



## **SUMMARY**

State Defendants Delaware State Police, Justin Galloway, Stephen Fausey, and William Miller (herein “State Defendant”) move the Court to dismiss a “John Doe defendant” as an Unknown Employee(s) of Kent County Family Court (“Unknown Employee”), and to bar any discovery by *Pro Se* Plaintiff Gordon Smith (“Plaintiff”) in support of that claim. Because Delaware law prohibits lawsuits against non-existent persons; and, further, because any lawsuit brought by Plaintiff, regarding Unknown Employee(s), would be now be untimely, this Court **GRANTS** State Defendant’s Motion for Dismissal and Protective Order.

## **FACTS AND PROCEDURAL POSTURE**

On January 23, Plaintiff filed his Complaint, then filed an Amended Complaint on May 15, 2012, containing nineteen claims against State Defendant. The Complaint also contained a series of claims against defendants Corporal Justin Galloway of the Delaware State Police, the Family Court including Guy Sapp, and the Delaware Department of Correction regarding the Plaintiff’s arrest on January 14, 2010. One of the defendants in the Amended Complaint is described as Unknown Employee (s) of Kent County Family Court.

On June 19, 2012, certain defendants moved to dismiss several defendants in this action including Family Court and Family Court Administrator Guy Sapp. The Court granted the State’s motion, with an opinion issued on October 12, 2012.<sup>1</sup> The Court held that Family Court and Guy Sapp were entitled to judicial

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<sup>1</sup> *Smith v. Delaware State Police, et al.*, 2012 WL 5355639, at \*2 (Del. Super. Oct. 12, 2012).

*Smith v. DSP, et al.*  
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immunity, also holding that the claims against these defendants were barred by sovereign immunity. The case is now in discovery. The remaining defendants are law enforcement defendants: the Delaware State Police, as well as officers Justin Galloway, Stephen Fausey, and William Miller.

During the course of discovery, Plaintiff has attempted to pursue discovery regarding a claim against Unknown Employee (s). The claims asserted against this Unknown Employee are: false arrest (Count I), false imprisonment (Count II), abuse of power (Counts IV and V), nonfeasance, misfeasance, and malfeasance (Count VIII), and failure to properly train and supervise (Count IX). Plaintiff has noticed depositions of two Family Court employees in order to obtain discovery in support of his claims against Unknown Employee (s). Defendants' counsel has objected to Plaintiff on behalf of the deponents regarding these depositions.

### **DISCUSSION**

#### **Defendant's Motion for Dismissal of Complaint and Protective Order**

Defendants move to dismiss Unknown Employee(s) from this case. First, Delaware law is well-settled that it is improper under the Superior Court rules to sue an unknown or non-existent person.<sup>2</sup>

Second, this Court has already ruled that any claims against Family Court employees are barred by the doctrine of sovereign immunity. The same determination applies to any claims that have been raised against Unknown

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<sup>2</sup> *Hutchinson v. Fish Eng'g Corp.*, 153 A.2d 594 , 595 (Del. Ch. 1959); *Mohl v. Doe*, 1995 WL 339099, at \*2 (Del. Super. 1995); *Collins v. Liberty Mutual Ins. Co.*, 1991 WL 190390, at \*1 (Del. Super. 1991); *Marshall v. University of Delaware*, 1989 WL 135646, at \*2 n. 2 (Del. Super. 1989).

