

NOT RECOMMENDED FOR PUBLICATION

File Name: 05a0377n.06

Filed: May 11, 2005

No. 02-4149

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

MYKOBI L'BERT,

Plaintiff-Appellant,

v.

WILLIAM MONTAGUE, et al.,

Defendants-Appellees.

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ON APPEAL FROM THE UNITED
STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OHIO

ORDER

BEFORE: KEITH, CLAY, and FARRIS*

PER CURIAM. The district court dismissed Plaintiff Mykobi L'Bert's tort lawsuit against Defendants William Montague, Robert Goldberg, Daniel Tilman, Charles Franks, Patricia Gheen, Brenda McCombs, and Theresa O'Malley, officials at the Ohio hospital where L'Bert worked, for failure to exhaust administrative remedies. 28 U.S.C. § 2675(a). The hospital is administered by the Department of Veterans Affairs (VA). L'Bert originally brought this lawsuit in state court; the defendants removed the case to federal district court upon certification by the Attorney General that the defendants were acting within the scope of their employment at the VA. *See* 28 U.S.C. § 2679(d)(1). The district court accordingly accepted the case and substituted the United States as Defendant. *See id.*

* The Honorable Jerome Farris, Circuit Judge of the United States Court of Appeals for the Ninth Circuit, sitting by designation.

The district court also dismissed another lawsuit brought by L'Bert, this one against Defendant R. James Nicholson, the Secretary of the VA,¹ *see* 42 U.S.C. § 2000e-16(c), involving claims of discriminatory and retaliatory discharge in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, on the grounds that the Title VII claims are barred by *res judicata*. These claims were raised and fully litigated in a lawsuit L'Bert brought in 1999; in that case, the district court granted summary judgment to the defendants and this Court affirmed. *L'Bert v. West*, 2001 WL 1450734 (6th Cir. Oct. 30, 2001) (unpublished order). L'Bert appeals the substitution of the United States as Defendant in the tort lawsuit and the dismissal of the tort and Title VII lawsuits.

We have carefully reviewed the record supplied to us on appeal, the parties' briefs, and the decision below. Because the district court (Oliver, J.) fully addressed L'Bert's claims and correctly disposed of them in a thorough written opinion, we conclude that the issuance of an opinion by this Court would be duplicative and serve no useful purpose. We therefore affirm on the basis of the district court's opinion.

¹ R. James Nicholson is substituted for his predecessor, Anthony Principi, pursuant to Fed. R. App. P. 43(c)(2).