

STATE OF MICHIGAN
COURT OF CLAIMS

ALEC-MICHAEL SWARTZ,

Plaintiff,

**OPINION AND ORDER GRANTING
SUMMARY DISPOSITION TO
DEFENDANT WILLIAM SCHUETTE,
GEOFFREY STUART, DAVID W.
FRISCH, TREVOR JOHNSON, & JOHN
CIPIELWSKI.**

v

Case No. 18-000031-MZ

WILLIAM SCHUETTE, TERESA SPENCER,
NICK HOLOWKA, LAURA BANARD,¹
MICHAEL DELLING, MICHAEL SHARKY,
GEOFFREY STUART, DAVID W. FRISCH,
TREVOR JOHNSON, and JOHN CIPIELWSKI,

Hon. Stephen L. Borrello

Defendants.

Pending before the Court are motions for summary disposition filed by defendant Schuette, defendant Stuart, and defendants Frisch, Johnson, and Ciplewski. Also pending before the Court is a motion to strike filed by defendant Schuette (hereinafter “Attorney General”)—as to plaintiff’s “first amended petition”—and a separate motion to strike² filed by plaintiff—as to the answer filed by defendants Spencer, Holowka, Sharky, and Delling. In addition, plaintiff’s June 26, 2018 purported “Notice and Request” to the Attorney General is

¹ Defendant Laura Banard was dismissed for non-service on May 24, 2018.

² Plaintiff’s filing is styled as an “Objection” to the answer. This Court will interpret the “Objection” as a motion to strike.

pending. For the reasons articulated herein, summary disposition is GRANTED to the moving defendants pursuant to MCR 2.116(C)(4) and (C)(7), and the motions to strike are DENIED. Defendant's June 26, 2018 "Notice and Request" is hereby DISMISSED.

Plaintiff's complaint contains allegations related to a traffic stop in Lapeer County. He raises claims against the Attorney General, several Lapeer County officials, a circuit court judge, a prosecuting attorney who was involved in plaintiff's subsequent prosecution, the court-appointed defense attorney who briefly represented plaintiff,³ the Lapeer Police Department Chief of Police, and the two city of Lapeer police officers involved in the traffic stop.

I. FAILURE TO COMPLY WITH THE COURT OF CLAIMS ACT

At the outset, the Court agrees with the Attorney General's contention that plaintiff failed to comply with the notice and verification requirements contained in the Court of Claims Act. MCL 600.6431(1) provides that:

No claim may be maintained against the state unless the claimant, within 1 year after such 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 the state or any of its departments, commissions, boards, institutions, arms or agencies, stating the time when and the place where such claim arose and in detail the nature of the same and of the items of damage alleged or claimed to have been sustained, *which claim or notice shall be signed and verified by the claimant before an officer authorized to administer oaths.* [Emphasis added.]

The time for giving notice is shortened to six months "following the happening of the event giving rise to the cause of action" for "all actions for property damage or personal injuries[.]" MCL 600.6431(3).

³ It appears plaintiff terminated the attorney's services shortly after the appointment was made.

In this case, plaintiff's complaint raises a number of property claims and claims that fall within the broad understanding of the term "personal injuries." See *Alfieri v Bertorelli*, 295 Mich App 189, 198; 813 NW2d 772 (2012) (ascribing, albeit in a different context, a broad understanding to the term "personal injuries"). As such, plaintiff's action is subject to the six-month period for giving notice. Plaintiff's pleadings do not identify the date on which the "happening of the event giving rise to the cause of action" occurred. The only dates specifically mentioned in the notice of intent, the complaint, or in plaintiff's "First Amended Petition" are September 1, 2017—when defendant Stuart was appointed to serve as plaintiff's counsel in a criminal matter that arose from the traffic stop—and October 30, 2017—when plaintiff terminated Stuart's services.

Using the latest date mentioned in plaintiff's pleadings, i.e., October 30, 2017, and giving plaintiff the benefit of the doubt, the Court agrees that plaintiff failed to satisfy the dictates of MCL 600.6431(3) and that his claim must be dismissed as a result. In order to satisfy MCL 600.6431(3), plaintiff needed to comply with the notice and verification requirements within six months of October 30, 2017, i.e., by April 30, 2018. Plaintiff filed a notice of intent as to some of the named defendants in the instant action in November 2017. However, that notice did not satisfy MCL 600.6431's verification requirements. Plaintiff's complaint, filed in February 2018, failed to satisfy the verification requirements as well. Plaintiff's First Amended Petition⁴ was signed and verified before an officer authorized to administer oaths; however, it was signed and verified outside of the six-month period for giving notice. Accordingly, the Court must dismiss

⁴ The Court will assume for purposes of this analysis that the First Amended Petition could be considered a properly amended complaint.

the complaint. See *Rusha v Dep't of Corrections*, 307 Mich App 300, 307; 859 NW2d 735 (2014).

II. GOVERNMENTAL IMMUNITY

As an additional ground for granting summary disposition, the Court agrees that governmental immunity applies to bar plaintiff's claims against the Attorney General. See MCL 691.1407(4) ("A judge, a legislator, and the elective or highest appointive executive official of all levels of government are immune from tort liability for injuries to persons or damages to property if he or she is acting within the scope of his or her judicial, legislative, or executive authority."). Here, there are no allegations that the Attorney General was acting outside the scope of his executive authority; hence, immunity would apply, even if plaintiff had complied with MCL 600.6431(3).

III. THIS COURT LACKS JURISDICTION OVER NON-STATE DEFENDANTS

Finally, the Court agrees that it lacks subject-matter jurisdiction over the non-state defendants named in plaintiff's complaint. The Court of Claims is created by statute and its subject-matter jurisdiction is confined by express statutory limitations. *O'Connell v Dir of Elections*, 316 Mich App 91, 101; 891 NW2d 240 (2016). With exceptions not relevant to this case, the Court of Claims' subject-matter jurisdiction is set forth in MCL 600.6419(1)(a), which provides that this Court has jurisdiction:

To hear and determine any claim or demand, statutory or constitutional, liquidated or unliquidated, ex contractu or ex delicto, or any demand for monetary, equitable, or declaratory relief or any demand for an extraordinary writ *against the state or any of its departments or officers* notwithstanding another law that confers jurisdiction of the case in the circuit court. [Emphasis added.]

The phrase "the state or any of its departments or officers" means:

this state or any state governing, legislative, or judicial body, department, commission, board, institution, arm, or agency of the state, or an officer, employee, or volunteer of this state or any governing, legislative, or judicial body, department, commission, board, institution, arm, or agency of this state, acting, or who reasonably believes that he or she is acting, within the scope of his or her authority while engaged in or discharging a government function in the course of his or her duties. [MCL 600.6419(7).]

As the foregoing definition makes apparent, the identity of the defendant matters for purposes of determining whether the Court of Claims possesses subject-matter jurisdiction. See *Council of Orgs & Others for Ed About Parochiaid v State*, 321 Mich App 456, 467; 909 NW2d 449 (2017). “Indeed the very essence of the Court of Claims is to hear claims against the state. Thus, the nature of a defendant as a private individual necessarily relates to the subject-matter jurisdiction of the Court of Claims.” *Id.* In this case, the Livonia police officers are plainly not state actors. Likewise, defendant Stuart does not fall within the auspices of the term “the state or any of its departments or officers.” Hence, plaintiff’s claims against the non-state defendants are subject to dismissal for lack of subject matter-jurisdiction pursuant to MCR 2.116(C)(4).

IT IS HEREBY ORDERED that defendants’ respective motions are GRANTED pursuant to MCR 2.116(C)(4) and (C)(7).

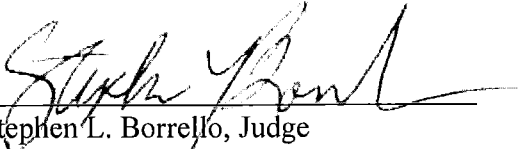
IT IS HEREBY FURTHER ORDERED that plaintiff and the Attorney General’s respective motions to strike are DENIED.⁵

IT IS HEREBY FURTHER ORDERED that plaintiff’s June 26, 2018 “Notice and Request” to the Attorney General is DISMISSED as moot.

⁵ As for plaintiff’s motion to strike the answer filed by defendants Spencer, Holowka, Delling, and Sharky, plaintiff failed to state an articulable reason for this Court to strike the answer. See MCR 2.115(B).

This order does not resolve the last pending claim or the case.⁶

Dated: August 10, 2018


Stephen L. Borrello, Judge
Court of Claims

⁶ To that end, the Court notes that defendants Teresa Spencer, the Hon. Nick Holowka, Michael Delling, and Michael Sharky have not moved for summary disposition. As a result, even assuming the arguments made by other defendants might apply to them, the Court declines to dismiss them at this time.