

STATE OF MICHIGAN
IN THE 33RD CIRCUIT COURT COUNTY OF CHARLEVOIX

HALSEY WOLFF,
Plaintiff,

HON. ROY C. HAYES III
CIRCUIT COURT JUDGE

v

CASE NO. 23-0328-28-CZ

HEALTH DEPARTMENT OF
NORTHWEST MICHIGAN, and
JEREMY FRUK, in their individual and
official capacities,
Defendants.

Halsey Wolff,
Plaintiff, *In Pro Per*
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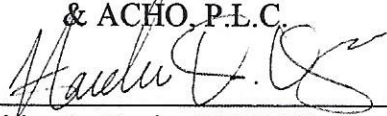
**DEFENDANTS HEALTH DEPARTMENT OF NORTHWEST MICHIGAN AND
JEREMY FRUK'S MOTION FOR SUMMARY DISPOSITION**

NOW COME Defendants, HEALTH DEPARTMENT OF NORTHWEST MICHIGAN
and JEREMY FRUK, by and through their attorneys, CUMMINGS, McCLOREY, DAVIS &
ACHO, P.L.C., and pursuant to MCR 2.116(C)(7) and (C)(8), request that this Honorable Court
grant their Motion for Summary Disposition for the reasons stated in the attached Brief in
Support of Defendants' Motion for Summary Disposition.

Respectfully submitted,

Dated: January 12, 2024

CUMMINGS, McCLOREY, DAVIS
& ACHO, P.L.C.


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**BRIEF IN SUPPORT OF DEFENDANTS HEALTH DEPARTMENT OF NORTHWEST
MICHIGAN AND JEREMY FRUK'S MOTION FOR SUMMARY DISPOSITION**

NOW COME Defendants, HEALTH DEPARTMENT OF NORTHWEST MICHIGAN and JEREMY FRUK, by and through their attorneys, CUMMINGS, McCLOREY, DAVIS & ACHO, P.L.C., and for their Brief in Support of Defendants' Motion for Summary Disposition, state as follows.

STATEMENT OF FACTS

On or about September 25, 2023, Plaintiff, Halsey Wolff (hereafter referred to as "Plaintiff") filed a Complaint titled "Wolff vs the Health Department of Northwest Mich. COMPLIANT [sic]". (Exhibit A, *Complaint dated September 25, 2023*). However, under the heading "Defendant", the Complaint only identified Jeremy Fruk, Environmental Director for the

Health Department of Northwest Michigan (hereafter referred to as “Fruk”). *Id.* The Complaint was a rambling narrative consisting of eight (8) pages, and its ambiguous and disjointed nature made it impossible for Defendants not only to determine who Plaintiff was actually bringing the lawsuit against but also the nature of his claims against them. *Id.*

In response to the Complaint, on October 11, 2023, Defendants filed a Motion for a More Definite Statement and to Strike All or Part of the Plaintiff’s Complaint Under MCR 2.115 (hereafter referred to as “Motion to Strike”). A hearing was scheduled on Defendants’ Motion to Strike for December 1, 2023. (**Exhibit B**, *Notice of Hearing on Defendants’ Motion to Strike*). In response to the Motion to Strike, on or about October 24, 2023, Plaintiff submitted an Amended Complaint titled “Wolff vs the Health Department of Northwest Mich. COMPLIANT [sic] 10-24-2023” (hereafter referred to as “Amended Complaint”). (**Exhibit C**, *Complaint dated 10-24-23*). In his Amended Complaint, Plaintiff identified as Defendant, “Health Department of NW Michigan” and listed Fruk as “contact”. *Id.*

At the hearing on Defendants’ Motion to Strike held on December 1, 2023, Plaintiff failed to appear. Following the hearing, this Honorable Court GRANTED Defendants’ Motion to Strike “for the reason that Plaintiff’s Original Complaint and Amended Complaint fail to reasonably inform Defendants of the claims against them, and are not drawn in conformity with the Michigan Court Rules.” (**Exhibit D**, *Order Striking Plaintiff’s Original Complaint and Amended Complaint and Requiring Plaintiff to Provide a More Definite Statement of Claims Against Defendants, dated December 13, 2023*). Pursuant to the Order, Plaintiff’s Original Complaint and Amended Complaint were stricken in their entirety for failure to conform with Michigan Court Rules, and Plaintiff was ordered to file a Complaint that complies with MCR 2.111(A) and (B), and MCR 2.113(B), within fourteen (14) days from the date of the Order. *Id.*

On or about December 14, 2023, Plaintiff submitted his Third Complaint titled “Wolff vs the Health Dept. of NW MI Complaint 12-14-23 RESUBMISSION”. (**Exhibit E**, Complaint dated 12-14-23). However, page 2 of the Third Complaint is titled “Wolff vs the Health Department of Northwest Mich. COMPLIANT [sic] 10-24-2023”, and lists the Health Dept. of NW Michigan (HDNW)” as Defendant, and Fruk as “contact”. *Id.* A review of the Third Complaint reveals that it is essentially identical to the Amended Complaint filed by Plaintiff on or about October 24, 2023. (*Compare Exhibits C and E*). For example, pages 2 through 4 of the Third Complaint are virtually the same except for the addition of a sentence in bold on page 3. (**Exhibit E**). Significantly and most notably, the Third Complaint fails to comply with the requirements of MCR 2.111(A) and (B), and MCR 2.113(B) as ordered by the Court. (**Exhibit D**).

Under MCR 2.111(A)(1), “[e]ach allegation of a pleading must be clear, concise, and direct.” Pursuant to MCR 2.111(B)(1), a complaint must contain “[a] statement of the facts, without repetition, on which the pleader relies in stating the cause of action, with the specific allegations necessary reasonably to inform the adverse party of the nature of the claims the adverse party is called on to defend[.]” MCR 2.113(B)(1) requires that all allegations **must** be made in numbered paragraphs. MCR 2.113(B)(2) states that the paragraph **must** be limited as far as practicable to a single set of circumstances. MCR 2.113(B)(3) provides that each statement of a claim for relief founded on a single transaction or occurrence or on separate transactions or occurrences, **must** be stated in a separately numbered count. Plaintiff’s Third Complaint utterly fails to comply with any of the above requirements under the Michigan Court Rules.

STANDARD OF REVIEW

A. MCR 2.116(C)(7)

Under MCR 2.116(C)(7), an order granting a motion for summary disposition in favor of a defendant is proper when the plaintiff's claim is "barred because of ... immunity granted by law." See *Odom v Wayne Co.*, 482 Mich 459, 466 (2008); *RDM Holdings, LTD v Continental Plastics Co.*, 281 Mich App 678, 687 (2008). The moving party may submit affidavits, depositions, admissions, or other documentary evidence in support of the motion if substantively admissible. *Odom*, 482 Mich at 466. The contents of the complaint must be accepted as true unless contradicted by the documentary evidence. *Id.* If there is no relevant factual dispute, whether a plaintiff's claim is barred under a principle set forth in MCR 2.116(C)(7) is a question of law for the court to decide. *Huron Tool & Engineering Co. v Precision Consulting Services, Inc.*, 209 Mich App 365, 377 (1995).

B. MCR 2.116(C)(8)

"A motion under MCR 2.116(C)(8) tests the *legal sufficiency* of a claim based on the factual allegations in the complaint." *El-Khalil v Oakwood Healthcare, Inc.*, 504 Mich 152, 159-160 (2019), citing *Feyz v Mercy Mem Hosp.*, 475 Mich 663, 672 (2006). "When considering such a motion, a trial court must accept all factual allegations as true, deciding the motion on the pleadings alone." *El-Khalil*, 504 Mich at 160 citing *Bailey v Schaaf*, 494 Mich 595, 603 (2013). However, "the mere statement of a pleader's conclusions, unsupported by allegations of fact, will not suffice to state a cause of action." *ETT Ambulance Serv. Corp. v Rockford Ambulance*, 204 Mich App 392, 395 (1994).

LAW AND ARGUMENT

A. Plaintiff's Third Complaint Must be Dismissed Pursuant to MCR 2.504(B)(1)

MCR 2.504(B)(1) states:

If a party fails to comply with these rules or a court order, upon motion by an opposing party, or sua sponte, the court may enter a default against the noncomplying party or a dismissal of the noncomplying party's action or claims.

A dismissal pursuant to MCR 2.504(B)(1) requires consideration of several factors, including:

(1) whether the violation was wilful or accidental; (2) the party's history of refusing to comply with previous court orders; (3) the prejudice to the opposing party; (4) whether there exists a history of deliberate delay; (5) the degree of compliance with other parts of the court's orders; (6) attempts to cure the defects; and (7) whether a lesser sanction would better serve the interests of justice.

Vicencio v Jaime Ramirez, MD, PC, 211 Mich App 501, 506 (1995).

In the present matter, Plaintiff has been afforded two (2) opportunities to conform his complaint with the requirements of Michigan Court Rules and this Court's Order. In each instance, Plaintiff has ignored the requirements of MCR 2.111(A)(1), (B)(1) and MCR 2.113 (B). He has repeatedly submitted the same non-conforming complaint with only cosmetic changes, and has not made any attempts to comply with the provisions of MCR 2.111(A)(1), (B)(1) and MCR 2.113 (B) as ordered by the Court. Plaintiff's failure to submit a proper complaint has rendered it impossible for Defendants to determine the nature of his claims against them, and respond accordingly. It is not even clear as to who the proper Defendants are since Plaintiff's Third Complaint similar to his Amended Complaint identifies the Health Department of Northwest Michigan as a Defendant but also list Fruk as a "contact". (See **Exhibits C and E**).

In violation of MCR 2.111(B)(1), Plaintiff's Third Complaint does not contain a statement of facts with specific factual allegations which, would inform the Defendants of the nature of the claims against them. Instead, the Complaint is a stream of consciousness ranting that does not list in any decipherable manner, the allegations and claims against the Defendants such that

Defendants can file an informed and reasoned response to the Complaint. (**Exhibit E**). The Third Complaint does not contain any numbered paragraphs stating the allegations against the Defendants contrary to MCR 2.113(B)(1). *Id.* As opposed to limiting the paragraph in his Third Complaint to a single set of circumstances, Plaintiff's Third Complaint is an amalgam of multiple circumstances, occurrences, grievances, and issues such that it is impossible for Defendants to distinguish the cause(s) of action(s) against them. *Id.* MCR 2.113(B)(3) provides that each statement of a claim for relief founded on a single transaction or occurrence or on separate transactions or occurrences, must be stated in a separately numbered count. Plaintiff's Third Complaint is devoid of any separately numbered counts which, would inform the Defendants of the claim(s) for relief sought by Plaintiff. Instead, the complaint is a running commentary of Plaintiff's conclusions of fact and law. *Id.*

Based upon Plaintiff's repeated failures to comply with the Michigan Court Rules and this Court's Order, and the resulting prejudice to Defendants, a dismissal of Plaintiff's Third Complaint with Prejudice is warranted.

B. The Health Department of Northwest Michigan is Entitled to Absolute Governmental Immunity

MCL 691.1407(1) provides in relevant part:

Except as otherwise provided in this act, a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function.

The term "governmental agency" is defined as "this state or a political subdivision." MCL 691.1401(a). "Governmental function" means "an activity that is expressly or impliedly mandate or authorized by constitution, statute, local charter or ordinance, or other law." MCL 691.1401(b).

The definition of “governmental function” is to be broadly applied. *Maskery v Univ. of Mich. Bd. of Regents*, 468 Mich 609, 613-614 (2003). It only requires that there be some constitutional, statutory, or other legal basis for the activity in which the agency was engaged. The determination whether an activity involves a governmental function must focus on the general activity, not the specific conduct involved at the time of the tort. *Tate v City of Grand Rapids*, 256 Mich App 656, 661 (2003). There is no exception in the immunity granted to a municipality by MCL 691.1407(1) for intentional torts. *Smith v Dep’t of Public Health*, 428 Mich 540, 609 (1987). “[N]o intentional tort exception exists, and an act ‘may be [the] exercise or discharge of a governmental function even though it results in an intentional tort.’” *Id.* at 593.

MCL 333.2413 states: “Except if a district health department is created pursuant to section 2415, the local governing entity of a county shall provide for a county health department which meets the requirements of this part, and may appoint a county board of health.” MCL 333.2415, being section 2415 of the Public Health Code permits two or more counties, by a majority vote of each local governing entity and with the approval the state department of health and human services, to unite to create a district health department. Section 2415 requires a district board of health to be comprised of two (2) members from each county board of commissioners.

MCL 333.2433 sets forth the duties of a health department. Among a health department’s duties are: (1) implement and enforce laws for which responsibility is vested in the local health department; and (2) make investigations and inquiries as to the causes, prevention, and control of environmental hazards, nuisances, and sources of illness. *Id.* Pursuant to MCL 333.2435, a health department has the power to adopt regulations to properly safeguard the public health and to prevent the spread of diseases and sources of contamination.

The Health Department of Northwest Michigan (hereafter referred to as “Health Department”) is entitled to governmental immunity pursuant to MCL 691.1407(1). *Jamieson v Luce-Mackinac-Alger-Schoolcraft District Health Department*, 198 Mich App 103 (1993). The Health Department is a district health department created by Antrim, Charlevoix, Emmet and Otsego Counties. It was established pursuant to MCL 333.2413 which requires every county in the state to either create a county health department or join a district health department. Pursuant to the Public Health Code, specifically, MCL 333.2435, the Health Department has adopted a District Sanitary Code (hereafter referred to as “Code”). (**Exhibit F**, *District Sanitary Code*). Article IV of the Code regulates “the installation and maintenance of private, semi-private and public sewage treatment and disposal systems where no municipal sewage facility is available”. *Id.*

Since the Health Department is a governmental agency engaged in the exercise or discharge of a governmental function at all times relevant to Plaintiff’s Third Complaint, it has absolute governmental immunity against any and all claims alleged by Plaintiff.

C. Fruk is Entitled to Governmental Immunity

Subsection 2 of the governmental immunity statute, being MCL 691.1407, states:

Except as otherwise provided in this section, and without regard to the discretionary or ministerial nature of the conduct in question, each officer and employee of a governmental agency, each volunteer acting on behalf of a governmental agency, and each member of a board, council, commission, or statutorily created task force of a governmental agency is immune from tort liability for an injury to a person or damage to property caused by the officer, employee, or member while in the course of employment or service or caused by the volunteer while acting on behalf of a governmental agency if all of the following are met:

- (a) The officer, employee, member, or volunteer is acting or reasonably believes he or she is acting within the scope of his or her authority.

- (b) The governmental agency is engaged in the exercise or discharge of a governmental function.
- (c) The officer's, employee's, member's, or volunteer's conduct does not amount to gross negligence that is the proximate cause of the injury or damage.

First, it is unclear whether Fruk is a Defendant under Plaintiff's Third Complaint. As aforementioned, Fruk is listed as a "contact" under the heading "Defendant" in Plaintiff's Third Complaint. (Exhibit E). However, to the extent that Fruk may be a Defendant under Plaintiff's latest iteration of a complaint, the Third Complaint is devoid of any and all allegations against Fruk. In fact, upon review of the Third Complaint, other than listing Fruk as a contact for the Health Department, his name does not even appear in the remainder of the Third Complaint. (See Exhibit E). A complaint must set forth "the facts ... on which the pleader relies in stating the cause of action, with the specific allegations necessary reasonably to inform the adverse party of the nature of the claims the adverse party is called on to defend." MCR 2.111(B)(1). A plaintiff's conclusory allegations are insufficient to state a cause of action. *Kloian v Schwartz*, 272 Mich App 232, 240 (2006). And "unsupported statements of legal conclusions are insufficient to state a cause of action." *Kyocera Corp. v Hemlock Semiconductor, LLC*, 313 Mich App 437, 445 (2015). Plaintiff has failed to include any allegations against Fruk.

"In order to survive a motion for summary disposition premised on the immunity afforded to governmental employees, the plaintiff must present evidence sufficient for a reasonable finder of fact to conclude that the employee was grossly negligent." *Lameau v Royal Oak*, 289 Mich App 153, 175 (2010). "If there is no question of fact about whether the allegedly negligent conduct rises to the level of gross negligence, the court may decide the question as a matter of law." *Id.* at 176. "Evidence of ordinary negligence will not be sufficient to survive a

action for summary disposition.” *Id.* “Rather, there must be evidence that the employee engaged in ‘conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.’ ” *Id.* Furthermore, liability may be imposed for gross negligence only where it is *the* proximate cause of injury, i.e., “the one most immediate, efficient, and direct cause preceding injury.” *Robinson v City of Detroit*, 462 Mich 439, 458-459 (2000) (emphasis in original).

Once again, Plaintiff’s Third Complaint does not contain any allegation that Fruk was grossly negligent in the performance of his duties. In fact, Fruk’s name does not appear anywhere else in the Third Complaint other than being listed as a “contact” for the Health Department.

Based upon the lack of any allegations against Fruk in Plaintiff’s Third Complaint, Fruk is entitled to governmental immunity as provided in MCL 691.1407(2).

D. Plaintiff has Failed to State a Claim Against Defendants

A complaint must set forth “the facts ... on which the pleader relies in stating the cause of action, with the specific allegations necessary reasonably to inform the adverse party of the nature of the claims the adverse party is called on to defend.” MCR 2.111(B)(1). A plaintiff’s conclusory allegations are insufficient to state a cause of action. *Kloian v Schwartz*, 272 Mich App 232, 240 (2006). And “unsupported statements of legal conclusions are insufficient to state a cause of action.” *Kyocera Corp. v Hemlock Semiconductor, LLC*, 313 Mich App 437, 445 (2015).

The entire Third Complaint is comprised of conclusory statements. For example, under the title, “Plaintiff’s position”, he admits that his septic system does not meet the requirements of the Code, and that he failed to register it. Yet, Plaintiff’s claim is that “he knows it works well, suits

his needs and is safe.” (Exhibit E). What is Plaintiff’s cause of action against the Defendants? How are Defendants supposed to respond in the absence of any specific factual allegations? As aforementioned, Plaintiff’s Third Complaint does not contain a statement of facts with specific factual allegations which, would inform the Defendants of the nature of the claims against them. Instead, the Third Complaint is a stream of consciousness ranting that does not list in any decipherable manner, the allegations and claims against the Defendants.

Plaintiff has alleged that the Health Department has made false and inflammatory statements. *Id.* He cites as examples statements such as: “Multiple agencies may be needed to address all of the violations on the Wolff property”, and “Mr. Wolff hasn’t even filed a variance requesting he be allowed to relocate his trailer”. *Id.* However, Plaintiff has failed to allege any facts as to how the cited statements are false.

The Third Complaint contains a section titled “Rationale for damages”. *Id.* It is composed entirely of conclusory, immaterial, and redundant statements, and is devoid of any factual allegations. Instead, it is a running commentary on Plaintiff’s grievances against the Health Department. For example, Plaintiff accuses the Health Department of causing a rift between him and his neighbors. *Id.* No cause of action exists for creating rifts between Plaintiff and his neighbors. The entire section is replete with references to what Plaintiff “prefers” rather than any factual allegations regarding any wrongdoing by Defendants.

In the section labeled as “Wolff vs Health Department of NW Michigan Complaint Details”, Plaintiff attempts to provide the basis for his complaint. (Exhibit E). Upon review, it is clear that no cause of action exists for any of the alleged reasons articulated by Plaintiff as his basis for bringing a complaint against the Health Department. It is further clear that the so called “Complaint Details” are just a rehash of the Amended Complaint section “Primary points against

the Health Dept. of NW Michigan". (Exhibit C). This Court has previously stricken the Amended Complaint for failing to reasonably inform Defendants of the claims against them. (Exhibit D). Hence, Plaintiff's Third Complaint similarly fails to state a claim.

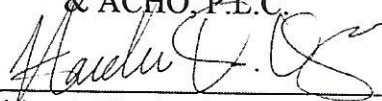
RELIEF REQUESTED

WHEREFORE, Defendants, HEALTH DEPARTMENT OF NORTHWEST MICHIGAN and JEREMY FRUK, respectfully request that this Honorable Court GRANT their Motion for Summary Disposition, and DISMISS Plaintiff's complaint WITH PREJUDICE, and award Defendants their costs and attorney fees incurred in defending against Plaintiff's frivolous action against the Defendants.

Respectfully submitted,

Dated: January 12, 2024

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