

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

IN THE ESTATE OF MARGUARITE WISNIEWSKI and
SALY ANN WISNIEWSKI aka ANN AUSTIN,

OPINION AND ORDER

Plaintiff,

12-cv-662-bbc

v.

DISTRICT ATTORNEY and
COUNTY OF COLUMBIA WI, PARDEEVILLE WI,

Defendants.

Plaintiff Ann Austin (who also identifies herself as Sally Wisniewski, her "biological name") has filed a proposed complaint suing Columbia County and the district attorney of that county for monetary damages for failing to prosecute the driver who negligently killed her biological mother, Marguarite Wisniewski. Because plaintiff is proceeding in forma pauperis, I must screen the complaint to determine whether it states a claim upon which relief may be granted. 28 U.S.C. § 1915(e)(2).

After considering plaintiff's allegations, I conclude that she cannot state a claim upon which relief may be granted and thus the case must be dismissed. Taking aside the question whether plaintiff may sue on behalf of her biological mother's estate, plaintiff's claim fails for two reasons. First, Columbia County is not a proper defendant because each Wisconsin county contains a "prosecutorial unit" headed by an elected district attorney and staffed by

deputy or assistant district attorneys, who are *state*, and not *county*, employees. Wis. Stat. §§ 978.01, 978.03, 978.04; Ameritech Corp. v. McCann, 403 F.3d 908, 910 (7th Cir.2005); Ass'n of State Prosecutors v. Milwaukee County, 199 Wis. 2d 549, 544 N.W.2d 888, 889 (1996); see also Wis. Stat. § 17.19 (listing "district attorney" as an "elective state office").

Second, plaintiff cannot sue the Columbia County district attorney for failing to prosecute a negligent driver. Prosecutors are entitled to absolute immunity from suit for exercising their discretion to bring or not bring charges during the judicial phase of the criminal process. E.g., Hartman v. Moore, 547 U.S. 250, 261-62 (2006); Imbler v. Pachtman, 424 U.S. 409, 428-29 (1976); Spiegel v. Rabinovitz, 121 F.3d 251, 256-57 (7th Cir. 1997). The reason for this immunity is that “[t]he public trust of the prosecutor’s office would suffer if he were constrained in making every decision by the consequences in terms of his own potential liability in a suit for damages.” Imbler, 424 U.S. at 424-25.

ORDER

IT IS ORDERED that plaintiff Ann Austin is DENIED leave to proceed on her claims and this case is DISMISSED for failure to state a claim upon which relief may be granted. The clerk of court is directed to enter judgment for defendants and close this case.

Entered this 30th day of November, 2012.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge