

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

RUDOLPH HAWKINS,)
) C.A. No. K14C-05-001 WLW
Plaintiff,)
)
v.)
)
FAMILY COURT OF NEW)
CASTLE COUNTY,)
NORMAN E. LEVINE, ESQUIRE,)
KIMBERLY WHATLEY,)
)
Defendants.)

Submitted: July 1, 2014
Decided: October 7, 2014

ORDER

Upon Consideration of Both Defense Motions to Dismiss
Based on Sovereign Immunity, Lack of Jurisdiction,
and Failure to State a Claim
Granted.

Rudolph Hawkins. *Pro Se.*

Ophelia Waters, Esquire, Deputy Attorney General for the State of Delaware, attorney
for Family Court of New Castle County.

Norman E. Levine, Esquire, Individually and as attorney for Defendant Kimberly
Whatley.

WITHAM, R.J.

Upon Consideration of Defendants' motions to dismiss, it appears that:

1. On May 13, 2014, Rudolph Hawkins (hereinafter "Plaintiff") filed a *pro se* complaint with this Court against Kimberly Whatley (hereinafter "Whatley"), her attorney, Norman E. Levine, Esquire (hereinafter "Levine"), and the Family Court of New Castle County (hereinafter "Family Court"). Plaintiff's one-page, handwritten complaint asserts little facts or description as to which count of the complaint is asserted against each Defendant. In total there are eight issues enumerated in the complaint, each failing to specify the parties to whom they are referring. Plaintiff alleges: "1) Evidence removed from file; 2) File went missing; 3) Defamation of character (almost incarcerated numerous occasions, false allegations- transcripts of hearing before Judge, Commissioners); 4) Tried to change venue; 5) Home in foreclosure; 6) Loss of CDL's license; 7) Paid unfounded child support based on estimation of year to date; 8) Not given Melson Formula based on disability."

2. In August of 2011, the Family Court entered an order that Plaintiff failed to comply with a deadline set by the Court to respond to Whatley's Request for Production of Documents pertaining to the petition to modify child support. The Court dismissed Plaintiff's petition based upon the ground that he failed to comply with the deadline to produce the requested documents.

3. In November of 2011, Plaintiff filed a Request for Review of Commissioner's Order, which was dismissed by the Family Court because Plaintiff failed to pay the fee for the Request for Review. Plaintiff appealed the decision of the Family Court and on November 29, 2012, had his case heard by the Delaware

Supreme Court. The Supreme Court affirmed the Family Court, deciding that there was no error or abuse of discretion by the Family Court. The Supreme Court determined that because Plaintiff failed to address the failure to pay filing fees, this indicated that he did not pay them.¹

4. Plaintiff now brings claims against the Family Court, as well as against Whatley and her attorney, Levine.

5. Levine filed a Motion to Dismiss on behalf of himself and Whatley on June 5, 2014 for Failure to State a Claim and Lack of Subject Matter Jurisdiction. The State also filed a Motion to Dismiss on behalf of the Family Court on June 25, 2014 based on the doctrine of sovereign immunity.

6. Plaintiff must allege the absence of one or more of the following elements in order to overcome sovereign immunity: “(1) the action was discretionary in nature; (2) the action was done in good faith; [or] (3) the action was done without gross or wanton negligence” pursuant to 10 Del. C. § 4001.

7. Plaintiff fails to provide this Court with allegations of the absence of any of the above enumerated elements. Further, no facts assert that the General Assembly has allowed for a waiver of immunity, or that the Court was acting in anything less than its formal judicial capacity. This Court is satisfied that the Family Court retains sovereign immunity.

8. The Motion to Dismiss filed by Levine is based on the assertion that this

¹ *Hines v. Willard*, 58 A.3d 983 (Del. 2012), reargument denied (Nov. 29, 2012).

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Court lacks subject matter jurisdiction and that the Plaintiff failed to state a claim upon which relief could be granted. This Court finds that it does not have jurisdiction over claims already litigated before the Supreme Court of Delaware. Further, Plaintiff's complaint fails to state with specificity what relief he is seeking. This Court is satisfied that Plaintiff has failed to properly plead his case pursuant to Super. Ct. Civ. R. 12(b)(1) and Super. Ct. Civ. R. 12(b)(6).

9. This Court also determines it is not in the best interests of the parties to award attorney's fees when there is a lack of factual basis for the award and no authority given to support the Defense's request.

Therefore, the Motions to Dismiss on behalf of all named defendants, the Family Court of New Castle County, Kimberly Whatley, and Norman E. Levine, are ***granted***, and the request for attorney's fees filed by Mr. Levine is ***denied***.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

WLW/dmh