

THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION
NO. 3:22-cv-191

KANAUTICA ZAYRE-BROWN,)
)
Plaintiff,)
)
v.)
)
NORTH CAROLINA DEPARTMENT)
OF PUBLIC SAFETY, et al.,)
)
Defendants.)

**MOTION TO SUBSTITUTE
PARTY DEFENDANTS AND
TO AMEND CAPTION**

NOW COME Defendants through undersigned counsel, with the consent of counsel for Plaintiff, and pursuant to Rule 25(c) of the Federal Rules of Civil Procedure, to request that the Court substitute out the North Carolina Department of Public Safety (“DPS”), and Eddie Buffaloe, Jr., in his official capacity as Secretary of DPS as party Defendants and replace them with the North Carolina Department of Adult Correction (“DAC”) and Todd Ishee, respectively, as party-defendants. Defendants further request that the caption of this matter be amended to reflect this substitution as well as the other title changes detailed herein.

In support of this motion, Defendants state the following:

1. Plaintiff is an incarcerated person in the custody of DAC.
2. Plaintiff commenced this action on April 28, 2022, by filing a Complaint, asserting multiple causes of action related to the conditions of her incarceration and other matters.
3. At the time that Plaintiff filed this Complaint, DAC did not exist, and Plaintiff was in the custody of DPS.
4. Thereafter, pursuant to North Carolina Session Law 2021-180, DAC was established as a single, unified cabinet-level department effective January 1, 2023, which is separate and distinct from DPS.
5. Specifically, pursuant to North Carolina Session Law 2021-180, the following

legislative actions occurred:

- a. DAC was established as a single, unified cabinet-level department effective January 1, 2023, which is separate and distinct from DPS; and
 - b. all functions, powers, duties, and obligations vested in the following programs, divisions, and entities located in DPS were transferred to, vested in, and consolidated within DAC in the manner of a Type I transfer, as defined in N.C.G.S. §143A-6: Prisons Section, Alcohol and Chemical Dependence Treatment Program, Health Services Section, Correction Enterprises Section, and Community Corrections Section; and
 - c. the Grievance Resolution Board and Post-Release Supervision and Parole Commission were transferred to DAC in the manner of Type II transfers, as defined in N.C.G.S. § 143A-6.
6. Accordingly, beginning January 1, 2023, Plaintiff was in the custody of DAC, and no longer in the custody of DPS.
7. Pursuant to Federal Rule of Civil Procedure 25(c), “[i]f an interest is transferred, the action may be continued by or against the original party unless the court, on motion, orders the transferee to be substituted in the action or joined with the original party.” Fed.R.Civ.P. 25(c).
8. Accordingly, under Rule 25(c), Defendants hereby seek an order from this Court substituting out DPS as a party-defendant and replacing it with DAC as a party-defendant.
9. Similarly, because Plaintiff only asserts official capacity claims against Eddie Buffaloe Jr., as the Secretary of DPS, Defendants move for an order from this Court substituting out Secretary Buffaloe as a party-defendant and replacing him with Todd Ishee, the Secretary of DAC, as a party-defendant.

10. Defendants also request that the caption be amended to reflect these substitutions, as well as the resulting changes in position titles as listed below.

11. More specifically, Defendants request that the Court enter an order modifying the caption as follows:

THE NORTH CAROLINA DEPARTMENT OF ADULT CORRECTION; TODD ISHEE, in his official capacity as Secretary of the North Carolina Department of Adult Correction; GARY JUNKER, in his official capacity as Deputy Secretary of the North Carolina Department of Adult Correction; BRANDESHAWN HARRIS, in her official capacity as Chief Deputy Secretary, the North Carolina Department of Adult Correction; ARTHUR CAMPBELL, in his official capacity as Medical Director III, the North Carolina Department of Adult Correction; TERRI CATLETT¹, in her official capacity as Director of Healthcare Administration, Division of Prisons, the North Carolina Department of Public Safety; JONATHAN PEIPER, in his official capacity as Human Services Director the North Carolina Department of Adult Correction; BRIAN SHEITMAN, Medical Director III, the North Carolina Department of Adult Correction; VALERIE LANGLEY, in her official capacity as Nurse Director the North Carolina Department of Adult Correction; ABHAY AGARWAL, Medical Director II, the North Carolina Department of Adult Correction; SARAH COBB², in her official capacity as Director of Rehabilitative Services, Division of Prisons, the North Carolina Department of Adult Correction; JOSH PANTER, in his official capacity as Correctional Administrator the North Carolina Department of Adult Correction; CHARLOTTE WILLIAMS, in her official capacity as a

¹ Defendant Catlett retired from service prior to the reorganization of DPS and creation of DAC.

² Defendant Cobb retired from service prior to the reorganization of DPS and creation of DAC.

Program Manager, the North Carolina Department of Adult Correction; and ELTON AMOS, in his official capacity as Medical Director II, the North Carolina Department of Adult Correction.

12. Plaintiff consents to this motion.

WHEREFORE, Defendants respectfully request that DPS be substituted out as a party-defendant and replaced by DAC in this matter; that Eddie Buffaloe, Jr. be substituted out as a party-defendant and replaced by Todd Ishee in this matter, and that the captioned be amended as reflected in paragraph 11 above.

This the 21st day of June 2023.

JOSHUA H. STEIN
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(Proposed)
ORDER

THIS MATTER IS BEFORE THE COURT on the Defendants’ consent motion pursuant to Rule 25(c) of the Federal Rules of Civil Procedure for an order substituting certain party-defendants and amend the caption accordingly (Document No. --) filed June --, 2023. This motion has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b), and immediate review is appropriate. Having carefully considered the motion and the record, the undersigned will grant the motion.

IT IS, THEREFORE, ORDERED, that the North Carolina Department of Public Safety (“DPS”), and Eddie Buffaloe, Jr., in his official capacity as Secretary of DPS be replaced as party Defendants with the North Carolina Department of Adult Correction (“DAC”) and Todd Ishee, as Secretary of DAC.

IT IS FURTHER ORDER THAT to reflect this substitution and other position title changes of certain individual defendants, the caption of this matter be amended as follows:

THE NORTH CAROLINA DEPARTMENT OF ADULT CORRECTION; TODD ISHEE, in his official capacity as Secretary of the North Carolina Department of Adult Correction; GARY JUNKER, in his official capacity as Deputy Secretary of the North Carolina Department of Adult Correction; BRANDESHAWN HARRIS, in her official capacity as

Chief Deputy Secretary, the North Carolina Department of Adult Correction; ARTHUR CAMPBELL, in his official capacity as Medical Director III, the North Carolina Department of Adult Correction; TERRI CATLETT, in her official capacity as Director of Healthcare Administration, Division of Prisons, the North Carolina Department of Public Safety; JONATHAN PEIPER, in his official capacity as Human Services Director the North Carolina Department of Adult Correction; BRIAN SHEITMAN, Medical Director III, the North Carolina Department of Adult Correction; VALERIE LANGLEY, in her official capacity as Nurse Director the North Carolina Department of Adult Correction; ABHAY AGARWAL, Medical Director II, the North Carolina Department of Adult Correction; SARAH COBB, in her official capacity as Director of Rehabilitative Services, Division of Prisons, the North Carolina Department of Adult Correction; JOSH PANTER, in his official capacity as Correctional Administrator the North Carolina Department of Adult Correction; CHARLOTTE WILLIAMS, in her official capacity as a Program Manager, the North Carolina Department of Adult Correction; and ELTON AMOS, in his official capacity as Medical Director II, the North Carolina Department of Adult Correction.

SO ORDERED

David C. Kessler
United State Magistrate Judge