) Plaintiff thus appears to allege that Nurse Lacey was negligent in failing to follow Dr. Benitez's order. These facts, however, are absent from Plaintiff's Complaint, and this Court may not consider them in evaluating Defendant's Motion. *See, e.g., Bates v. Green Farms Condo. Ass'n*, 958 F.3d 470, 483 (6th Cir. 2020) ("The court may not take into account additional facts asserted in a memorandum opposing the motion to dismiss, because such memoranda do not constitute pleadings under Rule 7(a)." (cleaned up)); *Sorah v. Tipp City Exempted Vill. Sch. Dist. Bd. of Educ.*, 611 F. Supp. 3d 441, 449 (S.D. Ohio 2020) ("Plaintiffs are not permitted to remedy pleading deficiencies through a response brief."). If Plaintiff believed he needed to add facts to his Complaint to withstand Defendant's Motion, he could have moved to amend his Complaint under Rule 15. *See, e.g., Bates*, 958 F.3d at 483. He did not do so.

³ Other than Dr. Benitez and Nurse Lacey, the only other health care provider named in the Complaint is Dr. Naveed Gill, who Plaintiff alleges saw him on September 14, 2020, when he presented to the prison medical infirmary with pain, numbness, swelling and a limp. (*See* ECF No. 1 at PageID 3.) According to Plaintiff, Dr. Gill stated she would refer Plaintiff to orthopedic. There are no other allegations about Dr. Gill. Therefore, Plaintiff has similarly failed to allege the applicable standard of care or that Dr. Gill's action fell below that standard.

2018) (affirming the district court’s dismissal of health care liability action because the plaintiff did not allege a standard of care, so he could not show the health care provider acted with less than ordinary and reasonable care); *Goyer v. Ashe*, No. 21-CV-2059-JTF-ATC, 2023 WL 2776732, at *5 (W.D. Tenn. Apr. 4, 2023) (dismissing FTCA claim because the plaintiff failed to “allege facts showing that the USA failed to act in accordance with the applicable standard of professional medical care,” or “allege facts demonstrating but-for cause and proximate cause”); *M.S.G.L. v. United States*, No. C22-1554RSM, 2023 WL 2401929, at *1–2 (W.D. Wash. Mar. 8, 2023) (dismissing FTCA claim under Rule 12(b)(6) because the plaintiffs “failed to include basic factual information about their negligence claim, including the specific care they claim fell below the standard of care and the identity of the providers whose care allegedly fell below the standard of care”); *see also Hawthorne v. Veteran Affairs Med. Ctr.*, No. 9:18-CV-80508-ROSENBERG, 2018 WL 9686555, at *1 (S.D. Fla. Aug. 2, 2018) (explaining that the plaintiff failed to state a claim for negligence under the FTCA because he failed to allege, *inter alia*, that the treatment he received fell below the standard of care).

CONCLUSION

For the reasons set forth above, Defendant’s Motion to Dismiss for Failure to State a Claim (ECF No. 10) is **GRANTED**. Plaintiff’s Complaint is **DISMISSED** with prejudice for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).

IT IS SO ORDERED, this 29th day of March, 2024.

s/ Mark S. Norris

MARK S. NORRIS
UNITED STATES DISTRICT JUDGE