

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

JAMES PIERSON : CIVIL ACTION
: :
v. : :
: :
MEMBERS OF THE DELAWARE : :
COUNTY, PENNSYLVANIA, : :
COUNCIL et al. : NO. 99-3935

MEMORANDUM

Dalzell, J.

April 25, 2000

Pro se inmate plaintiff James Pierson has filed this § 1983 action against Members of the Delaware County, Pennsylvania, Council, the Wackenhut Corrections Corporation¹, and Irving S. Wiesner, M.D. Before us now are five dispositive motions: all defendants' motions to dismiss under Fed. R. Civ. P. 12(b)(6)² and Pierson's responses thereto; Pierson's motion to dismiss the Members of the Delaware County, Pennsylvania, Council; and Pierson's motion for summary judgment.

I. Background³

¹The caption to Pierson's Complaint includes as defendants "Wackenhut Corrections Corp. and Employees in their Official/Individual Capacities". It would thus appear that there may exist additional "John Doe" defendants. This will not affect the disposition of the motions before us, however, and we will not discuss it further.

²All three defendants have separate counsel and filed their motions separately.

³The facts outlined below are taken from various of Pierson's pleadings. We also keep in mind our Court of Appeals's admonition that "a pro se prisoner's pleadings should be . . . construed liberally." Lewis v. Attorney Gen. of the United States, 878 F.2d 714, 722 (3d Cir. 1989).

James Pierson is a forty-four year old retired United States Air Force non-commissioned officer who left active duty on June 4, 1996 at the rank of Master Sergeant (E-7) after twenty-one years of service. Upon leaving active duty, he was placed on the "temporary disability retired list" with a thirty percent-compensable physical disability. Pierson's disabled status was a result of his diagnosis of "Major depressive disorder recurrent severe, with psychotic features and definite impairment of social and industrial adaptability." Ex. E, Pl.'s Opp'n to Wackenhut Corp.'s Mot. to Dismiss at 1. Subsequently, on April 6, 1998, Pierson was removed from the "temporary disability retired list" and placed on the permanent retired list, again with a thirty percent-compensable disability.

In the interim, however, Pierson had run afoul of the law.⁴ He was arrested on February 28, 1997, evidently for some type of sexual offense involving a fifteen year-old woman.⁵ He was initially, after intake, placed in the medical section of the Delaware County Prison⁶. Within several days, and after a

⁴We also note that in September, 1996, Pierson was divorced from his wife of nineteen years.

⁵Although the original charges apparently included rape, statutory rape, and sexual assault, Pierson evidently ultimately pleaded guilty to Involuntary Deviate Sexual Intercourse under 18 Pa. Cons. Stat. § 3123. Pierson is currently challenging the validity of his guilty plea and the resulting conviction using the remedies provided for under Pennsylvania law for post-conviction relief.

⁶Pierson claims that some of this time was spent in a "hard cell" which essentially involved complete isolation in a
(continued...)

meeting with the staff psychologist, he was placed in the maximum security wing. On March 8, 1997, Pierson's bail was reduced⁷ and he was bonded out of jail by his brother-in-law. After his release, Pierson obtained out-patient treatment for his mental condition from the Veteran's Administration, which included prescription of Prozac and Klonopin.⁸ Pierson says that his treating physician at the VA, Dr. Harriet Wells, recommended that he seek in-patient treatment at a VA facility. Before that could happen, however, Pierson's brother-in-law pulled his bond, and on September 15, 1997 Pierson was returned to custody at the Delaware County Prison. It is the events that follow the revocation of his bond that form the basis of Pierson's suit here.⁹

When Pierson was returned to custody on September 15, 1997, he had on his person what was inventoried by the prison upon intake as "legal papers." These apparently consisted of

⁶(...continued)
bare cell.

⁷At this point, Pierson was represented by counsel arranged through his brother-in-law; Pierson avers that this counsel told him that the only way to get his bond -- originally \$500,000 -- reduced was to waive a preliminary hearing, which evidently Pierson did.

⁸Pierson also says that he received a course of thirteen electro-convulsive therapy treatments for his condition at the VA Hospital in Albuquerque, New Mexico. These treatments occurred "five months before the alleged criminal act" which would seem to put them sometime in early to mid-1996.

⁹Pierson also faults his treatment during the first period of incarceration, but these acts do not appear to be within the claims he makes in his Complaint here.

various documents, including records from the Air Force, regarding Pierson's condition and history of treatment, as well as other records from the Air Force and elsewhere containing reports of Pierson's awards and work history.¹⁰ Pierson alleges that when he requested these papers during his incarceration, while he was preparing his defense, he was twice told that they were "lost" and then was subsequently informed that he could not have them because they were merely "Air Force records".¹¹

Pierson also claims that during his first two weeks at the Delaware County Prison he was denied proper mental treatment despite that he had papers that showed his debilitated condition. He also alleges that he was at the time of his September, 1997 jailing in a "severe relapse state". He avers that he did not receive treatment until his sister contacted Dr. Wells from the VA, who then called the prison. Moreover, he alleges that the Prison failed to take proper steps when the Air Force requested that a mental evaluation of him be performed so that he could maintain his "temporary disability retired list" status. Finally, Pierson holds the prison responsible for the loss of

¹⁰Pierson claims he had these records with him because he was preparing for a job interview with a firm in Cherry Hill, New Jersey in the electronics and computer maintenance field.

¹¹Pierson notes that he is allowed to maintain custody of these papers while in state custody, so there is no security reason why the county should have denied them to him. He also claims that during a hearing in his criminal case, the judge in the Court of Common Pleas ordered the prosecuting attorney to get these records from the prison. The prosecutor apparently did not do so.

Express Mail package his sister sent to him in late November, 1997.

On October 1, 1997, pursuant to an order of the Honorable George Koudelis, Judge of the Court of Common Pleas of Delaware County, Dr. Irving W. Wiesner, M.D., a psychiatrist in private practice, conducted a psychiatric evaluation of Pierson to determine his competency for trial.¹² Wiesner concluded that Pierson was suffering from "Major depressive disorder, recurrent with psychotic features by history", but offered his opinion that Pierson was "competent to understand the charges and to participate with counsel" and that "[t]here is no evidence that at the time of the alleged charges that he had any cognitive impairment as well." Ex. A, Pl.'s Opp'n to Wiesner's Mot. to Dismiss at 3.

Subsequently, Pierson pleaded guilty to his charges¹³ and was sent to a state correctional facility; he currently resides at S.C.I. Mercer. Pierson thereafter filed this suit.

¹²Pierson avers that the Commonwealth billed him \$175.00 for this evaluation.

¹³As noted in the margin above, Pierson evidently pleaded guilty to Involuntary Deviate Sexual Intercourse. He now avers that his counsel was deficient, partly in that counsel failed to assert affirmative defenses including mistake of fact (evidently pursuant to 18 Pa. Cons. Stat. § 3102) and "deception and contributory negligence" by victim. Of course, these claims as to representation and the propriety of Pierson's guilty plea are not before us here; we take note of them only insofar as they occurred after Wiesner's evaluation and thus after Wiesner's alleged wrongdoing.

II. Analysis of the Motions to Dismiss¹⁴

As the claims that Pierson asserts against each of the defendants are quite distinct, as are their various defenses, we shall address each of the defendants separately.

A. Members of the Delaware County Council

Pierson has sued the Members of the Delaware County Council (the "Council") on the apparent theory that they are responsible for the alleged wrongdoing at the Prison, including the denial of access to the "legal papers", the failure timely to allow a psychiatric evaluation for Air Force disability purposes, and the "flawed" competency evaluation because of a failure by the Council "to provide oversight". Compl. at 6. The Council filed a motion to dismiss, arguing that (1) Pierson has alleged no claim rising to the level of a Constitutional claim; (2) the Council does not have control over the Prison, rather special legislation¹⁵ vests control of the prison in the Delaware County

¹⁴When considering a motion to dismiss a complaint for failure to state a claim under Fed. R. Civ. P. 12(b)(6), we must "accept as true the facts alleged in the complaint and all reasonable inferences that can be drawn from them. Dismissal under Rule 12(b)(6) . . . is limited to those instances where it is certain that no relief could be granted under any set of facts that could be proved," Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990), see also H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 249-50 (1989).

¹⁵In support of this contention, the Council cites Bond v. County of Delaware, 368 F. Supp. 618 (E.D. Pa. 1973). There, the court held that an 1866 statute which placed the control of the prison with the Board of Prison Inspectors had in fact survived subsequent legislation regarding the County and its relationship to the Prison.

Board of Prison Inspectors; and (3) in any event the care, custody, and control of inmates at the Delaware County Prison is under the exclusive control of the Wackenhut Corrections Corporation.

Pierson filed an opposition to this motion, arguing that it was improper for the Council to avoid liability under the principles of Monell v. Department of Soc. Servs., 436 U.S. 658, 98 S. Ct. 2018 (1978). Notwithstanding this opposition, Pierson subsequently filed what he has styled a "Motion to Dismiss" (docket number 16) in which he moves "to dismiss his complaint against Defendant's, Members of Delaware County Pennsylvania Council". Pl.'s Mot. to Dismiss at 1. In this motion, to which no defendant filed an opposition, Pierson seeks to dismiss the Council pursuant to Fed. R. Civ. P. 41 on the grounds that, evidently upon reflection, he does not believe that the Council can be shown to have violated the standards for liability under 42 U.S.C. § 1983.¹⁶

¹⁶Under § 1983, municipalities do not have respondeat superior liability for the acts of their agents. Instead, liability under § 1983 will lie for a municipality "when the execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983." Monell v. Dept. of Soc. Servs., 436 U.S. 658, 694, 98 S. Ct. 2018, 2037-38 (1978). That is, the plaintiff must show that the official policy or custom caused the deprivation of a constitutionally-protected right, see id. at 690; Beck v. City of Pittsburgh, 89 F.2d 966, 972 n.6 (3d Cir. 1996) ("The plaintiff bears the burden of proving that the municipal practice was the proximate cause of the injuries suffered.").

Fed. R. Civ. P. 41 states that "an actor shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper." As noted in the margin, to hold a municipality liable under § 1983 for the acts of its employees or agents, a plaintiff must prove the existence of policy or custom. Here, Pierson now concedes that he will not be able to meet that proof, and asks us to dismiss as to the Council.¹⁷ We therefore will exercise our discretion under Fed. R. Civ. P. 41 and dismiss the claims against the Council with prejudice.¹⁸

Moreover, we find that the Council is in any event not a proper defendant here, both because the Delaware County Prison is under the control of the Delaware County Board of Prison Inspectors, see Bond v. County of Delaware, 368 F. Supp. 618, 624 (E.D. Pa. 1973) and because the Wackenhut Corrections Corp. is the party responsible for the operation of the Prison, see, e.g.,

¹⁷We are naturally wary of accepting such a representation from a plaintiff acting pro se who has been diagnosed with a mental disability. On the other hand, Pierson has submitted in conjunction with the instant motions over 40 pages of memoranda containing coherent arguments; we therefore assume and find that Pierson, who filed his complaint pro se, remains capable of making decisions regarding the suit he has instituted. Moreover, we note that there is nothing either in the Complaint or in the factual representation in Pierson's other pleadings to suggest any policy or custom subscribed to or mandated by the Council that was associated in any way with the wrongs Pierson alleges.

¹⁸As noted above, neither of the other defendants has opposed Pierson's motion to dismiss the Council, and we also cannot see how the other defendants would be prejudiced by the dismissal.

Holland v. Ward, No. 97-3923, 1999 WL 1240947 (E.D. Pa. Dec. 20, 1999); Morro v. Wackenhut Corrections Corp., No. 97-389, 1999 WL 817725 (E.D. Pa. Oct. 12, 1999)¹⁹. Thus, we will grant the Council's motion to dismiss.²⁰

B. Irving S. Wiesner, M.D.

The Complaint alleges that Dr. Wiesner, acting under color of state law, was "recklessly negligent" in his performance of Pierson's competency evaluation discussed above. Pierson argues that Dr. Wiesner "deliberately ignored the facts of the plaintiff's pre-existing condition, and its severity" by failing to review records documenting Pierson's prior medical history that had been confiscated from Pierson upon his intake into the Prison and that therefore were in the County's hands.²¹ Compl. at 6. Dr. Wiesner's report, Pierson claims, was "flawed" and "willfully prepared" after a fifteen-minute interview. Compl. at 6. Pierson further argues that this behavior amounts to "reckless indifference" and that Dr. Wiesner "conspired, even unwittingly, to violate [Pierson's] liberty interests and right

¹⁹These cases involve allegations of wrongdoing under § 1983 stemming from conditions or conduct in the Delaware County Prison, and they non-problematically include Wackenhut as a defendant.

²⁰Naturally, this does not necessarily preclude amendment of the Complaint to include the appropriate governmental body should this subsequently prove proper.

²¹Elsewhere in his pleadings, Pierson alleges that Wiesner failed to contact the contracted prison doctors, including psychiatrist Dr. Hollenhull, to determine Pierson's medical history and condition.

to competent help." Compl. at 6. The main thrust of Pierson's allegations, as clarified in his opposition to the motions to dismiss, is that Dr. Wiesner failed to commit Pierson for mental treatment, a failure that led to his criminal conviction in spite of his diagnosed mental condition.

Dr. Wiesner has moved to dismiss, asserting four defenses. First, he contends that he served as an arm of the court in preparing the competency evaluation, and thus has judicial immunity and witness immunity from claims brought as a result of his report. Second, Dr. Wiesner argues Pierson has failed to allege facts that show he was acting under the color of state law. He next asserts that Pierson has no claim under § 1983 because he has failed to exhaust administrative remedies. Lastly, Dr. Wiesner says that Pierson has no claim under § 1983 because there is no allegation that he knew Pierson's behavior presented a risk of harm to Pierson.

In response, Pierson reiterates his claim of the alleged incomplete nature of Dr. Wiesner's examination and failure to research Pierson's history.²² Pierson argues that

²²Pierson cites 50 Pa. Cons. Stat. § 7401 in support of his claim that as a criminal defendant he was owed the same mental health services as a an individual who was not a criminal defendant. Section 7401 is part of the Mental Health Procedures Act, which prescribes procedures for, inter alia, voluntary and involuntary commitment of the mentally disabled. The text of § 7401 reads "Whenever a person who is charged with a crime . . . is or becomes severely mentally disabled, proceedings may be instituted for examination and treatment under the civil provisions of this act in the same manner as if he were not so charged" 50 Pa. Cons. Stat. § 7401(a). We note, though,
(continued...)

some precedent Dr. Wiesner cites is inapposite because it is based on cases where treatment was imposed upon a patient against the patient's will, while our situation here is allegedly the converse. With respect to Dr. Wiesner's knowledge of the harm to Pierson, Pierson claims that such harm should have been apparent to Dr. Wiesner as stemming from the denial of treatment. Pierson goes on to argue that his claim meets the "deliberate indifference" standard because Dr. Wiesner violated the standards of care prescribed in the Mental Health Procedures Act and associated case law.

Examining the first of Dr. Wiesner's defenses, we find that it is clear that he is absolutely immune from liability stemming from his competency evaluation of Pierson. Dr. Wiesner made his evaluation of Pierson at the request of the court, and his report was furnished to the court. Dr. Wiesner was thus functioning as an arm of the court, and as an integral part of the judicial process he is protected by the same judicial immunity that protects the judge who requested the evaluation.

²²(...continued)

that the language of this statute is permissive, and not mandatory. Moreover, the term "severely mentally disabled" as used in statute means that "as a result of mental illness, [a person's] capacity to exercise self-control, judgment and discretion in the conduct of his affairs and social relations . . . is so lessened that he poses a clear and present danger of harm to others or to himself." 50 Pa. Cons. Stat. § 7301(a). Pierson makes no claim that we can make out that he met this definition at the time Dr. Wiesner made his evaluation.

See McArdle v. Tronetti, 961 F.2d 1083, 1085 (3d Cir. 1992).²³

Similarly, the report to the court constitutes testimony to the court that is protected by absolute witness immunity, see McArdle, 961 F.2d at 1085.²⁴ We therefore find that Dr. Wiesner

²³McArdle is on all fours with our circumstances here. In that case, Tronetti, a prison physician, had diagnosed a prisoner as paranoid and schizophrenic, which led to the prisoner's involuntary commitment to a state hospital. The prisoner brought a § 1983 suit against Tronetti, alleging that Tronetti had filed a false diagnosis and given false testimony. The Third Circuit upheld the district court's determination that Tronetti, whose diagnosis had been made pursuant to a court order, was absolutely immune under both judicial and witness immunity. The slight factual differences between this case and McArdle appear to reinforce a finding of immunity for Wiesner. While the diagnosis in McArdle was made post-sentencing, the pre-trial nature of the determination rendered here would seem to be more inextricably judicial and more deserving of immunity. Similarly, that Wiesner is a private physician working solely at the behest of the court would seem to place him even more soundly under the umbrella of judicial immunity than the physician in McArdle, who was a "prison physician".

Pierson argues that McArdle cannot apply here because the decision made in that case was in favor of committing the patient -- that is, the error, if any, was in the direction of the "safety" of the patient. While we agree that this is a difference between McArdle and Pierson's circumstances, we cannot agree it makes any difference in the immunity analysis. A physician positioned as Tronetti was in McArdle or Dr. Wiesner is here is simply immune from liability for the opinion he rendered at the court's request. It matters not that Dr. Wiesner's decision was that Pierson was competent for trial, rather than, for instance, that Pierson needed to be institutionalized: the very concept of immunity means that irrespective of the nature of the decision Dr. Wiesner cannot be held liable.

²⁴McArdle suggested that the immunity for the evaluation and report to the court did not extend to a claim under the Eighth Amendment that the prison physician failed to treat a prisoner's medical needs, see McArdle, 961 F.2d at 1088 n.7. There, however, the physician defendant who had performed the court evaluation had also treated the prisoner plaintiff, encouraging him to take an antipsychotic drug with strong side effects. Here, there is no allegation in the Complaint or elsewhere that Dr. Wiesner was responsible for Pierson's ongoing

(continued...)

is immune from Pierson's § 1983 suit based on both judicial and witness immunity, and therefore we will dismiss the claims against him.²⁵

C. Wackenhut Corrections Corporation

As noted above, the Wackenhut Corrections Corporation ("Wackenhut") operates the Delaware County Prison under contract with the Delaware County Board of Prison Inspectors. As discussed above, Pierson makes a number of claims against

²⁴(...continued)

care; rather, Dr. Wiesner performed a one-time evaluation at the court's behest while other physicians were responsible for ongoing medical care at the prison. Dr. Wiesner's only connection with Pierson was the court-directed evaluation and the subsequent report. Thus, each and every action Dr. Wiesner took that is at issue in this case is covered by judicial and witness immunity, notwithstanding that Pierson seeks to bring against Dr. Wiesner claims of inadequate treatment while in the Delaware County Prison. Such claims, if they are founded, must go against others than Dr. Wiesner.

²⁵Even having found Dr. Wiesner immune, it is worth reiterating that Dr. Wiesner's report stated clearly and without reservation the diagnosis that Pierson suffered from "Major depressive disorder, recurrent with psychotic features by history." This of course exactly corresponds with the Air Force diagnosis of 1995. Moreover, while Dr. Wiesner did not recommend hospitalization, he did state -- again clearly and without reservation -- that psychiatric treatment should continue. Thus, it is unclear what difference Dr. Wiesner's review of Pierson's records would have made.

We have not overlooked Pierson's claim that his VA psychiatrist had recommended in-patient treatment shortly before Pierson's detention. However, we also note that this psychiatrist did not seek to involuntarily commit Pierson, and so it seems to us odd that Pierson would hold Dr. Wiesner -- whom Pierson saw but once -- liable for failing to do what his civilian provider had similarly refused to do. Likewise, Pierson repeatedly refers to the existence of psychiatrists such as Dr. Hollenhull who also do not seem to have taken any steps to commit Pierson. In any event, as discussed above, it is all irrelevant: Dr. Wiesner is absolutely immune.

Wackenhut, including that it wrongly denied him his various medical and legal records needed for his defense, that he was denied a medical evaluation required and requested by the Air Force, and that he was denied proper medical care for his diagnosed psychiatric condition.

Wackenhut seeks to dismiss these claims on the ground that Pierson's claims do not rise to the level of a violation of his constitutional rights. In response, Pierson argues that Wackenhut's conduct did amount to indifference to his medical condition and adds that his criminal defense was hampered by the fact that he did not have access to the papers in Wackenhut's control.²⁶

²⁶Pierson also claims that Wackenhut's responsive pleading here was not timely filed based on the date of service of process. Therefore, he argues, Wackenhut is in default and we should grant him summary judgment. We find Pierson's claims with regard to default to be without merit. First, although Pierson makes claims about the date on which Wackenhut was served, no proof of service was filed with the court. Although Pierson attaches a copy of a summons to his opposition to Wackenhut's motion, it does not show the date upon which Wackenhut was served, nor even that Wackenhut was in fact served. Moreover, even if Wackenhut was technically in default, our Court of Appeals disfavors judgments by default, and requires that doubtful cases be resolved in favor of the party moving to set aside the default "so that cases may be decided on their merits," United States v. \$55,518.05 in U.S. Currency, 728 F.2d 192, 194-95 (3d Cir. 1984). Thus, even to the extent that Wackenhut was in default, its subsequent filing of a responsive pleading would have prompted us to set aside default and hear the case on the merits, cf. Emcasco Ins. Co. v. Sambrick, 834 F.2d 71, 73 (3d Cir. 1987) (setting out four-factors that a court may consider in exercising its discretion in setting aside default). Thus we will deny Pierson's motions for default and summary judgment as to Wackenhut.

We find that dismissal of Pierson's claims against Wackenhut is not warranted at this stage. As noted above, we are obliged to construe a pro se prisoner's pleadings broadly, and while we agree that Pierson's claims do not appear necessarily to raise egregious constitutional issues, we are not persuaded that § 1983 relief would be unavailable against Wackenhut on any set of facts that might be proved based on the Complaint. We therefore will not dismiss the claims against Wackenhut. On the other hand, Wackenhut is naturally free to raise its arguments again in the context of a summary judgment motion after discovery is taken.

As Pierson has had no discovery to date, it is premature to consider his motion for summary judgment, and so we will deny it without prejudice to refile after discovery is concluded.²⁷

²⁷In a separate Order, we will grant Pierson's motion for appointment of counsel in the hope

(continued...)

²⁷(...continued)

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ORDER

AND NOW, this 25th day of April, 2000, upon consideration of all defendants' motions to dismiss, Pierson's responses thereto, and Pierson's motion to dismiss Members of the Delaware County Council, motion for summary judgment, and for the reasons stated in the accompanying Memorandum, it is hereby ORDERED that:

1. Defendant Members of the Delaware County Council's motion to dismiss (docket number 12) is GRANTED;

2. Plaintiff's motion to dismiss the Members of the Delaware County Council (docket number 16) is GRANTED;

3. Plaintiff's claims against the Members of the Delaware County Council in their official capacities are DISMISSED WITH PREJUDICE;

4. Defendant Irving S. Wiesner's motion to dismiss (docket number 2) is GRANTED;

5. Plaintiff's claims against Irving S. Wiesner are DISMISSED WITH PREJUDICE;

(continued...)

²⁷(...continued)

6. Defendant Wackenhut Corrections Corporation's motion to dismiss (docket number 8) is DENIED;

7. Plaintiff's motion for default as to defendant Wackenhut Corrections Corporation is DENIED; and

8. Plaintiff's motion for summary judgment as to defendant Wackenhut Corrections Corporation (docket number 10) is DENIED WITHOUT PREJUDICE.

BY THE COURT:

Stewart Dalzell, J.

we may find a volunteer lawyer who can conduct the requisite discovery that is quite beyond any inmate's capacity.