

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROBERT D. CUNNINGHAM, JR.,	§
	§
Plaintiff Below-	§ No. 340, 2004
Appellant,	§
	§
v.	§
	§ Court Below—Superior Court
JEFFREY HORVATH, Chief of	§ of the State of Delaware,
Police, and M. JANE BRADY,	§ in and for Kent County
Attorney General,	§ C.A. No. 03C-08-013
	§
Defendants Below-	§
Appellees.	§

Submitted: September 7, 2004

Decided: October 18, 2004

Before **STEELE**, Chief Justice, **HOLLAND**, and **BERGER**, Justices.

**ORDER**

This 18th day of October 2004, upon consideration of the appellant's opening brief and the appellees' motion to affirm, it appears to the Court that:

(1) The plaintiff-appellant, Robert Cunningham, filed this appeal from the Superior Court's dismissal of his complaint for failure to state a claim upon which relief could be grant and the Superior Court's subsequent denial of Cunningham's motion for reargument. The appellees have moved to affirm the Superior Court's judgment on the ground that it is manifest on

the face of Cunningham's opening brief that the appeal is without merit. We agree and affirm.

(2) The record reflects that Cunningham filed a 105-page complaint against the appellees alleging numerous violations of his constitutional rights due to the appellees refusal to pursue criminal complaints that Cunningham sought to file. Cunningham requested the Superior Court to issue an injunction compelling the appellees to take action on his complaints. The appellees moved to dismiss. The Superior Court concluded, to the extent Cunningham sought mandamus relief compelling the appellees to prosecute his criminal complaints, such relief was unavailable to compel the performance of a discretionary duty.<sup>1</sup> To the extent Cunningham sought other injunctive relief, the Superior Court lacked jurisdiction to issue such relief.<sup>2</sup> Moreover, the Superior Court correctly noted that public agencies and officers enjoy absolutely immunity from suit for discretionary decisions made during the performance of their official duties.<sup>3</sup>

(3) Having carefully considered the parties' respective positions on appeal, we find it manifest that the judgment of the Superior Court should be

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<sup>1</sup> *Darby v. New Castle Gunning Bedford Educ. Ass'n*, 336 A.2d 209, 210 (Del. 1975).

<sup>2</sup> *Kerns v. Dukes*, 707 A.2d 363, 368 (Del. 1998) (citing 10 Del. C. § 341).

<sup>3</sup> 10 Del. C. § 4001.

affirmed on the basis of the Superior Court's well-reasoned decision dated March 31, 2004 and its decision denying reargument dated July 30, 2004. The issue on appeal is clearly controlled by settled Delaware law.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland  
Justice