

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

HERMAN BOULWARE : CIVIL ACTION
v. :
GEORGE W. HILL, et al. : NO. 98-3876

MEMORANDUM AND ORDER

Bechtle, J. October ,2000

Presently before the court is defendants George W. Hill, et al.'s Motion to Dismiss Plaintiff's Amended Complaint and plaintiff Herman Boulware's Opposition thereto. For the reasons stated below, said motion will be granted.

I. BACKGROUND

Plaintiff, an inmate at Delaware County Prison ("DCP"), filed a pro se Amended Complaint under 42 U.S.C. § 1983¹ alleging violation of the Eighth Amendment prohibition against cruel and unusual punishment. Plaintiff alleges that he bit into the head of a mouse contained in his lunch and prison officials failed to provide medical treatment when Plaintiff became ill as a result. (Am. Compl. ¶¶ 2-9.) Plaintiff's original complaint, filed in

¹ The statute reads, in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

42 U.S.C. § 1983. Defendants do not dispute that they are state actors.

November of 1999, was dismissed as legally frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). See Order dated Jan. 28, 2000. Defendants argue that Plaintiff's Amended Complaint fails to state a claim on which relief can be granted and therefore should be dismissed as a matter of law. (Defs.' Mot. to Dismiss at 1.)

Plaintiff alleges that although the dining and kitchen facilities at the prison are and have been in violation of health regulations, it cannot be closed down because it is a correctional facility. (Am. Compl. ¶ 4.) Furthermore, Plaintiff claims that he became violently ill after having bitten into the head of a mouse, was told to go to the medical facility unescorted and that he would be seen later by medical personnel. Id. ¶¶ 2,3 & 5. Plaintiff alleges that as a result of this treatment, he suffers serious psychological harm for which he is still being treated. Id. ¶¶ 5 & 7. Plaintiff asserts that Defendants' treatment of him is cruel and unusual punishment in violation of the Eighth Amendment, and seeks monetary damages, declaratory judgment and injunctive relief. Id. at unnumbered 1 & ¶ 8.

II. LEGAL STANDARD

For the purposes of a motion to dismiss, the court must accept as true all well-pleaded allegations of fact in a plaintiff's complaint, construe the complaint in the light most favorable to the plaintiff, and determine whether "under any reasonable reading of the pleadings, the plaintiff may be

entitled to relief." Colburn v. Upper Darby Township, 838 F.2d 663, 665-66 (3d Cir. 1988). The court may also consider "matters of public record, orders, exhibits attached to the Complaint and items appearing in the record of the case." Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1384 n.2 (3d Cir. 1994) (citations omitted). The court, however, need not accept as true legal conclusions or unwarranted factual inferences. Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997) (citations omitted). A complaint is properly dismissed only if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

III. DISCUSSION

To prevail on an Eighth Amendment claim brought under § 1983, a prisoner plaintiff is required to show that 1) the deprivations suffered are sufficiently serious under an objective standard; and 2) prison officials acted with deliberate, subjective indifference to the prisoner's welfare. Wilson v. Seiter, 501 U.S. 294, 302-03 (1991) (stating standard); Estelle v. Gamble, 429 U.S. 97, 104 (1976) (same). The objective component of this test requires that the prisoner have suffered a deprivation of "the minimal civilized measure of life's necessities." Seiter, 501 U.S. at 298 (quoting Rhodes v. Chapman, 452 U.S. 337, 347 (1981)). A defendant cannot be held liable under § 1983 unless it is shown that he was directly

involved in, had personal knowledge of, or acquiesced in the alleged constitutional violation. Hill v. Blum, 916 F. Supp. 470, 474 (E.D. Pa. 1996) (quoting Hodgin v. Roth, 536 F. Supp. 454 (E.D. Pa. 1982)). Thus, liability exists only where the official knows of and disregards an excessive risk to inmate health or safety. Farmer v. Brennan, 511 U.S. 825, 837-38 (1994); Wilson v. Horn, 971 F. Supp. 943, 946 (E.D. Pa. 1997).

Section 1983 liability for inadequate medical care requires more than a showing of negligence. Whitley v. Albers, 475 U.S. 312, 319 (1986). A plaintiff must demonstrate that the defendant state actors acted with "deliberate indifference" to the inmate's serious medical needs. Seiter, 501 U.S. at 302-03; Estelle, 429 U.S. at 104.

To prevail on a claim that conditions of confinement violate the Eighth Amendment, a prisoner must prove that an official's act or omission has denied the prisoner the minimal necessities of life. Farmer, 511 U.S. at 834; Wilson, 971 F. Supp. at 946. Under certain circumstances, unsanitary conditions within a prison, such as pest infestation, can constitute cruel and unusual punishment under the Eighth Amendment. See Kost v. Kozakiewics, 1 F.3d 176, 188 (3d Cir. 1993) (noting that inmates "have a right to be free of conditions that generate infestations of vermin").

Plaintiff's allegations of unsanitary conditions at the prison do not state a claim on which relief can be granted. One instance of a prisoner biting into a mouse contained in his lunch

does not constitute a denial of the "minimal civilized measure of life's necessities." Seiter, 501 U.S. at 298; see, e.g., Williams v. Lyons, Civ. No.89-2278, 1989 WL 32764, *1 (E.D. Pa. April 3, 1989) (holding that presence of rats and bugs does not violate Eighth Amendment); McKnight v. Murphy, Civ. No. 89-2196, 1989 WL 32768, *1 (E.D. Pa. April 3, 1989) (holding same regarding allegations of "bugs, rats, unclean and unsanitary conditions"); Jackson v. Berks County Prison Warden, Civ. No. 88-7225, 1988 WL 111902, *3 (E.D. Pa. Oct. 21, 1988) (stating "while mice are an unpleasant reality in many . . . facilities, . . . their presence does not per se constitute cruel and unusual punishment"). At most, Plaintiff's allegations amount to negligence on the part of the persons responsible for preparing Plaintiff's food on the day of the incident. While prisoners at DCP may live and eat in an unpleasant and less than clean environment, the court is unfortunately without power to change these conditions when, as here, they do not amount to cruel and unusual punishment.

Likewise, Plaintiff's allegation of inadequate medical care is insufficient to state a claim upon which relief can be granted. First, Plaintiff does not allege that Defendants disregarded a serious risk to Plaintiff's health. Second, Plaintiff's failure to allege either that the Defendants' subjective states of mind amounted to deliberate indifference, or facts from which a jury could infer such a state of mind, is fatal to Plaintiff's claim of inadequate medical care. In fact,

Plaintiff himself characterizes Defendants' actions as "negligence". (Am. Compl. ¶ 8.) Furthermore, one instance of lack of medical attention does not establish deliberate indifference. As pled, these allegations amount only to isolated acts of negligence in Defendants' treatment of Plaintiff. Such allegations are insufficient to state a claim for relief under § 1983. See Davidson v. Cannon, 474 U.S. 344, 347-48 (1986) (stating that lack of due care is insufficient basis for liability under § 1983); see also El'Amin v. Pearce, 750 F.2d 829, 832-33 (10th Cir. 1985) (noting that "medical malpractice does not become a constitutional violation merely because the victim is a prisoner."). Accordingly, Plaintiff's claim of inadequate medical care does not state a claim for relief.

Lastly, Plaintiff does not allege that defendant Hill, the Superintendent at DCP, had knowledge of or acquiesced in any unconstitutional violation. Without an allegation of personal involvement in the wrongful conduct, Plaintiff's Complaint cannot state a claim for relief against Mr. Hill individually. Hill, 916 F. Supp. at 474.

IV. CONCLUSION

Accordingly, Defendants' motion will be granted and Plaintiff's Amended Complaint will be dismissed.

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ORDER

AND NOW, TO WIT, this day of October, 2000, upon consideration of defendants George W. Hill, et al.'s Motion to Dismiss Plaintiff's Amended Complaint and plaintiff Herman Boulware's Opposition thereto, IT IS ORDERED that said motion is GRANTED and Plaintiff's Amended Complaint is DISMISSED.

LOUIS C. BECHTLE, J.