

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

CHRISTINE SAUNDERS, Administratrix of	:	CIVIL ACTION
the Estate of Corrine M. Cottom,	:	
Plaintiff,	:	
	:	
v.	:	NO. 02-966
	:	
CITY OF PHILADELPHIA, et al.,	:	
Defendants.	:	

ORDER

AND NOW, this day of June, 2003, upon consideration of Defendant the City of Philadelphia’s Motion for Summary Judgment, filed on February 3, 2003 (**Docket Entry No. 14**), and Plaintiff’s Response, filed on February 24, 2003 (Docket Entry No. 16), it is hereby ORDERED that the Motion for Summary Judgment is GRANTED for the reasons that follow. It is further ORDERED that the remaining claims against Defendant Corry Cottom are DISMISSED without prejudice for the reasons set forth at the conclusion of this Order.

On February 12, 2002, Christine Saunders (“Plaintiff”) as Administratrix on behalf of the Estate of Corrine M. Cottom instituted this action by filing in state court a Complaint against Defendants the City of Philadelphia (“City”), the Department of Human Services (“DHS”), and Corry Cottom (“Corry”). The Complaint generally alleges: that Corrine M. Cottom (“Ms. Cottom”) lived in Philadelphia and had a number of children, including Corry; that Corry was under the direct supervision, custody and control of the City, through DHS, and that the City was responsible for the care and placement of Corry; that Corry had a history of violent behavior of

which the City was aware or should have been aware; that the City, through DHS, returned Corry to the custody of his mother Ms. Cottom at some point in time prior to January 8, 2000; and that, on January 8, 2000, Corry set fire to Ms. Cottom's house, which fire contributed to Ms. Cottom's death. See Complaint at ¶¶ 1-15. The Complaint sets forth the following claims: (Count I) a wrongful death claim against the City; (Count II) a survival claim against the City; (Count III) a claim against the City for an alleged violation of 42 U.S.C. § 1983 ("Section 1983"); (Count IV) an unspecified tort claim against Corry; (Count V) a claim (purportedly against all Defendants) for a violation of Ms. Cottom's "Federal Constitutional Rights," including "her rights under the First, Fourth, Fifth and Fourteenth Amendments"; (Count VI) a claim (purportedly against all Defendants) for a violation of Ms. Cottom's "State Constitutional" rights; (Count VII) an additional survival claim against all Defendants; and (Count VIII) a claim for punitive damages against all Defendants. See Complaint at ¶¶ 16-53.

After the action was removed to this Court by the City, and after the completion of discovery, the City filed the instant Motion for Summary Judgment, arguing that the City and DHS are entitled to summary judgment as to all claims against them. Plaintiff has filed a Response to the Motion for Summary Judgment.¹ The Court will grant the Motion for Summary Judgment because well-established legal precedent decidedly compels the conclusion that the City and DHS are entitled to judgment as a matter of law as to all claims against them.

¹ The Court notes that Plaintiff has attached to the Response many hundreds of pages of exhibits without numbering the pages, separating and numbering the exhibits, or including an index. Moreover, Plaintiff's memorandum (the pages of which are not numbered) includes numerous factual allegations, the vast majority of which are not followed by a citation to any exhibit. Such an approach impedes this Court's ability to review the record, and for this reason the Court's preference is that counsel separately identify each exhibit and provide citations to exhibits to support factual allegations contained in the memorandum.

In order to prevail on a summary judgment motion, the moving party must show from the “pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any” that “there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). When ruling on a motion for summary judgment, the court must view the facts from the evidence submitted in the light most favorable to the non-moving party, and the court must take the non-movant’s allegations as true. Groman v. Township of Manalapan, 47 F.3d 628, 633 (3d Cir. 1995). The movant is entitled to summary judgment if the non-moving party fails to demonstrate a dispute over facts that might affect the outcome of the suit, and fails to present sufficient evidence for a reasonable jury to find in its favor. See id.

1. Wrongful Death and Survival Claims

Under Pennsylvania law, the “spouse, children or parents of the deceased” may bring a “wrongful death” action “to recover damages for the death of an individual caused by the wrongful act or neglect or unlawful violence or negligence of another.” 42 Pa. Cons. Stat. Ann. § 8301. In addition, Pennsylvania law permits the administrator of a decedent’s estate to institute a “survival action” on behalf of the decedent, to recover damages accruing to the decedent up until the time of death resulting from the defendant’s tort, where the decedent, had he survived, would have been entitled to bring the tort action against the defendant. See, e.g., Kiser v. Schulte, 648 A.2d 1, 4 (Pa. 1994); Tulewicz v. Southeastern Pennsylvania Transp. Authority, 606 A.2d 427, 431 (Pa. 1992). However, under Pennsylvania statutory law establishing governmental immunity, “no local agency shall be liable for any damages on account of any injury to a person or property caused by any act of the local agency or an employee thereof or any other person,” 42

Pa. Cons. Stat. Ann. § 8541, except for eight specific categories of negligent acts, see 42 Pa. Cons. Stat. Ann. § 8542(b), none of which apply here. Thus, the City (and DHS) are immune from Plaintiff’s wrongful death claim (Count I), and from Plaintiff’s two survival claims (Counts II and VII). See, e.g., Tyree v. City of Pittsburgh, 669 A.2d 487 (Pa. Cmwlth. 1995); Morris v. Montgomery County Geriatric and Rehabilitation Center, 459 A.2d 919 (Pa. Cmwlth. 1983).

2. Section 1983 Claim

Count III alleges a claim against the City under § 1983, which states, in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof 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. “Section 1983 does not, by its own terms, create substantive rights; it provides only remedies for deprivations of rights established elsewhere in the Constitution or federal laws.” Kneipp v. Tedder, 95 F.3d 1199, 1204 (3d Cir. 1996). Thus, “[i]n order to establish a section 1983 claim, a plaintiff ‘must demonstrate a violation of a right secured by the Constitution and the laws of the United States [and] that the alleged deprivation was committed by a person acting under color of state law.’” Id. (citation omitted). Here, Plaintiff contends only that the actions of the City, through its agents (including DHS), resulted in a deprivation of Plaintiff’s substantive due process rights. See Complaint at ¶ 29; Plaintiff’s Response at § II.² This § 1983 claim, based upon an

² Count III of the Complaint does not specify which particular federal or constitutional rights Plaintiff contends were violated by the City’s actions. Count V (entitled “Federal Constitutional Claims”) alleges a deprivation of Plaintiff’s Equal Protection and Due Process rights, as well as her rights under the First, Fourth, Fifth and Fourteenth Amendments of (continued...)

alleged substantive due process violation, fails (1) because it does not assert a cognizable claim of municipality liability against the City, and (2) because the Due Process Clause does not impose an affirmative obligation on the State to protect citizens against harm from private actors.

a. Municipal Liability

“A government entity may not be held liable under section 1983 under the *respondeat superior* doctrine. To obtain a judgment against a municipality, a plaintiff must prove that the municipality itself supported the violation of rights alleged.” Andrews v. City of Philadelphia, 895 F.2d 1469, 1480 (3d Cir. 1990). “Thus, section 1983 liability attaches to a municipality only when ‘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.’” Id. (quoting Monell v. Department of Social Services, 436 U.S. 658, 694 (1978)). Here, Plaintiff argues that the City may be held liable because the harm to Ms. Cottom resulted from a custom, policy, or practice of the City. See Plaintiff’s Response at § III. However, the only policy or practice of the City to which Plaintiff points are the City’s general regulations for “deal[ing] with and treat[ing] dependent children . . . under their care, custody and control,” which regulations Plaintiff alleges should have been followed, but were not followed in this individual instance. In other words, Plaintiff does not actually contend that the harm to Ms. Cottom resulted from a

²(...continued)

the U.S. Constitution. Complaint at ¶¶ 36-37. Count VI (entitled “Pennsylvania State Constitutional Claims”) alleges a deprivation of Plaintiff’s rights under Article I, Section 1 through 26 of the Pennsylvania Constitution. Id. at ¶ 45. However, in her Response to the Motion for Summary Judgment, Plaintiff argues only that her substantive due process rights have been violated. Plaintiff’s Response at § II. Thus, Plaintiff has waived any argument that any other constitutional, federal, or state law rights were violated, and the Court’s conclusion that Plaintiff may not proceed against the City on her § 1983 claim means that the City is entitled to summary judgment as to Counts III, V and VI.

policy or practice of the City. Rather, Plaintiff argues that the harm to Ms. Cottom resulted from *a single instance of failing to follow* the policies or practices of the City. Thus, the City (and DHS) may not be held liable here. See City of Oklahoma City v. Tuttle, 471 U.S. 808, 823-824 (1985) (“Proof of a single incident of unconstitutional activity is not sufficient to impose liability under Monell, absent proof that incident was caused by existing, unconstitutional municipal policy attributable to municipal policymaker.”); cf. Tazioly v. City of Philadelphia, 1998 WL 633747, at *14 (E.D. Pa. 1998) (summary judgment sought on similar grounds denied because: (1) plaintiffs set forth evidence that DHS had formal plan to close as many files as possible by turning children over to biological parents without regard for potential danger to children; (2) record contained evidence that DHS official responsible for establishing final policy deliberately decided that child in question should be entrusted to custody of biological mother who abused child; and (3) plaintiffs set forth evidence that DHS and City were deliberately indifferent to safety of children by knowingly employing untrained, overworked, or incompetent case workers).

b. Due Process

Even if the § 1983 claim against the City were not barred under Monell, the claim would still fail as a result of the fact that Ms. Cottom’s death was the result of the actions of Defendant Corry, a private actor. The Due Process Clause of the Fourteenth Amendment “forbids the State itself to deprive individuals of life, liberty, or property without ‘due process of law,’ but its language cannot fairly be extended to impose an affirmative obligation on the State to ensure that those interests do not come to harm through other means.” DeShaney v. Winnebago County Dept. of Social Services, 489 U.S. 189, 195 (1989). Nor does an affirmative duty to protect a citizen from private harm arise under the Due Process Clause even where the State knows that an individual faces a particular

danger, and voluntarily undertakes to provide protection to that individual (provided the State does not create the danger or do anything to render the individual more vulnerable to the danger). *Id.* at 197, 201; see *Horton v. Flenory*, 889 F.2d 454, 457 (3d Cir. 1989) (“*DeShaney* certainly stands for the harsh proposition that even though state officials know that a person is in imminent danger of harm from a third party, the fourteenth amendment imposes upon those state officials no obligation to prevent that harm. This holding is limited, however, to situations in which the state is not involved in the harm, either as a custodian or as an actor.”). Because Ms. Cottom’s death was caused by a private actor, rather than a state actor, the facts here do not establish a violation of Plaintiff’s substantive due process rights.³

Because Plaintiff may not proceed against the City on her § 1983 claim, the City is entitled to summary judgment as to Counts III, V and VI. Finally, Count VIII sets forth a bare claim for punitive damages unrelated to any particular cause of action. However, an independent cause of

³ Plaintiff contends that, despite the general rule set forth in *DeShaney*, the City is liable under the “state-created danger” exception. Under this theory, liability may be imposed where: (1) the harm ultimately caused was foreseeable and fairly direct; (2) the actions of the state actor shock the conscience; (3) there existed some relationship between the state and the plaintiff; and (4) the state actors used their authority to create an opportunity that otherwise would not have existed for the third party’s actions to occur. See *Kneipp v. Tedder*, 95 F.3d 1199, 1208 (3d Cir. 1996); *County of Sacramento v. Lewis*, 523 U.S. 833, 846-47 (1998); *Miller v. City of Philadelphia*, 174 F.3d 368, 375 (3d Cir.1999); *Cannon v. City of Philadelphia*, 86 F.Supp.2d 460, 469 (E.D. Pa. 2000). The Court concludes as a matter of law that Plaintiff has not established the elements of this theory. The actions of the City and DHS in allegedly returning Corry to the custody of Ms. Cottom, rather than putting him up for adoption (as Plaintiff argues they should have done), do not shock the conscience. In addition, when the City (through DHS) allegedly returned Corry to the custody of Ms. Cottom, the City did not place Ms. Cottom in a more dangerous position than the position in which Ms. Cottom would have been had the City not removed Corry from her custody in the first place. See *DeShaney*, 489 U.S. at 201 (where the State had taken temporary custody of child and had then returned child to father’s custody, the State had no constitutional duty to protect child from abuse by father, even though the State may have known of the danger of abuse by child’s father, because the State placed child in no worse position than that in which he would have been had it not acted at all).

action does not exist for punitive damages, as punitive damages are simply a form of relief, and therefore the City is entitled to summary judgment as to Count VIII as well.

In summary, the City and DHS are entitled to judgment as a matter of law as to all claims asserted against them (Counts I-III and V-VIII). Thus, Defendants the City of Philadelphia and the Department of Human Services are hereby dismissed from this action.

The only remaining claim is the unspecified tort claim against Corry (Count IV),⁴ a pendent state law claim over which this Court does not have original jurisdiction. Pursuant to 28 U.S.C. § 1367(c)(2), it is well-established that “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.” Borough of West Mifflin v. Lancaster, 45 F.3d 780, 788 (3d Cir. 1995). Here, it does not appear that there is any affirmative justification for this Court hearing the pendent state law claim, and for this reason the Court will decline to do so. Thus, the Court will dismiss without prejudice the pendent state law claim against Defendant Corry Cottom. See id.

The Clerk of Court is directed to close this matter for statistical purposes.

BY THE COURT:

Legrome D. Davis

⁴ Although there is also a survival claim asserted against Corry (Count VII), such a claim must be based upon a tort, and this claim is therefore indistinguishable from the tort claim in Count IV. There is also a claim for punitive damages asserted against Corry (Count VIII), which is, in fact, simply a form of relief sought pursuant to the tort claim in Count IV.