

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY**

MARVIN HOLMES	)	
	)	
Plaintiff,	)	
v.	)	
	)	
PROTHONOTARY, SUPERIOR COURT	)	C.A. No. N14C-08-112 MMJ
N.C.C.,	)	
	)	
Defendant.	)	

Submitted: April 13, 2015  
Decided: June 4, 2015

Upon Defendant's Amended Motion to Dismiss  
**GRANTED**

**MEMORANDUM OPINION**

Marvin Holmes, *Pro Se*.

Ophelia Waters, Esquire, Department of Justice, Wilmington, Delaware, Attorney  
for the State.

**JOHNSTON, J.**

## **FACTUAL AND PROCEDURAL CONTEXT**

This litigation arises from claims by Marvin Holmes against the Prothonotary of the Superior Court of New Castle County. Holmes was arrested on July 31, 2012, for violating the terms of his probation. On August 9, 2012, Holmes was sentenced to Level IV Plummer Center, followed by a period of Level III probation. On August 28, 2012, Holmes filed a Motion for Sentence Modification, seeking medical treatment for a blood disorder. The Prothonotary was unable to locate the file containing the Motion for Sentence Modification until September 19, 2012. Holmes alleges that he was told that the file was lost from August 2012 until December 19, 2012.

Holmes filed a Complaint against the Prothonotary on August 19, 2014. He states that the Prothonotary lost the file containing the Motion for Sentence Modification and that by the time that the file was found, his sentencing judge had retired. Holmes argues that the sentencing judge might have granted his motion or alerted the Plummer Center about Holmes' blood disorder.

On September 25, 2014, the State filed a Motion to Dismiss pursuant to Superior Court Civil Rule 12(b)(6) for failure to state a claim on which relief can be granted. The State also asserted sovereign immunity.

On October 3, 2014, Holmes filed a Response to the Motion to Dismiss. In the Motion, Holmes renewed the arguments previously made in his Complaint.

On October 24, 2014, the State filed an Amended Motion to Dismiss. Holmes responded on April 13, 2015 and again restated the arguments made in his Complaint.

### **STANDARD OF REVIEW**

When reviewing a motion to dismiss pursuant to Rule 12(b)(6), the Court must determine whether the claimant “may recover under any reasonably conceivable set of circumstances susceptible of proof.”<sup>1</sup> The Court must accept as true all non-conclusory, well-plead allegations.<sup>2</sup> Every reasonable factual inference will be drawn in favor of the non-moving party.<sup>3</sup> If the claimant may recover under that standard of review, the Court must deny the motion to dismiss.<sup>4</sup>

### **ANALYSIS**

The doctrine of sovereign immunity provides that the State cannot be sued without its consent.<sup>5</sup> Sovereign immunity may be waived only by an express act of the General Assembly.<sup>6</sup> Section 6511 of Title 18 of the Delaware Code provides: “The defense of sovereignty is waived and cannot and will not be asserted as to any risk or loss covered by the state insurance coverage program . . . .”<sup>7</sup>

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<sup>1</sup> *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

<sup>2</sup> *Id.*

<sup>3</sup> *Wilmington Sav. Fund. Soc’y, F.S.B. v. Anderson*, 2009 WL 597268, at \*2 (Del. Super.) (citing *Doe v. Cahill*, 884 A.2d 451, 458 (Del. 2005)).

<sup>4</sup> *Spence*, 396 A.2d at 968.

<sup>5</sup> *Power v. State*, 1996 WL 945012, at \*3 (Del. Super.).

<sup>6</sup> *Doe v. Cates*, 499 A.2d 1175, 1176 (Del. 1985).

<sup>7</sup> 18 *Del. C.* § 6511.

If the State has waived sovereign immunity, liability still may be limited by the Delaware Tort Claims Act.<sup>8</sup> The Delaware Tort Claims Act provides state employees with qualified immunity from civil liability.<sup>9</sup> Qualified immunity will apply where: “(1) the alleged act or failure to act arises out of and in connection with the performance of official duties involving the exercise of discretion; (2) the act or failure to act was done (or not done) in good faith; and (3) the act or failure to act was done without gross negligence.”<sup>10</sup>

In the present case, Holmes is suing the Prothonotary of the Superior Court of New Castle County. Holmes claims that the Prothonotary lost the file containing the Motion for Sentence Modification from August of 2012 until December 19, 2012. Holmes states that the Motion was sent to the sentencing judge, but by the time the file was found the sentencing judge had retired. Holmes’ Motion was assigned to a different judge. Holmes argues that he was prejudiced by the Prothonotary losing his file because the sentencing judge might have granted the Motion. Holmes also states that the Motion for Sentence Reduction contained information concerning his blood disorder. Holmes argues that if the file had not been lost, the sentencing judge might have alerted the Plummer Center

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<sup>8</sup> *Parker v. Wireman*, 2012 WL 1536934, at \*1 (Del. Super.).

<sup>9</sup> 10 *Del. C.* § 4011(c).

<sup>10</sup> *J.L. v. Barnes*, 33 A.3d 902, 914 (Del. Super. 2011).

about Holmes' medical condition and he would have received treatment in a more timely fashion.

The Court's official record demonstrates that Holmes is incorrect regarding the time during which the file could not be located. On September 10, 2012, the docket notes that the file could not be located. On September 19, 2012, the file was found and was sent to chambers. Thus, the file was missing for nine days, not three months as claimed by Holmes.

Additionally, there is no legal basis for Holmes' claims. No litigant has a right to assume that one Superior Court judge will rule in a manner inconsistent with any other judge. Further, even a file missing for three months (which did not occur in this case) would not give rise to a cause of action. That short period is a reasonable time within which this Court may have a matter under advisement. Finally, Defendant did not move for expedited proceedings or otherwise seek extraordinary relief, which would have made a short delay relevant or indicated prejudice might result.

Regardless of the substantive merits of Defendant's claims, the Prothonotary, as part of Superior Court, is shielded from liability under the doctrine of sovereign immunity. Holmes has not pointed to any insurance policy or legislative act that would allow such a suit against the Prothonotary. Therefore, sovereign immunity has not been waived and Holmes' suit must fail.

Having found that the State has not waived sovereign immunity, the Court need not address the application of the Delaware Tort Claims Act (“DTCA”). Even if the DTCA did apply, Defendant has failed to demonstrate a *prima facie* case of bad faith, or gross or wanton negligence. All alleged acts clearly arose out of the performance of official duties in the ordinary course.

### **CONCLUSION**

The Court finds that the doctrine of sovereign applies.

**THEREFORE**, Defendant’s Motion to Dismiss is hereby **GRANTED**.

This action is hereby **DISMISSED WITH PREJUDICE**.

**IT IS SO ORDERED.**

/s/ Mary M. Johnston

The Honorable Mary M. Johnston