

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

WEIH STEVE CHANG, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	C.A. No. N15C-10-100 EMD
	)	
JENNIFER L. MAYO,	)	
	)	
Defendant.	)	

Submitted: June 6, 2016  
Decided: June 28, 2016<sup>1</sup>

*Upon Consideration of  
State Defendant’s Motion to Dismiss the Complaint  
**GRANTED***

Weih Steve Chang, Hockessin, Delaware, *Pro Se*, Plaintiff.

Ryan P. Connell, Esquire, Deputy Attorney General, Department of Justice, Wilmington, Delaware, *Attorney for the Jennifer L. Mayo, Commissioner, Family Court for the State of Delaware.*

**DAVIS, J.**

**INTRODUCTION**

This is a civil action filed by Plaintiffs Weih Steve Chang and Minors A.B., C.D., and (collectively, the “Plaintiffs”) against Defendant Jennifer L. Mayo (“Commissioner Mayo”). Commissioner Mayo is a commissioner in the Family Court for the State of Delaware. Plaintiffs, through the Complaint, assert several claims founded upon Commissioner Mayo’s alleged conduct in hearing a petition filed by Mr. Chang in Family Court.

Commissioner Mayo filed the State Defendant’s Motion to Dismiss Complaint (the “Motion”) on February 25, 2016. On May 12, 2016, Plaintiffs filed their Answer to State Defendant’s Motion to Dismiss (the “Answer”). The Court held a hearing (the “Hearing”) on the

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<sup>1</sup> The Court ruled from the bench at the June 6, 2016 hearing on the State Defendant’s Motion to Dismiss. This is the final order from that ruling.

Motion and the Answer on June 6, 2016. At the Hearing, Mr. Chang also submitted his Plaintiffs' Opening Statements at the Hearing on State Defendant's Motion to Dismiss. Upon conclusion of the Hearing, the Court granted the relief sought in the Motion. This is the Court's written Order **GRANTING** the Motion and dismissing, with prejudice, the Complaint.

### RELEVANT FACTS

On September 19, 2013, Mr. Chang, on behalf of himself and his children, petitioned the Family Court for an Order of Protection From Abuse (the "Order for PFA").<sup>2</sup> On October 11, 2013, Commissioner Mayo, acting in her official capacity as a Family Court Commissioner, dismissed Mr. Chang's petition with prejudice.<sup>3</sup>

On October 15, 2015, Plaintiffs filed the Complaint in this action against Commissioner Mayo. The Complaint seeks to hold Commissioner Mayo personally liable for duties she performed in her role as a Family Court Commissioner.<sup>4</sup> The Complaint asserts that Commissioner Mayo erred in dismissing "child sexual abuse" allegations brought by Mr. Chang on behalf of his children.<sup>5</sup> Plaintiffs contend that Commissioner Mayo did not have the legal authority or jurisdiction to dismiss Mr. Chang's petition for the Order for PFA.<sup>6</sup>

The Complaint asserts eight causes of action against Commissioner Mayo: (i) Violations of Judicial Guidelines ("Count I"); (ii) Violations of Canon 2 Rule 2.3(B) ("Count II"); (iii) Under color of law abuses beyond the bounds of her lawful authority ("Count III"); (iv) Under Color of Law Abuses While Performing Judicial Duties ("Count IV"); (v) 11 Del. C. § 1211 Official Misconduct Class A Misdemeanor ("Count V"); (vi) Offenses Involving Moral Turpitude ("Count VI"); (vii) Defamation ("Count VII"); and (viii) Intentional Infliction of

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<sup>2</sup> Compl. ¶ 1.

<sup>3</sup> *Id.* ¶ 2.

<sup>4</sup> *Id.* ¶ 13.

<sup>5</sup> *Id.* ¶ 6.

<sup>6</sup> *Id.* ¶ 22.

Emotional Distress by Deliberate Indifference and Reckless Disregard (“Count VIII”).<sup>7</sup>

Plaintiffs seek monetary compensation for various types of damages purportedly caused by Commissioner Mayo upon the dismissal of the Order for PFA.<sup>8</sup>

### **PARTIES’ CONTENTIONS**

#### **A. Defendant’s Motion to Dismiss**

In the Motion, Commissioner Mayo argues that: (i) no authority exists for Plaintiffs to pursue a private cause of action for Counts I through VI; (ii) the doctrine of sovereign immunity absolutely bars all of Plaintiffs’ claims because there has been no waiver of such immunity by the General Assembly; (iii) the doctrine of absolute judicial immunity bars all of Plaintiffs’ claims because they each arise out of judicial acts that were performed by Commissioner Mayo; and (iv) the doctrine of qualified immunity applies to Commissioner Mayo’s official duties as Commissioner Mayo performed these duties in good faith, and without gross or wanton negligence.<sup>9</sup>

#### **B. Plaintiffs’ Answer to Defendant’s Motion to Dismiss**

In the Answer, Plaintiffs maintain that the Court should deny the Motion because: (i) Commissioner Mayo is not protected by judicial immunity because she acted without legal authority when she dismissed Mr. Chang’s petition; (ii) Commissioner Mayo acted with malice, wanton negligence, deliberate indifference and reckless disregard when dismissing the petition; and (iii) Commissioner Mayo’s actions caused Plaintiffs to be injured.<sup>10</sup>

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<sup>7</sup> *Id.* ¶¶ 5-13.

<sup>8</sup> *Id.* ¶¶ 13-14.

<sup>9</sup> Def.’s Mot. to Dismiss, at 2-5.

<sup>10</sup> Plf.’s Br. in Opp’n to Def.’s Mot. to Dismiss, at 1-5.

## LEGAL STANDARD

The Motion seeks to dismiss the Complaint under Superior Court Civil Rule 12(b).<sup>11</sup> Upon a Civil Rule 12(b) motion to dismiss, the Court (i) accepts all well-pleaded factual allegations as true, (ii) accepts even vague allegations as well-pleaded if they give the opposing party notice of the claim, (iii) draws all reasonable inferences in favor of the non-moving party, and (iv) only dismisses a case where the plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances.<sup>12</sup> However, the Court must “ignore conclusory allegations that lack specific supporting factual allegations.”<sup>13</sup>

## DISCUSSION

### A. Absolute Judicial Immunity

As long recognized, judicial immunity exists “as a device for discouraging collateral attacks ... thereby helping to establish appellate procedures as the standard system for correcting judicial error.”<sup>14</sup> Theoretically, judicial immunity preserves judicial independence by insulating judges from vexatious actions pursued by disgruntled litigants.<sup>15</sup> Without judicial immunity, judges that are burdened by the threat of potential personal liability for erroneous decisions would be powerfully incentivized to avoid rendering decisions likely to provoke such suits.<sup>16</sup> Thus, the doctrine of judicial immunity provides protections that extend to shield judges and others who are acting “as arms of the court.”<sup>17</sup>

Section 4001 of Title 10 of the Delaware Code provides judges with absolute judicial immunity from civil claims founded upon an act or omission arising out of the performance of an

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<sup>11</sup> Def.’s Mot. to Dismiss, at 1.

<sup>12</sup> *Central Mortg. Co. v. Morgan Stanley Mortg. Capital Holdings LLC*, 227 A.3d 531, 536 (Del. 2011); *Doe v. Cedars Academy*, 2010 WL 5825343, at \*3 (Del. Super. Oct. 27, 2010).

<sup>13</sup> *Ramunno v. Crawley*, 705 A.2d 1029, 1034 (Del. 1998).

<sup>14</sup> *Forrester v. White*, 108 S. Ct. 538, 543 (1988).

<sup>15</sup> *Bradley v. Fisher*, 13 Wall. 335, at 348 (1872).

<sup>16</sup> *Forrester*, 108 S. Ct. at 538, 544.

<sup>17</sup> *Buchanan v. Gay*, 491 F.Supp.2d 483, 494-95 (D.Del. 2007).

official duty.<sup>18</sup> In addition, under federal decisional law, it is well-established that judicial officers are absolutely immune from civil suits for conduct arising out of their judicial acts unless “there is clearly no jurisdiction over the subject matter” involved.<sup>19</sup>

Plaintiffs claim that Commissioner Mayo’s dismissal of the petition for the Order for PFA was outside the scope of her official duties and that she acted without jurisdiction.

However, Delaware statutory law contradicts Plaintiffs’ assertions. Section 915 of Title 10 of the Delaware Code, in relevant part, provides:

(c) Each Commissioner serving under this chapter shall have:

(1) All powers and duties conferred or imposed upon Commissioners by law or by the rules of Criminal and Civil Procedure for the Family Court;

(2) The power to hear any civil case within the jurisdiction of the Family Court, as designated by the Chief Judge.

\* \* \*

(d) A Commissioner’s order, including emergency ex parte orders, shall be an enforceable order of the Court.

Moreover, 10 Del. C. § 1048 provides “Family Court shall have jurisdiction of proceedings” in Family Court Protection From Abuse Proceedings. Hence, under the Delaware Code, Commissioner Mayo has jurisdiction to act in her official capacity in Family Court Protection From Abuse Proceedings.

Here, Plaintiffs have not satisfied their burden, as provided by Section 4001, to overcome Commissioner Mayo’s defense of absolute judicial immunity. As alleged, Commissioner Mayo’s actions arose directly out of the performance of her official duties and she acted with jurisdiction over the subject matter here at issue. The Complaint does not contain any facts

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<sup>18</sup> 10 Del. C. § 4001.

<sup>19</sup> *Vick v. Haller*, 512 A.2d. 249, 252 (Del. Super.), *aff’d sub nom. Vick v. Haller, Tease, & Witsil*, 514 A.2d. 782 (Del. 1986) (citing *Stump v. Sparkman*, 98 S. Ct. 1099 (1978)).

alleging that the relevant sections of the Delaware Code do not apply in this case. Accordingly, the Court holds that Commissioner Mayo is absolutely immune from personal liability for the actions alleged in the Complaint.

**B. Unauthorized Private Cause of Action**

Commissioner Mayo believes that the majority of Plaintiffs' claims (Count I through Count VI) do not state a private cause of action.<sup>20</sup> This Court agrees. The Court is unaware of any authority that allows a private citizen to bring civil suit on purported violations of judicial rules or canons. Moreover, Delaware case law provides that private citizens do not have standing to bring criminal actions under Title 11 of the Delaware Code.<sup>21</sup> A private remedy for a criminal violation is created only by express language in a statute or when "the requisite legislative intent is implicit in the text, structure or purpose of the statute."<sup>22</sup>

For Counts III and IV of the Complaint, the Court notes that Plaintiffs have not made clear what law(s) Commissioner Mayo allegedly violated. Regardless, upon accepting all well-pleaded facts alleged in the Complaint as true and drawing all reasonable inferences in Plaintiffs' favor, there is no evidence in Title 11 that the General Assembly intended to grant a private cause of action on the facts alleged to support Count I, II, III, IV, V, or VI of the Complaint.<sup>23</sup> Accordingly, the Court holds that it will dismiss Counts I, II, III, IV, V, and VI for failing to state a cause of action upon which relief can be granted.

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<sup>20</sup> Def.'s Mot. to Dismiss, at 2-3.

<sup>21</sup> See *Brett v. Berkowitz*, 706 A.2d 509, 512 (Del. 1998) (holding that criminal statutes were "not intended to create rights for a particular group of citizens, but to protect the public at large.").

<sup>22</sup> *Id.*

<sup>23</sup> *Brett*, 706 A.2d at 512 (noting that if "a statute does not expressly create or deny a private remedy, the issue is whether or not the requisite legislative intent is implicit in the text, structure or purpose of the statute.").

### C. Sovereign Immunity

The doctrine of sovereign immunity provides that the State may not be sued without its consent.<sup>24</sup> The only way to limit or waive the State's defense of sovereign immunity is by an act of the General Assembly that expressly manifests an intention to do so.<sup>25</sup>

When suing the State or its officers, a plaintiff must satisfy a two-pronged test in order for the lawsuit to proceed.<sup>26</sup> A plaintiff must show (and plead) that (i) the State has waived the defense of sovereign immunity for the actions alleged in the complaint, and (ii) the State Tort Claims Act (the "STCA") does not bar the action.<sup>27</sup> The General Assembly has only waived the defense of sovereign immunity as to the risks specifically covered by the State Insurance Coverage Program (the "SICP").<sup>28</sup>

Here, Plaintiffs have not satisfied the first prong of the test because they have failed to show that the State waived its defense of sovereign immunity. The Complaint does not contain any facts alleging that the State has waived sovereign immunity in accordance with 18 Del. C. § 6511. Furthermore, the Complaint does not contain any facts indicating that the SICP applies in this case.

Because Plaintiffs have failed to satisfy the first prong of the test, it is not necessary for the Court to consider the second prong and whether the STCA bars this action. Upon viewing the facts in a light most favorable to Plaintiffs and drawing all reasonable inferences in their favor, the Court believes that Commissioner Mayo is protected by sovereign immunity from personal liability for the conduct alleged in the Complaint. Therefore, the Court holds that dismissal of the Complaint is also appropriate under the doctrine of sovereign immunity.

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<sup>24</sup> See *Pauley v. Reinoehl*, 848 A.2d 569, 573 (Del. 2004); see also *Doe v. Cates*, 499 A.2d 1175, 1176 (Del. 1985).

<sup>25</sup> Del. Const. art. I, § 9; *Doe*, 499 A.2d at 1175, 1176.

<sup>26</sup> *Pauley*, 848 A.2d at 569, 573.

<sup>27</sup> *Id.*

<sup>28</sup> 18 Del. C. § 6511.

**CONCLUSION**

For the foregoing reasons State Defendant's Motion to Dismiss the Complaint is  
**GRANTED.**

**IT IS SO ORDERED.**

Dated: June 28, 2016  
Wilmington, Delaware

*/s/ Eric M. Davis*  
Eric M. Davis, Judge