STATE OF MICHIGAN

COURT OF CLAIMS

FYDENCIA S. CROMER,

Plaintiff,

v Case No. 25-000008-MK

J. TANNER, Hon. Sima G. Patel

Defendant.
_____ /

OPINION AND ORDER GRANTING DEFENDANT'S MARCH 5, 2025 MOTION FOR SUMMARY DISPOSITION

Plaintiff filed suit against the warden of the prison where her husband is housed, claiming she was denied access to the court and that defendant committed fraud by withholding certain documents requested by plaintiff. In this regard, plaintiff seems to allege that the Michigan Department of Corrections is a "For-Profit Commercial Enterprise" that houses prisoners under a contract to hold only those legally incarcerated. Defendant seeks summary disposition under MCR 2.116(C)(7), contending that the complaint was not properly verified under the Court of Claims Act (COCA), MCL 600.6431, and MCR 2.116(C)(8) and (C)(10), contending that plaintiff failed to adequately plead or support her claims. Plaintiff has not responded to this motion. The Court GRANTS defendant's motion for summary disposition and DISMISSES plaintiff's complaint with prejudice.

I. COMPLAINT IS NOT PROPERLY VERIFIED

MCL 600.6431(1) provides that "a claim may not be maintained against this state unless the claimant, within 1 year after the claim has accrued, files in the office of the clerk of the court of claims either a written claim or a written notice of intention to file a claim against this state or any of its departments, commissions, boards, institutions, arms, or agencies." The claim or notice "must contain" "[a] signature and verification by the claimant before an officer authorized to administer oaths." MCL 600.6431(2)(d). MCL 600.6434(2) reiterates that a complaint must be verified.

The requirements of the COCA are conditions precedent to "successfully expose the defendant state agencies to liability," *Fairley v Dep't of Corrections*, 497 Mich 290, 298; 871 NW2d 129 (2015), and the failure to comply with the notice and verification requirements mandates dismissal of the case, *Elia Cos, LLC v Univ of Mich Regents*, 511 Mich 66, 68; 993 NW2d 392 (2023).

Here, plaintiff did not verify the complaint "before an officer authorized to administer oaths." Accordingly, the complaint did not "successfully expose" defendant "to liability" and the Court is mandated to dismiss plaintiff's complaint.

II. FAILURE TO STATE A LEGALLY OR FACTUALLY SUFFICIENT CLAIM

Summary disposition is also supported under MCR 2.116(C)(8) and (C)(10).

> A motion under MCR 2.116(C)(8) tests the *legal sufficiency* of a claim based on the factual allegations in the complaint. When considering such a motion, a trial court must accept all factual allegations as true, deciding the motion on the pleadings alone. A motion under MCR 2.116(C)(8) may only be granted when a

> claim is so clearly unenforceable that no factual development could possibly justify recovery.
>
> A motion under MCR 2.116(C)(10), on the other hand, tests the *factual sufficiency* of a claim. When considering such a motion, a trial court must consider all evidence submitted by the parties in the light most favorable to the party opposing the motion. A motion under MCR 2.116(C)(10) may only be granted when there is no genuine issue of material fact. A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ. [*El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159-160; 934 NW2d 665 (2019) (cleaned up).]

Plaintiff alleges that her husband is being held in prison in violation of the Commerce Clause of the federal Constitution because there is no "record of loss or injury," which plaintiff asserts is required for the prison to hold her husband under the Commerce Clause. "Without a Record of Loss or Injury it is impossible for . . . Plaintiff to know what the 'Return' would say from a writ of habeas corpus." Defendant, in his role as warden, then enforced plaintiff's husband's criminal sentence "without proof of claim." Defendant was required to "disclose a record of show cause," plaintiff argues. And plaintiff contends defendant has frustrated the ability of her and her husband to challenge his sentence and imprisonment in court by withholding a record of show cause. Defendant acted outside his authority or in an intentional or grossly negligent manner by "operat[ing] without a record of show cause or loss."

Plaintiff's single claim for relief is found in ¶ 24 of the complaint and states in full:

> Plaintiff Cromer, realleges ¶ 9-23, and avers, Defendant TANNER did in his "Proprietor" and "Individual" capacity did knowingly and maliciously commit "Ultra Vires Acts" when: 1) Failed to act; 2) Failed to Disclose a Record of "Show Cause" or "Loss" denying access to the court to raise underlying non-frivolous claim; and 3) Silent Fraud, Contrary to 1st, 5th and 14th Amends. of the U.S. Constitution, and Mich Const. of 1963 Art.I § 3, MCL 440.1203, 440.9105, 440.3106, and 440.2311(1).

The Court agrees with defendant that plaintiff has not alleged any legally supportable claim and failed to allege facts forming a viable claim. The failure to act seems to be the same claim as the failure to disclose claim.

Plaintiff alleges that she asked to see documents that would validate her husband's sentence and grant defendant authority to hold her husband in prison, but that defendant refused to provide them. Plaintiff has cited no statute, court rule, or any other source requiring such documents to be produced or kept by the Department of Corrections, let alone a warden in a particular facility. Plaintiff contends that after she inquired into her husband's "illegal imprisonment and the way the sentence and conviction is contrary to common law," neither defendant nor any other representative of the prison "entered a courthouse asserting a constitutional loss or injury." Again, plaintiff has cited no legal support that requires a warden to ask the court to justify a sentence when concerns are raised by a prisoner. Indeed, if a prisoner believes he or she has been wrongfully convicted or sentenced, it is the duty of the prisoner, not the warden, to pursue an appeal or other relief from judgment.

Plaintiff also alleged that defendant engaged in silent fraud. The Court of Appeals has described "silent fraud" as "fraud by nondisclosure or fraudulent concealment." *M&D, Inc v McConkey*, 231 Mich App 22, 28; 585 NW2d 33 (1998). Claims of silent fraud require "a plaintiff to set forth a more complex set of proofs." *Id*. Specifically, "'the suppression of a material fact, which a party in good faith is duty-bound to disclose, is equivalent to a false representation and will support an action in fraud." *Id*. at 28-29 (cleaned up). As with any type of fraud claim, silent fraud "must be stated with specificity." MCR 2.112(B)(1). Further, silent fraud, as with any fraud claim, contains an element of reliance, meaning that a plaintiff must rely on the silence to her detriment. *Deschane v Klug*, 344 Mich App 744, 752-753; 2 NW3d 131 (2022). Plaintiff has not

identified how she relied on defendant's alleged withholding of documents to her detriment. She does not claim that she ever believed the documents did not exist or that she relied on a mistaken belief that the documents did not exist to her detriment. Rather, plaintiff contends that defendant's failure to produce documents that she believes are in the warden's possession prevented her from challenging her husband's conviction and sentence in court. These allegations do not comprise a silent fraud.

IT IS ORDERED:

1. The Court GRANTS defendant's motion for summary disposition.

2. The Court DISMISSES plaintiff's complaint in its entirety and with prejudice.

3. This is a final order resolving all issues in this case.

Date: October 17, 2025

Sima G. Patel
Judge, Court of Claims