IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

LARON SHEPPARD, Individually and   )
as Administrator of the ESTATE OF   )
CAMELLIA N. WASHINGTON, and   )
LARON SHEPPARD, Individually and   )
as next friend of CAMERON   )
SHEPPARD, a minor,   )
)
        Plaintiffs,   )
)   C.A. No. 03C-01-096-MMJ
     v.   )
)
STATE OF DELAWARE   )
DEPARTMENT OF HEALTH AND   )
SOCIAL SERVICES, DELAWARE   )
DIVISION OF ALCOHOLISM, DRUG   )
ABUSE AND MENTAL HEALTH,   )
DELAWARE PSYCHIATRIC   )
CENTER, VINCENT P. MECONI,   )
RENATTA J. HENRY, MICHAEL   )
TALMO, IVAN S. COHEN, M.D., D.   )
BINGHAM PH.D., and GURJEET   )
MAVI, M.D.,   )
)
        Defendants.   )

Submitted : March 29, 2004
Decided: April 15, 2004

ORDER

Upon Defendants' Motion for Reargument

DENIED

1.	By Order dated December 18, 2003, the Court denied Defendants'

Motion to Dismiss on the grounds of sovereign immunity. The Court found that

the non-moving parties had presented a reasonably conceivable set of

circumstances susceptible of proof of gross negligence on the part of Defendants.

The absence of gross negligence is required under 10 *Del. C.* § 4001 as a condition

essential for the retention of sovereign immunity by the State of Delaware.

Therefore, sovereign immunity is not available as a defense at this stage of the

proceedings. Additionally, sovereign immunity is not a bar to Plaintiffs' cause of

action pursuant to 42 U.S.C. § 1983 under the circumstances presented.

2.	Defendants filed a Motion for Reargument on December 30, 2003.

Defendants requested that the Court reconsider denial of Defendants' Motion to

Dismiss in light of the Delaware Supreme Court's December 17, 2003 decision in

Pauley v. Reinoehl.[1] Defendants also wished to readdress the issue of the

application of sovereign immunity to Section 1983 claims.

3.	On January 14, 2004, the Court granted the Motion for Reargument

for the sole purpose of consideration of *Pauley.* Although the parties included in

their submissions upon reargument discussion of Section 1983 claims, those issues

were fully considered by the Court upon Defendants' Motion to Dismiss.

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[1]Del. Supr., No. 679, 2002 (Dec. 17, 2003).

Therefore, this decision is limited to the issue of whether the Delaware Supreme Court's recent decision is cause for this Court to alter its Order denying the Motion to Dismiss.

4.   Plaintiffs have requested that the Court schedule oral argument on the Motion for Reargument. Oral argument is at the discretion of the Court. The parties' written submissions are sufficient for the Court to reconsider the Motion to Dismiss. Therefore, oral argument is not necessary.

5.   In *Pauley*, the Supreme Court considered whether by passing the State Tort Claims Act, the Delaware General Assembly intended to waive completely the State's sovereign immunity. The State had $1 million in insurance coverage available to the plaintiffs. The issue was whether sovereign immunity had been waived to permit recovery by plaintiffs from the State in excess of $1 million.[2]

6.   The Supreme Court confirmed that sovereign immunity does not apply when public officials act with gross negligence.[3] Nevertheless, the Court held that the General Assembly did not intend to waive sovereign immunity completely by enacting the State Insurance Program. "The purpose of that

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[2]*Id.* at *1.

[3]*Id.* at *2.

Program was to protect the public from wrongful actions of State officials and employees, by waiving the State's sovereign immunity up to the threshold of insurance coverage made available by the State."[4]

7.   For purposes of this Motion, it is undisputed that there is no State insurance coverage for the allegations in this case. Therefore, the ruling in *Pauley* is inapplicable and does not constitute a reason for this Court to alter its decision on the Motion to Dismiss.

THEREFORE, upon consideration of Defendants' Motion for Reargument of the Court's December 18, 2003 decision on Defendants' Motion to Dismiss, Defendants' Motion to Dismiss hereby is **DENIED AS PREVIOUSLY ORDERED ON DECEMBER 18, 2004.**

IT IS SO ORDERED.

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The Honorable Mary M. Johnston

oc: Prothonotary
pc: Counsel of Record

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[4]*Id.* at *5.