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STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 3

LA CROSSE COUNTY

TIMOTHY L. CORYELL and
JUDITH DELARWELL,

Plaintiffs,

v.

WISCONSIN DEPARTMENT
OF REVENUE, ERIK COATY,
and DENNIS CLARK,

Defendants.

**MEMORANDUM
DECISION AND ORDER**

Case No. 01-CV-118

This case is before the Court on Defendants Motion to Dismiss. Timothy Coryell and Judith Delarwell filed suit against the Wisconsin Department of Revenue ("Department"), Erik Coaty, and Dennis Clark for \$100,000 in damages. Plaintiffs assert that the defendants have stifled the loan process and payoff of their vehicle by refusing to give a clearance paper for the loan processing with the bank. (Compl. at ¶ 5). Defendants argue that Plaintiffs have failed to state a claim upon which relief may be granted, as the suit is barred by sovereign immunity and noncompliance with WIS. STAT. § 893.82(3). Because the action against the Department is barred by sovereign immunity, and because defendants Coaty and Clark were not properly given notice of the claim, Defendants Motion to Dismiss is granted.

DECISION

Under the Wisconsin Constitution, Article IV, § 27, "The legislature shall direct by law in what manner and in what courts suits may be brought against the state. . . "[T]here must exist *express legislative authorization* in order for the state to be sued." *Kallembach v. State*, 129 Wis. 2d 402, 408, 385 N.W.2d 215 (Wis. Ct. App. 1986) (citations omitted) (emphasis in

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original).

Moreover, “[t]he mere creation of liability against the state, . . . , does not constitute the state’s consent to an action against it. . . . That the state undertakes a duty “does not in any way imply that the legislature has waived its immunity from suit or given legislative consent for an action against the state.”” *Id.* at 408-9 (citations omitted). The defendants correctly argue that the action against the Department, a state agency, should be dismissed, as “[a] state agency is considered an arm of the state and is protected by sovereign immunity from liability for damages just as the state is . . .” *Miller v. Mauston School Dist.*, 222 Wis. 2d 540, 550, 588 N.W.2d 305 (Wis. Ct. App. 1998) (citation omitted).

Plaintiffs have failed to establish that the Wisconsin Department of Revenue is subject to suit. Although the Department has taken on a duty to collect and distribute tax revenues, the plaintiffs have not proven that the legislature has consented to suit against the Department. Furthermore, the plaintiffs’ assertions are conclusory. The plaintiffs have not provided this Court with any legal argument or support for their assertions. Because sovereign immunity bars the plaintiffs’ claim against the Department, their claim is dismissed.

“Sovereign immunity, however, does not protect state employees from tort suits.” *Carlson v. Pepin County*, 167 Wis. 2d 345, 356, 481 N.W.2d 498 (Wis. Ct. App. 1992). Under WIS. STAT. § 893.82(2m), “No claimant may bring an action against a state officer, employee or agent unless the claimant complies strictly with the requirements of this section.” (Emphasis added).

“Except as provided in sub. (5m), no civil action or civil proceeding may be brought against any state officer, employee or agent for or on account of any act growing out of or committed in the course of the discharge of

the officer's, employee's or agent's duties, . . . , unless within 120 days of the event causing the injury, damage or death giving rise to the civil action or civil proceeding, the claimant in the action or proceeding services upon the attorney general written notice of a claim stating the time, date, location and the circumstances of the event giving rise to the claim for the injury, damage or death and the names of persons involved, including the name of the state officer, employee or agent involved. . . ." WIS. STAT. § 893.82(3) (emphasis added).

Here, Coryell and Delarwell have failed to strictly comply with the statute. According to Betty Kruse, a paralegal assigned to the Civil Litigation Unit, Legal Services Division at the State of Wisconsin Department of Justice, (Kruse Aff. at ¶ 2), the plaintiffs have not filed notice with the Attorney General pursuant to § 893.82(3), STATS. (Kruse Aff. at ¶ 4). Not only have the plaintiffs failed to comply with the statute, they do not provide any legal argument, legal support, or explanation in their "Answer to Order", as to why they have not complied. Accordingly, their action against Coaty and Clark is dismissed.

ORDER

For the above stated reasons:

Defendants' Motion to Dismiss is GRANTED.

Dated at La Crosse, Wisconsin, this 7~~th~~ day of May, 2001.

BY THE COURT:



Dennis G. Montabon
Circuit Judge, Branch 3

cc: Timothy Coryell and Judith Delarwell, Plaintiffs
Steven J. Nicks, Asst. Attorney General, Attorney for Defendants