

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

GINA AIELLO	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION
v.	:	
	:	NO. 99-1543
COUNTY OF MONTGOMERY;	:	
MONTGOMERY COUNTY	:	
CORRECTIONAL FACILITY; VINCENT	:	
ROTH; and DELORES MARTIN	:	
	:	
Defendants/ Third Party Plaintiffs	:	
	:	
v.	:	
	:	
EMSA CORRECTIONAL CARE, INC.	:	
	:	
Third Party Defendant	:	

MEMORANDUM

BUCKWALTER, J.

February 11, 2000

Presently before the Court are the Defendants’ Motion for Summary Judgment and the Third Party Defendant’s Motion for Summary Judgment. For the reasons stated below, the Defendants’ Motion and the Third Party Defendant’s Motion are Granted in their entirety.

I. PROCEDURAL BACKGROUND

Plaintiff Gina Aiello (“Aiello”) filed a four-count Complaint alleging infliction of cruel and unusual punishment, false imprisonment, intentional infliction of emotional distress and violations of due process. The Defendants include Montgomery County (“County”);

Montgomery County Correctional Facility (“Facility”); Warden Vincent Roth (“Roth”) and Captain Delores Martin (“Martin” and collectively, the County Defendants”). Count I of the Complaint states a cause of action under 42 U.S.C. § 1983 for violations of Aiello’s rights under the Eighth and Fourteenth Amendments. Count I also contains a conspiracy allegation under 42 U.S.C. § 1985. Count II makes similar allegations under the Pennsylvania Constitution. Count III claims that Aiello was falsely imprisoned and subject to the intentional infliction of emotional distress. Count IV alleges that Defendants were negligent in their treatment of Aiello while she was held at the correctional facility. On July 27, 1999, the County Defendants joined Third Party Defendant EMSA Correctional Care, Inc. (“EMSA”) and filed a Complaint (the “Third Party Complaint”). The Third Party Complaint seeks indemnification under the Health Services Agreement (“Agreement”) from EMSA. Count II of the Third Party Complaint seeks common law contribution and indemnification.

II. FACTUAL BACKGROUND

Aiello was convicted of disorderly conduct and criminal mischief on June 12, 1997. The Honorable Paul W. Tressler of the Montgomery County Court of Common Pleas sentenced her to a sentence of fourteen consecutive weekends in a correctional facility¹. She began serving her sentence on November 2, 1997 at the Montgomery County Correctional Facility (“Facility”). In December, Aiello filed a Petition to Amend Sentence to House Arrest, stating that her ill mother’s inability to care for Aiello’s child as the reason the Petition should be granted. Aiello’s motion was granted and her sentenced furloughed on January 16, 1998.

1. At Aiello’s request, the “weekends” actually consisted of Sunday and Monday. The sentence required that Aiello serve a “minimum” thirty (30) days.

Aiello's complaint alleges that she was deprived of necessary medications during her stay at the facility.² On December 15, 1997, Aiello was cited on a Misconduct Report for possessing contraband-extra pills of one of her medications. As a result of this incident, Aiello was held at the Facility one extra day; Tuesday December 16, 1997. On that day, in accordance with the Facility's regulations, she received a hearing at which she plead guilty as charged ("the December 16 Hearing") (County Def. Mem. Ex. M). Aiello was issued a warning, but no punishment at the December 16 Hearing. Aiello was then released from the Facility and remanded back to her normal weekend status.

During her weekends stay at the Facility, Aiello was usually housed in Section L-1 and issued an Orange uniform.³ Sometimes she was assigned to either Section L-5 or L-6 and issued a Blue Uniform. On December 14, 1997, Defendant Martin ordered Aiello stripped search in an unsuccessful search for contraband cigarettes. When the search yielded no contraband, Aiello was placed in an administratively segregated cell in Section L-6. Aiello was not subjected to a body cavity search by Facility officials.

The Agreement reached between the County and EMSA in June, 1997, required EMSA to provide health care services for all persons committed to the Facility. The Agreement stated that EMSA, and anyone acting under its direction, were independent contractors with relation to the County. The Agreement also contained a hold harmless clause requiring EMSA to indemnify, defend and hold harmless the County and its agents from certain claims and lawsuits.

2. Aiello had prescriptions for Xanax (daily at 5 A.M., 2 P.M. and 8 P.M.), Oxycontin (daily at 8 A.M., 4 P.M. and 12 A.M.); Prilosec (daily at 10 A.M.); Naprelan (daily after meals and at 10 A.M.); Elavil (needed at bedtime and 8 P.M.); OXYIR (every four hours as needed); and Cytotec (needed at 10 A.M. and 8 P.M.)

3. Section L-1 was the section where weekend inmates like Aiello were housed.

III. LEGAL STANDARD

Under Federal Rule of Civil Procedure 56(c), the test is whether there is a genuine issue of material fact and, if not, whether the moving party is entitled to judgment as a matter of law. Gray v. York Newspapers, Inc., 957 F.2d 1070, 1078 (3d Cir.1992). In evaluating a summary judgment motion, the court may examine the pleadings and other material offered by the parties to determine if there is a genuine issue of material fact to be tried. Fed. R. Civ. P. 56(c); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). When considering a motion for summary judgment, a court must view all evidence in favor of the non-moving party. See Bixler v. Central Pa. Teamsters Health and Welfare Fund, 12 F.3d 1292, 1297 (3d Cir. 1993).

A movant “bears the initial responsibility of informing the court of the basis for its motion, and identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any which it believes demonstrate the absence of a genuine issue of material fact”. Celotex, 477 U.S. at 323. When movants do not bear the burden of persuasion at trial, they need only point to the court “that there is an absence of evidence to support the nonmoving party’s case. Id. at 325. A fact is material if it might affect the outcome of the suit under the governing substantive law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). For the dispute over the material fact to be genuine, “the evidence must be such that a reasonable jury could return a verdict in favor of the non-moving party.” Id. To successfully challenge a motion for summary judgment, the non-moving party cannot merely rely upon the allegations contained in the complaint, but must offer specific facts contradicting

the movant's assertion that no genuine issue is in dispute. Kline v. First West Government Securities, 24 F.3d 480, 485 (3d Cir. 1994).

IV. DISCUSSION

A. Plaintiff's § 1983 Claims

To make out a cause of action under § 1983, a plaintiff must show that (1) the defendants acted under color of law; and (2) their actions deprived him of rights secured by the Constitution or federal statutes. See Kost v. Kozakiewicz, 1 F.3d 176, 184 (3d Cir.1993). There is no debate that the Defendants took action under color of law. The question is whether the Defendants deprived Aiello of some federal right.

1. Medical Claims

Aiello charges that the County Defendants violated the Eighth Amendment by depriving her of required medications. In turn, the County Defendants have stated in the Third Party Complaint that EMSA is responsible for any alleged deprivations. Aiello agrees that Defendant Roth can not be individually liable under § 1983. The Court will first determine whether Aiello has produced enough evidence of an Eighth Amendment violation against any party to survive summary judgment.

To prove a violation of the Eighth Amendment, an inmate must show that he has been deprived of "the minimal civilized measure of life's necessities." Griffin v. Vaughn, 112 F.3d 703, 709 (3d Cir. 1997). In the context of an inmate's medical needs, the Supreme Court has declared that, in accordance with the " 'broad and idealistic, concepts of dignity, civilized standards, humanity, and decency' " embodied in the Eighth Amendment, the government is

obliged "to provide medical care for those whom it is punishing by incarceration." Estelle v. Gamble, 429 U.S. 97, 102 (1976). Deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain,' proscribed by the Eighth Amendment." Id. at 104. To be in violation of the Eighth Amendment, there must be both deliberate indifference on the part of the officials and a serious medical condition. Monmouth County Correctional Inst. Inmates v. Lanzaro, 834 F.2d 326, 346 (3d Cir. 1987).

A condition is "serious" if the failure to treat it could result in further significant injury or unnecessary and wanton infliction of pain. Reed v. McBride, 178 F.3d 849, 852 (7th Cir. 1999). The Supreme Court stated in Farmer v. Brennan, 511 U.S. 825, 837 (1994), that the deprivation alleged must be, objectively, "sufficiently serious". It is debatable whether Aiello's symptoms are evidence of a serious medical condition. A serious medical condition includes situations "when medical treatment is denied and such denial exposes the inmate 'to undue suffering or the threat of tangible residual injury'". Lanzaro, 834 F.2d at 346-47. There has been no evidence of further significant injury. But Aiello does testify that the deprivation of medication lead to pain in her right shoulder, leg cramps, sleeplessness, diarrhea, vomiting and other symptoms. The Court will assume for the moment, that these symptoms were objectively serious as a condition.

The second prong of the analysis requires the determination of whether the Defendants acted deliberately indifferent to this serious medical condition. The Supreme Court in Farmer, adopted a subjective test for what would constitute the required mental state to establish an Eighth Amendment violation in the context of prison conditions:

“A prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference”. 511 U.S. at 838.

Therefore, the Court continued, “...an official's failure to alleviate a significant risk that he should have perceived but did not, while no cause for commendation, cannot under our cases be condemned as the infliction of punishment”. *Id.* at 838. The Third Circuit has previously found examples of deliberate indifference to medical needs when prison officials erect arbitrary and burdensome procedures that result in interminable delays and outright denials of medical care to suffering inmates. *Lanzaro*, 834 F.2d at 346-47 .

Aiello produces no evidence of interminable delays or outright denials of requests for medication. Aiello testifies that EMSA only brought the medicine bag around twice a day. During these twice-daily rounds of medications by EMSA personnel, she would typically take extra medication to use at other times during the day. Even so, there were times when Aiello went without medication. However, she can not remember any instance in which she requested medication from EMSA personnel and was refused. The healthcare records show no denied requests for medication. Assuming that Aiello’s contentions that EMSA did not deliver all of her medications at the times specified by her doctors are true, these allegations do not constitute a valid Eighth Amendment claim. Aiello generally had medication to control her pain at all times. When Aiello was in pain and requested medication of EMSA personnel, she received it. EMSA did not act with deliberate indifference which caused Aiello undue suffering. Therefore, summary judgment will be granted to EMSA.

The Plaintiff's claim against Defendant Martin must also be dismissed. Aiello argues that Martin threatened to withhold medications from her. However, Aiello testified at deposition that Captain Martin told Aiello she would get medications when they were delivered to her. Martin never stated that Aiello would only get medications when Martin decided that she should have medications. At this stage of the proceedings, Aiello must provide some evidence that Martin actually interfered with or at least controlled the delivery of medication. As discussed above, Aiello can not specifically state when she did without medication for a prolonged period of time. She also can not show that Martin controlled the delivery of medical supplies to her. Therefore, a reasonable jury could not find that Martin deliberately withheld medical assistance to Aiello in violation of the Eighth Amendment.

2. The December 16 Holdover

Aiello also argues that her incarceration on Tuesday, December 16, violated both the Eighth and Fourteenth Amendments.

(a) Eighth Amendment

The detention of a prisoner beyond the term of her sentence can state an Eighth Amendment violation only if that detention occurs without penological justification. Douglas v. Murphy, 6 F.Supp. 2d. 430, 431 (E.D Pa. 1998). The County has provided sufficient justification for the one-day holdover. Since 1989, officials at the Facility have had the authority to hold over weekend inmates in order to hold disciplinary hearings for violations of the Facility's rules. See County Def. Mem. Exh. C. According to Judge Nicholas, such a policy allows officials to hold hearings for rules violations and encourages weekend inmate compliance. Contrary to what Aiello states, this policy was to be applied to all weekend inmates, not just

those whose crime was driving under the influence (DUI). Id. Secondly, even with the December 16 holdover, Aiello did not serve more than her minimum 30 day sentence. Accordingly, there are no grounds for an Eighth Amendment claim based on her detention on December 16, 1997.

(b) Due Process

The record clearly demonstrates that a hearing was held concerning Aiello's holding of contraband on December 16, 1997. Aiello admitted she possessed extra medication pills. If the record does not indicate a way in which greater procedural safeguards would have assisted the plaintiff and there is no dispute about the underlying facts, due process has not been violated. See Haines v. Kerner, 492 F.2d 937, 941 (7th Cir. 1974). Aiello received only a warning at the December 16 Hearing. She was not punished and was even credited for the extra day served. The only evidence that Aiello produces is her deposition testimony that she was not present, but in the medical wing, at the time of the December 16 Hearing. This same deposition testimony also admits to having extra pills (contraband) in her cell. Therefore, even assuming the truth of Aiello's claims; that she was not at the hearing, did not plead guilty to the charge, and was found guilty in absentia by the hearing board, the Court can not conclude that she was not given due process. In other words, Aiello would not have fared better if she had been there. She had admitted to the essential charges of the claim, and suffered no adverse effect from the hearing. Aiello was not punished, and was given credit for time served. As Aiello has not worked since 1995, she lost no income on December 16, 1997. Therefore, Aiello's § 1983 claim against the County Defendants for violating due process will be dismissed.

B. 42 U.S.C. § 1985 claim

Aiello makes some allegations that the Defendants Martin and Roth conspired under § 1985(3) by conspiring to withhold treatment, violate due process and falsely imprison her. Section 1985(3) authorizes an “action for the recovery of damages” against “two or more persons” who conspire to “deprive other persons of equal protection of the laws.” 42 U.S.C. § 1985(3). To state a claim under 42 U.S.C. § 1985(3), a plaintiff must allege: (1) a conspiracy involving two or more persons; (2) for the purpose of depriving, directly or indirectly, a person or class of persons of the equal protection of the laws; and (3) an act in furtherance of the conspiracy; (4) which causes injury to a person or property, or a deprivation of any right or privilege of a citizen of the United States. United Brotherhood of Carpenters v. Scott, 463 U.S. 825, 834 (1983). A claim under § 1985(3) requires that there must be “some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators’ action.” Id.

Aiello has offered no evidence that the Martin and Roth had any sort of agreement to violate her rights. Aiello has never even stated that the actions taken by defendants against her were directed against her as a member of a class. Plaintiff has not stated, much less proven that she was a member of an identifiable class and that the actions against her were part of a general pattern of discrimination. Therefore, she has not stated a claim under § 1985. Also, a public entity can act only through its officials. There can be no conspiracy among agents of a single entity, in this case the Montgomery County Correctional Facility. See Keddie v. Penn. St. Univ., 412 F.Supp. 1264, 1276 (M.D. Pa. 1976) (professor denied tenure by committee could not claim conspiracy when decision was made by collective judgment of the group); Plemmons v. Pennsylvania Mfrs. Ass’n Ins. Co. 1991 WL 125982 *6 (E.D. Pa. 1991) (“However, where a

plaintiff challenges acts that are essentially the acts of a corporate entity, the plaintiff cannot allege a cognizable conspiracy merely by naming the members of the entity individually); Hilliard v. Ferguson, 30 F.3d 649, 652-53 (5th Cir. 1994) (It is a long-standing rule in this circuit that a "corporation cannot conspire with itself any more than a private individual can, and it is the general rule that the acts of the agent are the acts of the corporation.") .

C. State Law Claims

Where the claim over which the district court has original jurisdiction is dismissed before trial, the district court must decline to decide the pendent state claims unless considerations of judicial economy, convenience, and fairness to the parties provide an affirmative justification for doing so. Growth Horizons, Inc. v. Delaware County, 983 F.2d 1277 (3d Cir.1993). Aiello encourages this court to retain the matter in the interest of fairness. All claims giving rise to the Court's original jurisdiction have been dismissed. Nevertheless, the Court will retain jurisdiction in the interests of judicial economy.

1. Pennsylvania Constitution and Code Claims (Count II)

The Plaintiff does not argue that Article I, § 13 of the Pennsylvania Constitution extends broader protection than do the Eighth and Fourteenth Amendments. Therefore, this Court will not analyze the Commonwealth's Constitution to determine whether it does offer broader protections than does the Federal Constitution. See Commonwealth v. Lucas, 424 Pa. Super. (1993) (in the absence of argument by parties to the contrary, it is assumed the Pennsylvania Constitution provisions against cruel and unusual punishment extends no further than Federal Constitutional provisions). As discussed above, Aiello's federal claims of

constitutional violations under Count I fail to survive. Therefore, Defendants will likewise be granted summary judgment as to Count II.

2. Intentional Infliction of Emotional Distress (Count III)

“One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm.⁴” Restatement (Second) of Torts § 46(1). Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. See Motheral v. Burkhart, 400 Pa. Super, 408, 422 (1990) (outrageousness standard not met by defendant’s unfounded allegations of sexual molestation by plaintiff). It is for the court to determine initially whether the defendant's conduct can be regarded as so extreme and outrageous as to permit recovery. Dawson v. Zayre Department Stores, 346 Pa.Super. 357, 359, 499 A.2d 648, 649 (1985). Where reasonable persons may differ, it is for the jury to determine whether the conduct is sufficiently extreme and outrageous so as to result in liability. See Miller v. Hoffman, 1999 U.S. Dist. LEXIS 9225 at *22 (E.D. Pa. 1999). To state a claim for either negligent or intentional infliction of emotional distress under Pennsylvania law, a plaintiff must demonstrate some physical injury, harm or illness caused by the defendant's conduct. Rolla v. Westmoreland Health Sys., 651 A.2d 160, 163 (Pa. Super. 1994) .

4. There is some dispute about whether the tort of intentional infliction of emotional distress is recognized under Pennsylvania law. As recently as 1998, the Pennsylvania Supreme Court clearly stated that it had not officially adopted the Restatement definition of the tort. See, Hoy v. Angelone, 720 A.2d 745, 753 (Pa. Super. 1998). However, the Superior Court has used the § 46 definition when discussing the tort. See Buczek v. First National Bank of Mifflin Town, 366 Pa. Super. 551, 558, 531 A.2d 1122, 1125 (1987)

The Court finds as a matter of law that Captain Martin's conduct can not meet the standard of outrageousness. Captain Martin's alleged threat was true. She did have the authority to hold over Aiello for violations of the Facility's rules and regulations. Aiello also claims that Martin had something to do with her not receiving some medications. However, she has not sustained her burden of producing event that would support a jury's finding in her favor. Even if Martin had interfered, since it is apparent that Aiello not only had medication, but usually extra medication, Martin's conduct was not beyond the bounds of decency. Therefore, the emotional distress claim will be dismissed.

3. False Imprisonment

False imprisonment is the unlawful, restraint of another so as to interfere substantially with the person's liberty. 18 Pa.C.S. § 2903. Martin, as discussed elsewhere, had authority to hold over Aiello in order to allow time for a disciplinary hearing. This is a lawful policy adopted by the Montgomery Court of Common Pleas. Aiello has not produced sufficient evidence to allow a jury to find that she was confined unlawfully on December 16, 1997.

Therefore, the County Defendants will be granted summary judgment.

4. Negligence (Count V)

Under Pennsylvania's Political Subdivision Tort Claims Act, a negligence claim can only be maintained against a local agency such as the County if the claim falls within one of eight narrow exceptions. The parties agree that none of the exceptions apply to Aiello's claim of negligent treatment while in the Facility. Defendants Roth and Martin, acting within the scope of their office or duties, are provided with the same protection from suit as their employers. See Pa. C.S.A. 8545. Therefore, the Negligence claim under Count IV will be dismissed in its entirety.

V. CONCLUSION

For the reasons stated above, summary judgment is granted to all the County Defendants as well as to the Third Party Defendant. An appropriate Order follows.

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	:	
Defendants/ Third Party Plaintiffs	:	
	:	
v.	:	
	:	
EMSA CORRECTIONAL CARE, INC.	:	
	:	
Third Party Defendant	:	

ORDER

AND NOW, this 11th day of February, 2000, upon consideration of Defendants' Motion for Summary Judgment (Docket No. 17), Third Party Defendant's Motion for Summary Judgment (Docket No. 18) and the Plaintiff's Responses thereto (Docket Nos. 19 & 20); it is hereby **ORDERED** that Defendants' Motion is **GRANTED** and the Third Party Defendant's Motion is **GRANTED**.

This case may be marked as Closed.

BY THE COURT:

RONALD L. BUCKWALTER, J.

