FILED
May 17, 2024
CLERK OF THE COURT
MARION COUNTY
MW

STATE OF INDIANA	)	IN THE MARION SUPERIOR COURT
	)SS:	CIVIL DIVISION, ROOM ELEVEN
COUNTY OF MARION	)	CAUSE NO. 49D11-2210-PL-037195

HAMILTON COUNTY, INDIANA,)
)
Plaintiff,)
)
v.)
)
DENNIS WIMER, IN HIS OFFICIAL CAPACITY AS DIRECTOR OF STATE OF INDIANA DEPARTMENT OF VETERANS AFFAIRS,)
)
Defendant.)

ORDER

Comes now the Court, and, having taken this matter under advisement at the close of the hearing on February 29, 2024 on Plaintiff's Motion for Summary Judgment and on Defendant's Motion for Summary Judgment, both of which were filed with the Court on December 5, 2023, at which hearing the parties appeared by counsel, and the Court , having read the Motions and memoranda submitted in support of and in opposition to said Motions, having heard oral argument, and, being duly advised in the premises, now finds as follows:

On October 26, 2022, Plaintiff filed a Complaint for Declaratory Judgment wherein it sought a declaration that the Director of the State of Indiana Department of Veterans Affairs (hereinafter the "Defendant") breached his duty to supervise the former Veteran Service Officer (hereinafter "VSO") in Hamilton County and that Indiana law mandates that the Director is responsible for supervising and monitoring the performance

of the County's VSO. On November 23, 2022, the Defendant filed its Answer wherein it filed a general denial and asserted the following affirmative defenses: failure to state a claim on which relief can be granted, not ripe; time barred; undue hardship; failure to mitigate damages; waiver; estoppel; failure to join necessary parties for adjudication and failure to present a justiciable controversy.

The parties have stipulated that the facts in this case are not disputed. In this instance, the VSO in question Lynn Epperson was hired by the Hamilton County Commissioners in 2014 and let go in December 2019 due to "ongoing performance issues". After she was removed from her position it was discovered that she had failed to timely submit claims for monthly disability benefits for many veterans in Hamilton County among other issues involving substandard performance.

The Plaintiff asserts that the Defendant has a statutory responsibility of supervision over each VSO in the State of Indiana. The Defendant claims that VSOs are county employees, not state employees and, for this reason, it is not feasible to effectively supervise their daily actions. Rather, the Defendant has interpreted the law to mean the Director supervises the program and not the individual VSOs.

I.C. 10-17-1-9 (c)(3) states explicitly that "the service officer shall …serve under the supervision of the director of veterans' affairs". Case law concerning statutory interpretation of this provision is not substantial. However, the two cases that have marginally touched on the issue have both supported the plain language of the statute. ("accountability…lies with state government." Felton v. Board of Commissioners of Greene County, 796 F. Supp. 371, 378(S.D. Ind, 1991); "County VSOs … are supervised by the State Director of Veterans Affairs." Pounds v. Griepenstroh, 970 F. 2d 338, 341

(7th Cir. 1992)) Both Courts that have interpreted the statute agree that the statute means what it says: while the county appoints, hires and pays for the VSOs, the Director is responsible for their supervision.

It may reasonably be seen as both illogical and unrealistic to expect the Director of the Department of Veterans Affairs to individually supervise ninety-two (92) separate county veterans departments. Defendant here suggests that Plaintiff is asking that the Court "intermeddle" in the affairs of the executive branch. However, that is not what is being requested. There is no attempt to micromanage the affairs of the Defendant's office nor to dictate how the Director does his job. Here, the Plaintiff sought the assistance of the Defendant in dealing with a problem that might well occur again in another county and affect other Hoosier veterans in the future. If the Indiana Department of Veterans Affairs does not exist to perform this task, then one might reasonably question its purpose. The Indiana General Assembly has imposed an explicit statutory duty on the Director to supervise the VSOs, not just the program, as spelled out in I.C. 10-17-1-9 (c)(3). If the General Assembly decides in the future to amend these responsibilities that will be their decision to make. For now, it is for the Defendant to carry out the statutory duty imposed on him.

Accordingly,

1. Defendant's Motion for Summary Judgment is Denied.
2. Plaintiff's Motion for Summary Judgment is Granted.

ALL OF WHICH IS ORDERED THIS 17 DAY OF MAY 2024.

Judge, Marion Superior Court
Civil Division, Room Number Eleven

cc:
All counsel of record