STATE OF MICHIGAN

COURT OF CLAIMS

JEROME MCCRAY JR.,

Plaintiff,

v

Case No. 25-000119-MM

MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES and ANDREA FERGUSON,

Hon. Sima G. Patel

Defendants.
_____ /

OPINION AND ORDER

Before the Court are defendants' November 26, 2025 motion for summary disposition, plaintiff's January 7, 2026 motion to file a second amended complaint naming additional defendants and adding four counts, and plaintiff's January 20, 2026 emergency motion for return of property and for a "show cause hearing." The Court GRANTS IN PART and DENIES IN PART defendant's summary disposition motion, DISMISSES plaintiff's claim of violation of confidentiality and privacy rights, and DENIES plaintiff's motions to file a second amended complaint and for the return of property and a show cause hearing.

I. BACKGROUND

Plaintiff shares two children with his live-in partner, DR. DR also has three children with her ex-husband, AA. And plaintiff shares a child or children with an ex-partner. In 2024, Child Protective Services (CPS) investigated plaintiff for abuse and neglect in relation to a child from

his previous relationship. Neither plaintiff nor defendants have provided the investigation report connected with that case. Defendants assert that they substantiated the claim and notified plaintiff of that result. It is undisputed that the final report indicated that no one would be placed on the Central Registry. Defendants assert that "[t]his was a clerical error" given the findings in the report.

It is also undisputed that defendants placed plaintiff on the Central Registry on July 28, 2024. Defendant Andrea Ferguson attested that she placed notice of this action in the mail addressed to plaintiff. Plaintiff contends that he did not receive this notice.

In March 2025, AA allegedly used plaintiff's placement on the Central Registry to his advantage in his custody dispute with DR. Plaintiff accuses Ferguson of releasing this confidential information to AA after interviewing AA and his children regarding allegations AA levied against plaintiff. Plaintiff further asserts that Ferguson testified under oath in the matter between AA and DR that plaintiff was on the Central Registry. Ferguson attested in an affidavit that she did not disclose to AA that plaintiff had been placed on the Central Registry.

Ferguson attested that in May 2025, she "was informed that [plaintiff] requested another copy of the" Central Registry notice and a staff member sent it. Plaintiff asserts that this May 5, 2025 notice was his first actual notice of being placed on the registry.

Plaintiff filed suit alleging that defendants violated his due process rights under the state and federal constitutions by placing him on the Central Registry without a proper investigation or timely notice. Plaintiff raised a count of violation of confidentiality and privacy rights in violation of MCL 722.627 *et seq*. and federal law, such as the Child Abuse Prevention and Treatment Act, against Ferguson for informing AA that plaintiff had been placed on the Central Registry. Finally,

plaintiff accused Ferguson of gross negligence and official misconduct for recklessly disclosing confidential information to AA. Plaintiff subsequently filed a first amended complaint to remedy a verification deficiency under MCL 600.6431.

In lieu of an answer, defendants moved for summary disposition under MCR 2.116(C)(7), (8), and (10). Defendants contend that US Const, Am XI bars plaintiff's federal constitutional and statutory claims, the DHHS is entitled to sovereign immunity of plaintiff's state tort claim, and Ferguson is immune from suit from the privacy and gross negligence claims. Defendants contend plaintiff failed to plead the elements of the privacy claim. Finally, defendants contend plaintiff failed to create a genuine issue of material fact as to any of his claims.

Plaintiff responds that even if the Eleventh Amendment bars plaintiff's federal claim against defendants, it does not protect them from liability for violating state law and the state constitution. He argues that Ferguson is not immune from gross negligence actions. Further, Ferguson is not immune from suit for violating his right to privacy because MCL 722.633(3) creates a private cause of action. Plaintiff challenges defendants' motion on (C)(8) grounds, noting that he alleged in the amended complaint that Ferguson unlawfully disclosed to AA that plaintiff had been placed on the Central Registry. And plaintiff contends there remain questions of fact and credibility precluding summary disposition under (C)(10).

On January 7, 2026, plaintiff moved to file a second amended complaint to add claims against CPS Investigators Stephanie Morris and Kristi Phillips. Plaintiff asserts that in March 2025, he was involved in a motor vehicle accident with AA. He claimed dashcam footage supported that AA intentionally caused the accident and that a minor child was in AA's vehicle at the time. Morris allegedly improperly substantiated an abuse claim against plaintiff based on this

accident. AA then allegedly fabricated claims that plaintiff beat his three children with DR with a belt and held one child by the neck before dropping him on his head. Plaintiff asserts that Phillips removed plaintiff from his home on December 19, 2025, as a result of this allegation. Police searched the home during his removal and seized SD cards from the home's surveillance system. That footage is actually exculpatory, plaintiff contends. Moreover, these SD cards were omitted from the search inventory. Plaintiff seeks to add counts of retaliatory action, false abuse allegations, evidence suppression, and an additional due process challenge.

On January 20, 2026, plaintiff filed an emergency motion for return of property and to show cause. Sandusky Police Officer Matthew Blaine secured the search warrant for plaintiff's residence, seeking evidence of first-degree child abuse by strangulation or suffocation. The evidence sought was a brown and green belt owned by plaintiff, cellular devices that are able to connect to the Internet to access the video recording system at the home, computer equipment, and data storage devices. The inventory sheet indicates that the officers collected two belts and cell phones belonging to plaintiff and DR.

Plaintiff alleges defendants failed to return his property despite that no charges were filed against him. He contends he was denied a preliminary hearing within 24 hours of being removed from his home as required by the child protection laws, and that he had been unjustly separated from his four-year-old autistic son for more than a month. He contends defendants secured a second search warrant, which was over broad and was used to invade "Plaintiff's protected legal work product and litigation strategy." Plaintiff asserts the searching agents took SD cards without listing them on the inventory form and that those cards contained exculpatory video recordings from inside his home. He also accuses Morris of fabricating allegations against him arising from the March 2025 accident caused by AA.

On February 11, 2026, plaintiff filed a supplement to his emergency motion, describing this case as involving "a coordinated, bad-faith pattern of systemic deception and constitutional violations across three distinct cases." He reiterates that in August 2024, Ferguson authored a report, stating "no one will be placed on central registry," but placed him on the registry without notice. In February 2025, 90 days before he received notice of his placement on the registry, AA used that information in moving for a change of custody for his children with DR. On March 24, 2025, AA intentionally caused an accident with plaintiff, triggering a new CPS investigation. Morris issued a notice on April 22, 2025, substantiating the abuse/neglect report against plaintiff but indicating that it would not result in a Central Registry placement, "further misleading" plaintiff about his status. Also in April 2025, Ferguson testified in a Sanilac Friend of the Court proceeding, "confirming the hidden August 2024 registry status." Then on December 19, 2025, based on false accusations made by AA, Phillips removed plaintiff from his home without a warrant or a DHHS petition, and without holding the mandatory preliminary hearing within 24 hours.

Plaintiff accuses defendants of perjury and of violating his right to procedural due process. He contends that Ferguson lied in her affidavit about releasing confidential information to AA. He requests this Court take judicial notice of the no-contact order that issued as a result of events in the Spring of 2025. The order, he claims, essentially evicted him from his residence as it required him to leave each day by 11 p.m. Plaintiff tried to intervene in the custody matter between AA and DR to protect his rights. He claims the circuit court denied his request, stripping him of the right to challenge the order requiring him to leave his own home every night. He requests an in camera review of the records in Sanilac Circuit Court Docket No. 24-40451-DM "to verify that the State's unauthorized disclosure was the catalyst for this exclusion and the subsequent perjury."

Plaintiff next asserts that the Sandusky Police Department and DHHS played "ping pong" with his formal demand for the return of his property, with each refusing to accept service of the demand.

On March 2, 2026, the Court directed defendants to respond to plaintiff's motions. Defendants contend amendment of plaintiff's complaint would be futile and plaintiff's motion for the return of his property is directed at the wrong party. Defendants assert that plaintiff's "removal" from his home was through an ex parte protective order in the custody dispute between AA and DR. Because neither the CPS nor DHHS petitioned for plaintiff's exclusion from his home, defendants were not required to conduct any hearings or provide any protections to plaintiff. Defendants note the property removed from plaintiff's home was the result of two search warrants sought and secured by the Sandusky Police Department in an active child abuse investigation. Defendants contend they had no power to levy criminal charges against plaintiff or to return the property seized and held by the police department. Defendants also argue that plaintiff's proposed new claims arose from conduct separate and distinct from his original action such that they should be raised in a separate suit, and alternatively that the proposed new claims are insufficient on their face.

On March 16, 2026, plaintiff filed a reply in support of his motions to file a second amended complaint and for return of his property and for a show cause hearing. The court rules do not permit a reply brief in relation to such motions and plaintiff did not seek Court permission for his filing. Accordingly, the Court STRIKES plaintiff's March 16, 2026 reply brief.

II. DHHS IMMUNITY

The DHHS seeks summary disposition, claiming that it is immune from suit by virtue of the Eleventh Amendment to the United States Constitution.

> The Eleventh Amendment provides, "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." "The ultimate guarantee of the Eleventh Amendment is that nonconsenting States may not be sued by private individuals in federal court." *Bd of Trustees of Univ of Alabama v Garrett*, 531 US 356, 363; 121 S Ct 955; 148 L Ed 2d 866 (2001). Suits brought against state officials in their official capacities are equivalent to suits against the state itself. *Kentucky v Graham*, 473 US 159, 166, 105 S Ct 3099, 87 L Ed 2d 114 (1985). [*Midwest Institute of Health, PLLC v Governor*, 506 Mich 332, 341 n 5; 958 NW2d 1 (2020).]

The same holds true in state courts: a federal statute cannot subject a nonconsenting state to private suits for damages in state court for violation of the federal statute. *Alden v Maine*, 527 US 706, 712-713; 119 S Ct 2240; 144 L Ed 2d 636 (1999). The United States Supreme Court has also stated that Eleventh Amendment immunity is just another name for a state's sovereign immunity. *Id*. at 713.

In Michigan, the State consents to being sued under various specific statutes, and also through the Governmental Tort Liability Act (GTLA). See MCL 691.1407(1) ("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. Except as otherwise provided in this act, this act does not modify or restrict the immunity of the state from tort liability as it existed before July 1, 1965, which immunity is affirmed."). The state and its agencies are not immune from suit when "the state, by virtue of custom or policy, has violated a right conferred by the Michigan Constitution," or when a plaintiff raises a claim for damages

arising out of the Michigan Constitution. *Mays v Governor*, 506 Mich 157, 187; 954 NW2d 139 (2020) (cleaned up).

The DHHS is not immune from plaintiff's state constitution due process challenge. As the state due process amendment is coextensive with the federal due process protections, it is not outcome determinative whether the DHHS is immune from that federal claim. *Grimes v Van Hook-Williams*, 302 Mich App 521, 530; 839 NW2d 237 (2013). Plaintiff did not raise any other challenges against the DHHS. Accordingly, defendants' motion for summary disposition on this ground lacks merit.[1]

III. FERGUSON IMMUNITY

Plaintiff prefaced his claims against Ferguson as follows: Ferguson "is an individual who, at all times relevant hereto, was employed by MDHHS as a Child Protective Services investigator and was acting within the course and scope of her employmen[t] and under color of state law." Plaintiff raises an intentional tort claim against Ferguson: violation of the privacy provisions of the child protective act. To be subject to immunity, Ferguson must have been (1) acting within the course of her employment, (2) acting in good faith and without malice, and (3) been engaged in a discretionary, rather than ministerial act. *Odom v Wayne Co*, 482 Mich 459, 468; 760 NW2d 217 (2008).

[1] The DHHS reads plaintiff's Count I as including a claim of negligent infliction of emotional distress and argues for its dismissal. Plaintiff alleged that the DHHS's due process violation caused him to suffer "severe emotional distress, reputational harm, and significant disruption to his family life." However, plaintiff did not raise a count of negligent infliction of emotional distress, and the Court cannot consider or dismiss a count that has not been raised.

Ferguson was clearly acting within the course of her employment as a CPS investigator. Ferguson investigated reports against plaintiff as required by her job duties. Defendants focus on this duty in contending that there is no question that Ferguson acted in good faith. But that is not the act plaintiff challenges. Rather, during an investigation into a new report against plaintiff, Ferguson allegedly told AA that plaintiff had been placed on the Central Registry. The question is whether that alleged act was taken in good faith and without malice. Whether Ferguson actually revealed this information to AA is a question of fact. The Court cannot resolve this credibility dispute at this early stage of the proceedings. Finally, defendants focus on the discretionary nature of an investigator's actions during a child protective investigation. If, in the course of an investigation, Ferguson revealed to AA that plaintiff had been placed on the registry, that certainly would have been a discretionary act. In any event, given that the question of whether Ferguson acted in good faith is a question of fact and credibility, Ferguson is not entitled to summary disposition on immunity grounds in this regard.

Plaintiff also raises a gross negligence claim against Ferguson. A government employee is not immune for grossly negligent conduct. MCL 691.1407(2)(c). Even so, defendants analyze this claim like a claim of ordinary negligence. Defendants also contend, however, that Ferguson's alleged conduct did not rise to the level of gross negligence and, as a result, Ferguson is immune from the claim. MCL 691.1407(8)(a) defines gross negligence as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." To be classified as gross negligence, a party's conduct must be "substantially more than negligent." *Jofferion-Bishop v Banks*, ___ Mich App ___; ___ NW3d ___ (2025) (Docket No. 372571), slip op at 10 (cleaned up). "The gross negligence standard of care suggests almost a willful disregard of precautions or measures to attend to safety and a singular disregard for substantial risks, such that an objective

observer could reasonably conclude "that the actor simply did not care about the safety or welfare of those in his charge." *Id.* (cleaned up).

Plaintiff alleged that Ferguson was grossly negligent in "signing an official report contradicting Plaintiff's Central Registry placement and intentionally or recklessly disclosing confidential Central Registry information to an unauthorized individual." Because the subject report has not been provided, the Court cannot take at face value defendants' assertion that the notation that no individual would be placed on the registry was a mere clerical error. And although Ferguson denies telling AA that plaintiff had been placed on the registry, that is a question of fact, as would be the issue of whether Ferguson acted with willful disregard of plaintiff's confidentiality. Accordingly, Ferguson is not entitled to summary disposition in this regard.[2]

IV. (C)(8) VIOLATION OF CONFIDENTIALITY

Plaintiff raised this claim against Ferguson only. Defendants contend that plaintiff failed to plead that the subject information (plaintiff's placement on the Central Registry) was disseminated and that defendants were the proximate cause.

MCL 722.633(3) provides: "Except as provided in section 7, a person who disseminates, or who permits or encourages the dissemination of, information contained in the central registry and in reports and records made as provided in this act . . . is civilly liable for the damages proximately caused by the dissemination." Section 7, MCL 722.627(1) provides a list of individuals and entities to whom confidential information from the Central Registry and investigation reports may be disseminated. The ex-husband of an investigated person's significant

[2] Ferguson does not claim immunity from plaintiff's due process claim.

other is not on the list. "Disseminate" for purposes of MCL 722.633(3) is defined as "to scatter or spread widely; promulgate extensively" or

> the circulation of the physical embodiment of the defamatory matter. It includes the selling, renting, giving, or otherwise circulating a book, paper or document composed or written or printed by a third person. It includes similar dealing with a picture or statue or phonograph record. It also includes the carrying of a letter or the transmission of messages by other means, such as by telegraph or radio. [*Zimmerman v Owens*, 221 Mich App 259, 263-264; 561 NW2d 475 (1997) (cleaned up).]

Plaintiff's allegations do not meet the definition of dissemination. Plaintiff alleged that Ferguson told AA during a child protective investigation that plaintiff had been placed on the Central Registry. If true, this would be a breach of confidentiality, but would not fall within the statutory provision creating a civil action for dissemination. Plaintiff alleged that Ferguson shared the information with one person, AA, not that Ferguson widely or extensively spread the information. And plaintiff did not allege that Ferguson circulated the report or physical copy proving plaintiff's placement on the registry.

Accordingly, defendants are entitled to summary disposition of the violation of confidentiality claim under MCR 2.116(C)(8).

V. (C)(10)

Defendants contend that plaintiff failed to create a genuine issue of material fact that Ferguson violated his right to confidentiality under the child protection law or was grossly negligent.

Just as plaintiff failed to plead a supportable claim that his confidential information was "disseminated," he also has not created a genuine issue of material fact in that regard. Providing

information to one person—AA—does not create a genuine issue of material fact of extensive dissemination as defined in the statute. Summary disposition is also supported under MCR 2.116(C)(10).

Plaintiff's gross negligence claim does not require dissemination of plaintiff's confidential information to more than one person. If Ferguson acted so recklessly as to demonstrate a substantial lack of concern for injury, or with a willful disregard of her duty to maintain the confidentiality of plaintiff's placement on the Central Registry, she could be found liable for gross negligence. Defendants have not tried to rebut these elements, instead focusing their challenge on their position that Ferguson did not reveal this information to AA. However, this is an issue of credibility that cannot be resolved at this early stage of the proceedings. Accordingly, defendants are not entitled to summary disposition in this regard.

In summary, the Court DENIES defendants' motion for summary disposition of plaintiff's state constitution due process challenge under (C)(7), GRANTS defendants' motion as to plaintiff's invasion of confidentiality claim under MCR 2.116(C)(8) and (C)(10), and DENIES defendants' motion as to plaintiff's gross negligence claim under (C)(7), (8), and (10).

VI. SECOND AMENDED COMPLAINT WITH ADDITIONAL DEFENDANTS

Plaintiff moved to file an amended complaint, adding Morris and Phillips as defendants. Plaintiff's proposed "supplemental" complaint would include four new counts.

First, plaintiff proposed adding a count of retaliatory action, alleging that Morris improperly substantiated a claim of abuse against plaintiff following the motor vehicle accident with AA. Plaintiff asserts that AA intentionally caused the accident, and that AA had a minor

child in his car at the time. The brief statement made by plaintiff in the proposed second amended complaint does not truly state a claim. At most, plaintiff can be deemed to have alleged that Morris was negligent in substantiating an unfounded report following an investigation. Morris would be entitled to immunity from this claim. Morris was acting within the course of her employment and engaged in a discretionary act in conducting the investigation. Plaintiff did not allege that Morris failed to act in good faith or acted with malice. Accordingly, Morris would be entitled to governmental immunity from this ordinary negligence claim. See *Odom*, 482 Mich at 468. It would be futile to add this count to plaintiff's complaint.

Second, plaintiff proposed adding a count asserting that AA raised false abuse claims against him. Plaintiff does not propose to add AA as a named defendant. Indeed, this Court could not exercise jurisdiction over AA. Amendment of the complaint to add this count would also be futile.

Third, plaintiff proposed to add a new due process challenge, alleging that on December 19, 2025, Phillips used AA's false reports to remove plaintiff from his home without legal authority, a DHHS petition, or a preliminary hearing. This claim, too, would be futile. Neither CPS nor the DHHS played a role in plaintiff being "removed" from his home. On December 19, 2025, the Sanilac Circuit Court entered an ex parte parenting time order in the separate custody dispute between AA and DR. The circuit court ordered that neither party could allow their minor children to have contact with plaintiff. To comply with this order, plaintiff may not be inside his residence while DR exercises parenting time with the three children she shares with AA. As no named or proposed named defendant entered this order, addition of this claim would be futile.

Plaintiff's final proposed additional claim is entitled "evidence suppression." Plaintiff seeks to add a count alleging that during his removal from his home on December 19, 2025, defendants searched for and seized SD cards containing home security footage. Defendants failed to include these cards on the search inventory. Plaintiff asserts that the SD cards include exculpatory footage as they demonstrate that no abuse occurred within the home. The December 19, 2025 search warrant was secured by Sandusky Police Officer Matthew Blaine and the post-search inventory form was completed by Officer Blaine. Plaintiff has presented no evidence that the DHHS, CPS, or any identified defendant has possession or control over the subject evidence. Addition of this count would, therefore, also be futile.

As each count proposed by plaintiff lacks merit and amendment of the complaint would be futile, the Court DENIES plaintiff's motion to file a second amended complaint.

VII. MOTION FOR RETURN OF PROPERTY AND SHOW CAUSE

In a separate "emergency" motion, plaintiff seeks return of the evidence collected from his home on December 19, 2025, specifically the SD cards for the home surveillance system. Plaintiff alleges that the DHHS and the Sandusky Police Department have been playing "ping pong" with him, with neither admitting to having the materials and refusing to accept service of his demand for the return of the property. However, the search warrant was sworn out and the inventory form completed by a Sandusky police officer. Just as it would be futile to amend the complaint to add a count related to the seizure of this property, plaintiff's motion for return of the property and to show cause is without merit. This Court does not have jurisdiction over the Sandusky Police Department and cannot order the return of the subject property. Plaintiff's motion is DENIED.

IT IS ORDERED:

1. Defendant's motion for summary disposition is GRANTED IN PART and DENIED IN PART.

2. Plaintiff's Count II Violation of Confidentiality and Privacy Rights is DISMISSED pursuant to MCR 2.116(C)(8) and (10) with prejudice.

3. Defendant is DIRECTED to answer the remaining claims in plaintiff's first amended complaint within 21 days of the entry of this opinion and order.

4. Plaintiff's motion to file a second amended complaint is DENIED.

5. The Court STRIKES plaintiff's March 16, 2026 reply brief

6. Plaintiff's motion to show cause and for the return of seized property is DENIED.

7. This is not a final order resolving all issues in this matter.

Date: April 21, 2026

Sima G. Patel
Judge, Court of Claims