

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

JAMES ALLEN;)
ELIZABETH ALLEN; and)
WILLIAM ALLEN,)
)
Plaintiffs) Civil Action
) No. 02-CV-1679
)
vs.)
)
PARKLAND SCHOOL DISTRICT;)
CHRISTOPHER BLEAM, in his)
individual and official capacity;)
and JOHN TOGGAS, in his)
individual and official capacity,)
)
Defendants)

* * *

APPEARANCES:

TERI B. HIMEBAUGH, ESQUIRE
On behalf of plaintiff James Allen,

ELIZABETH ALLEN,
Plaintiff Pro Se,

WILLIAM ALLEN,
Plaintiff Pro Se,

ANDRIA B SAIA, ESQUIRE and
MICHAEL I. LEVIN, ESQUIRE
On behalf of defendant
Parkland School District

ANDRIA L. BOROCK, ESQUIRE
On behalf of defendants
Christopher Bleam and
John Toggas

* * *

O P I N I O N

JAMES KNOLL GARDNER,
United States District Judge

This matter is before the court on the Motion to Dismiss Amended Complaint of Defendants Parkland School District, Christopher Bleam, and John Toggas, which motion was filed December 19, 2002.¹ For the reasons expressed below, we grant in part and deny in part defendants' motion to dismiss.

Specifically, we dismiss all claims of plaintiffs Elizabeth Allen and William Allen, and we dismiss all claims of plaintiff James Allen against defendant Christopher Bleam. In addition we dismiss all claims of plaintiff James Allen against defendant John Toggas in his official capacity. We deny defendants' motion to dismiss plaintiff's claims against defendant Parkland School District and John Toggas in his individual capacity.

Furthermore, we give plaintiff James Allen until October 31, 2003 to file a Second Amended Complaint enumerating the specific Constitutional provisions which enable plaintiff to assert a cause of action under 42 U.S.C. § 1983 based upon the facts pled in plaintiff's first Amended Complaint.

¹ On January 6, 2003, plaintiff James Allen filed his Plaintiff's Response to Defendants' Motion to Dismiss Pursuant to Rule 12(b)(6).

PROCEDURAL HISTORY

This civil action is a civil rights claim brought pursuant to 42 U.S.C. § 1983 on federal question jurisdiction. See 28 U.S.C. § 1331. On December 20, 2002, this case was reassigned from the calender of our colleague United States District Judge R. Barclay Surrick.

Count I of plaintiff's² Amended Complaint is entitled "Pattern, Practice and Custom Parkland School District and John Toggas". It avers that defendants Parkland School District and John Toggas adopted and maintained a policy, custom and practice that violated an unspecified right of plaintiff to bodily integrity.

Count II is entitled "Supervisory Liability Parkland School District and John Toggas". It asserts that defendants Parkland School District and its wrestling coach John Toggas failed to train, supervise and control their agent Kurt Pryor, a student in the Parkland School District.

Count III claims that Parkland School District and John Toggas, as agents for the state, created a danger of harm to

² Plaintiff's original Complaint was filed on behalf of plaintiffs James Allen, Elizabeth Allen and William Allen. In the caption of his Amended Complaint, plaintiff James Allen refers to plaintiff as "James Allen et. al". However, plaintiff's Amended Complaint contains no averments on behalf of plaintiffs Elizabeth Allen and William Allen. Accordingly, we dismiss Elizabeth and William Allen as plaintiffs from the within civil action. Therefore, all references to "plaintiff" in this Opinion will be in the singular and will refer to plaintiff James Allen.

James Allen, a student member of the high school wrestling team, by empowering members of the wrestling team to discipline other members of the team.

Count IV contends that defendant Christopher Bleam, a health teacher at Parkland High School, was deliberately indifferent when he denied plaintiff James Allen medical treatment to which plaintiff contends he was Constitutionally entitled. Count V was dismissed on May 21, 2003 by stipulation of the parties.

Count VI alleges that defendants Parkland School District, John Toggas, Kurt Pryor³ and Christopher Bleam intentionally inflicted emotional distress upon plaintiff.

STATUTE OF LIMITATIONS

Defendants assert that the Complaint is time-barred by the applicable statute of limitations. The parties agree that the events which serve as the basis for this cause of action occurred on or around October 8, 1998. At that time James Allen was sixteen years old. James Allen was born on March 27, 1982. He attained the age of eighteen on March 27, 2000.

Under Pennsylvania law, if an individual is an unemancipated minor at the time the cause of action accrues, the period of minority shall not be deemed a portion of the time

³ Kurt Pryor was dismissed from the action by stipulation of the parties on May 21, 2003.

period within which the action must be commenced. Such person shall have the same time for commencing an action after attaining majority as is allowed to other adults. 42 Pa.C.S.A.

§ 5533(b)(1)(i). For purposes of Pennsylvania's infancy tolling statute, a minor attains majority at age eighteen. 42 Pa.C.S.A.

§ 5533(b)(1)(ii). Consequently, plaintiff's cause of action was tolled from October 8, 1998 until March 27, 2000.

Pursuant to the Pennsylvania computation of time statute, we exclude the first day and include the last day of any period of time referred to in any statute. 1 Pa.C.S.A. § 1908. Therefore, we do not count the first day, March 27, 2000, toward the statute of limitations. Thus, the statute of limitations clock began to run on March 28, 2000.

Plaintiff had two years from March 28, 2000 to timely initiate an action. Section 1983 of the Civil Rights Act of 1964 does not have an explicit statute of limitations. Therefore, we must borrow the statute of limitations for the closest analogous state law cause of action. Bougher v. University of Pittsburgh, 882 F.2d 74, 78 (3d Cir.1989). The most analogous state law cause of action is battery.

In Pennsylvania, an action for battery must be commenced within two years. 42 Pa.C.S.A. § 5524(1). Plaintiff filed his initial Complaint on March 27, 2002, exactly two years after the clock began to run on plaintiff's cause of action.

Accordingly, plaintiff filed his initial Complaint on the last day permitted within the statute of limitations. Therefore, we conclude that plaintiff's Complaint is not time-barred.

FACTS

Based upon the allegations in plaintiff's Complaint, the following are the pertinent facts. On Thursday, October 8, 1998, Kurt Pryor and another student were in the office of the wrestling coach, John Toggas. The three discussed how plaintiff James Allen had been caught smoking the prior day. Mr. Toggas provoked or permitted Mr. Pryor to attack plaintiff as part of a school-sanctioned wrestling team policy of students policing themselves.

After Mr. Pryor left Mr. Toggas' office he encountered Mr. Allen in the school hallway. Mr. Allen was in the hallway because he had requested and received a lavatory pass from his Health teacher, Christopher Blead. Mr. Pryor physically confronted Mr. Allen about plaintiff's smoking. Specifically, Mr. Pryor applied a wrestling choke hold to Mr. Allen. Plaintiff was injured as a result of the attack by his fellow student.

Following the attack, Mr. Allen returned to his health class. Mr. Allen asked defendant Blead for medical attention because he was suffering from the effects of the choking. Mr. Blead denied plaintiff access to medical attention.

After health class ended, Mr. Allen went to the school office and reported the attack to Mr. Lessel, the Interim Principal. The matter was referred to defendant Toggas as a wrestling matter, and nothing further was done to correct the situation.

STANDARD FOR MOTION TO DISMISS

When considering a motion to dismiss the court must accept as true all factual allegations in the complaint and construe all reasonable inferences to be drawn therefrom in the light most favorable to the plaintiff. Jurimex Kommerz Transit G.M.B.H. v. Case Corp., 2003 U.S.App. LEXIS 7690, *4-5, 2003 WL 1919361, No. 02-1916 (3d Cir. April 23, 2003)(citing Lorenz v. CSX Corp., 1 F.3d 1406, 1411 (3d Cir. 1993)). A Rule 12(b)(6) motion should be granted "if it appears to a certainty that no relief could be granted under any set of facts which could be proved." Morse v. Lower Merion School District, 132 F.3d 902, 906 (3d Cir. 1997) (citing D.P. Enter. Inc. v. Bucks County Community College, 725 F.2d 943, 944 (3d Cir. 1984)). But a court need not credit a complaint's "bald assertions" or "legal conclusions" when deciding a motion to dismiss. Morse, 132 F.3d at 906. (Citations omitted.)

DISCUSSION

Defendant Bleam

Plaintiff contends that defendant Bleam acted with deliberate indifference in violation of the Constitution when he failed to permit Mr. Allen to seek medical treatment. Plaintiff further contends that Mr. Bleam's actions were intentional and inflicted emotional distress upon Mr. Allen. It is difficult to analyze plaintiff's claim without knowing what Constitutional provision he relies upon. After thorough research, we are unable to ascertain any Constitutional provision or theory under which Mr. Bleam could be liable. Alternatively, even if such a provision exists, Mr. Bleam is entitled to qualified immunity.

On October 8, 1998, Mr. Allen requested and received a lavatory pass from Mr. Bleam. While Mr. Allen was headed to the lavatory, he was attacked by Mr. Pryor. Plaintiff does not allege that Mr. Bleam had any knowledge of the attack either before or after the attack occurred. When Mr. Allen returned to health class he asked Mr. Bleam several times for permission to go to the school nurse because he was suffering from the after effects of the choking. From this we may glean that Mr. Allen verbalized his requests.

Mr. Bleam denied Mr. Allen's request. It was not until after Health class that Mr. Bleam reported the attack. At that

time, Mr. Allen reported the attack to Interim Principal Lessel.

Plaintiff alleges that Mr. Blead acted maliciously, deliberately and with reckless indifference to Mr. Allen's Constitutional rights. For the purposes of this motion to dismiss we are required to accept as true that Mr. Blead deliberately denied Mr. Allen's request for permission to see the nurse. However, the facts averred in the Complaint, even if construed in the light most favorable to plaintiff, fail to establish any basis for believing that Mr. Blead was anything more than reckless regarding Mr. Allen's Constitutional rights when he denied Allen's request. There is no allegation in the Complaint that Mr. Blead deliberately withheld medical attention to Mr. Allen with the intent and purpose of causing Mr. Allen harm.

We can find no Constitutional provision establishing liability absent an allegation that defendant intended to violate plaintiff's Constitutional rights when defendant committed the act which caused the alleged harm. However, even if there were a Constitutional right that plaintiff could assert that Mr. Blead intended to violate, Mr. Blead is entitled to qualified immunity.

Standard for Qualified Immunity

The standard for qualified immunity is uniform regardless of "the precise nature of various officials' duties or

on the precise character of the particular rights alleged to have been violated." Anderson v. Creighton, 483 U.S. 635, 643, 107 S.Ct. 3034, 3040-3041, 97 L.Ed.2d 523, 533-534 (1987).

Qualified immunity is an affirmative defense that must be pled by a defendant who is a government official. Gomez v. Toledo, 446 U.S. 635, 100 S.Ct. 1920, 64 L.Ed.2d 572 (1980).

While qualified immunity is an affirmative defense, it does not simply protect a defendant official from liability, but rather from having to defend suit. Harlow v. Fitzgerald, 457 U.S. 800, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982). Put another way, qualified immunity is "an entitlement [for government officials] not to stand trial or face the other burdens of litigation." Mitchell v. Forsyth, 472 U.S. 511, 526, 105 S.Ct. 2806, 2815 , 86 L.Ed.2d 411, 425 (1985).

The doctrine was established because the court found the tribulations of litigation an unreasonable burden on officials exercising subjective good faith in their discretionary duties. The United States Supreme Court determined that any potential good that could come of suits against government officials for discretionary acts was outweighed by the chilling effect that such litigation would have on legitimate governmental activities. Butz v. Economou, 438 U.S. 478, 98 S.Ct. 2894, 57 L.Ed.2d 895 (1978).

If qualified immunity is to be defeated, plaintiff must

satisfy a two-pronged test. First, he must establish that the government official violated a "basic, unquestioned constitutional right" belonging to plaintiff. Harlow, 457 U.S. at 815, 102 S.Ct. at 2736-2737, 73 L.Ed.2d at 408 (citing Wood v. Strickland, 420 U.S. 308, 322, 95 S.Ct. 992, 1001, 43 L.Ed.2d 214, 225 (1975)).

Next, plaintiff must establish that the official "knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of the [plaintiff], or if he took the action with the malicious intention to cause a deprivation of constitutional rights or other injury." Harlow, 457 U.S. at 815, 102 S.Ct. at 2737, 73 L.Ed.2d at 409 (citing Wood, 420 U.S. at 322, 95 S.Ct. 992, 1001, 43 L.Ed.2d 214, 225).

To satisfy the first prong of the test, it is not enough to point to a provision of a Constitutional amendment such as the due process clause. Analysis at this level of generality eviscerates the protection that the doctrine is meant to provide. Anderson v. Creighton, 483 U.S. 635, 639, 107 S.Ct. 3034, 3038-3039, 97 L.Ed.2d 523, 530-531 (1987). Rather, plaintiff must establish that "in the light of pre-existing law the unlawfulness [of the official action was] apparent." Id. at 640. Thus, plaintiff must show how the limits of a Constitutional protection have been so clearly defined as to preclude the

official's act from being questionably Constitutional.

To satisfy the second prong, plaintiff must show that the defendant official had notice that his alleged conduct was outside established Constitutional barriers. Plaintiff may establish this prong by showing that the state of the law is so clear that any reasonable official knew, or should have known, that his conduct would be illegal.

In so doing, however, the qualified "immunity inquiry is to acknowledge that reasonable mistakes can be made as to the legal constraints on particular police action." Saucier v. Katz, 533 U.S. 194, 205, 121 S.Ct. 2151, 2158, 150 L.Ed.2d 272, 284 (2001); see Anderson, 483 U.S. 635, 107 S.Ct. 3034, 97 L.Ed.2d 523. Merely establishing a Constitutional violation will not defeat immunity. This standard is meant to protect all but the most egregious of offenses or the most incompetent of officials.

When considering a qualified immunity defense, we must determine the validity of the defense as a matter of law. It is improper to allow a jury to consider such a defense. Hunter v. Bryant, 502 U.S. 224, 112 S.Ct. 534, 116 L.Ed.2d 589 (1991). However, we are required to take the facts in the light most favorable to the plaintiff. Saucier v. Katz, 533 U.S. at 201, 121 S.Ct. at 2156, 150 L.Ed.2d at 281. If the facts viewed in this light do not overcome either prong of the qualified immunity

defense, then judgment must be granted for defendant.

Application of Qualified Immunity to Mr. Bleam

In this action, plaintiff fails to set forth such allegations as to establish the first prong. Plaintiff has not established that Mr. Bleam violated a "basic, unquestioned constitutional right" belonging to the plaintiff. Harlow, 457 U.S. at 815, 102 S.Ct. at 2736-2737, 73 L.Ed.2d at 408.

Plaintiff asserts that Mr. Bleam violated Mr. Allen's alleged Constitutional rights to bodily integrity and to the provision of timely and adequate medical care. Plaintiff does not allege how Mr. Bleam violated Mr. Allen's bodily integrity, and we can discern no such violation from the pleadings. Finding no support in the pleadings for the allegation, we conclude that this bald assertion is meritless.

Plaintiff's assertion that Mr. Bleam violated Mr. Allen's right to provision of timely and adequate medical treatment assumes that Mr. Allen had such a right and that Mr. Bleam was under an affirmative duty to act to provide Mr. Allen medical care. Plaintiff fails to provide any legal citation to support his contention that these Constitutional rights exist.

Nevertheless, we conclude that there is a right to have state actors provide medical treatment under certain circumstances pursuant to a Fourteenth Amendment Due Process clause analysis.

When the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs - e.g. food, clothing, shelter, medical care, and reasonable safety - it transgresses the substantive limits on state action set by the Eighth Amendment and the Due Process Clause.

DeShaney v. Winnebago County Department of Social Services, 489 U.S. 189, 200, 109 S.Ct. 998, 1007, 103 L.Ed.2d 249, 261-262 (1989).

Mr. Allen's mere attendance at school, however, does not create the affirmative exercise of state power that would mandate the state be Constitutionally required to provide medical care to students. See D.R. v. Middle Bucks Area Vocational Technical School, 972 F.2d 1364 (3d Cir. 1992). Plaintiff does not allege a set of facts that satisfies plaintiff's burden. There are no allegations that Mr. Bleam had any knowledge of the cause of Mr. Allen's purported injuries, and no inference that may be drawn that Mr. Bleam intended to cause harm to Mr. Allen.

Mr. Bleam could have granted Mr. Allen's request to see the nurse, and perhaps Mr. Bleam should have granted the request, but Mr. Bleam was not Constitutionally required to do so. Brown v. Grabowski, 922 F.2d 1097, 1116 (3d Cir. 1990); see D.R., 972 F.2d at 1376. Moreover, "[a]s in DeShaney, 'the most that can be said of [Mr. Bleam] in this case is that [he] stood by and did nothing when suspicious circumstances dictated a more action role for [him].'" D.R., 972 F.2d at 1376 (citing DeShaney,

489 U.S. 189, 203, 109 S.Ct. 998, 1007, 103 L.Ed.2d 249, 263 (1989)). As such, Mr. Bleam has committed no act in violation of the Constitution. Therefore he is dismissed as a party to this lawsuit.

Defendant Toggas, in his Official Capacity

Plaintiff asserts claims in Counts I, II, III, and IV against John Toggas in his personal and official capacities. In each of those counts, plaintiff also asserts a claim against the Parkland School District.

"A suit against a governmental officer 'in his official capacity' is the same as a suit 'against [the] entity of which [the] officer is an agent.'" McMillian v. Monroe County, 520 U.S. 781, n. 2, 117 S.Ct. 1734, 138 L.Ed.2d 1 (1997)(internal citations omitted). It is undisputed that Mr. Toggas is an agent of Parkland School District. Since Parkland School District is a named defendant, naming Mr. Toggas, in his official capacity, as a defendant is superfluous. Accordingly, we dismiss Mr. Toggas, in his official capacity, as a party to this lawsuit.

Parkland School District and John Toggas,
in his Individual Capacity

Plaintiff has averred sufficient facts which, if true, may form the basis for liability as to defendants John Toggas and Parkland School District. For example, based upon the averments

in plaintiff's Complaint, taken in the light most favorable to plaintiff, we could conclude that Mr. Toggas, acting within the scope of his employment with the Parkland School District, created and implemented a policy and practice whereby student members of the wrestling team would physically harm other members of the wrestling team. Under such circumstances, plaintiff may have a Constitutional cause of action.

Nevertheless, in order to state a claim under 42 U.S.C. § 1983 plaintiff must not only present facts that establish a Constitutional violation, but also must indicate which Constitutional right possessed by plaintiff was violated. See Graham v. Connor, 490 U.S. 386, 394, 109 S.Ct. 1865, 1871, 104 L.Ed.2d 443, 454 (1989). Plaintiff's reference to a right of bodily integrity is not sufficient. Plaintiff must enunciated a particular provision of the Constitution which defendants' conduct has violated.

However, we find that it would be fundamentally unfair to dismiss plaintiff's Complaint because of this deficiency at this point. Accordingly, we shall give plaintiff until October 31, 2003 to file a Second Amended Complaint against Parkland School District and John Toggas in his individual capacity, enumerating the Constitutional provisions which permit plaintiff to assert a cause of action under 42 U.S.C. § 1983 based upon the facts pled in plaintiff's first Amended Complaint.

CONCLUSION

For the foregoing reasons, we grant in part and deny in part defendants' motion to dismiss. Because we conclude that plaintiff has failed to allege that Mr. Blead intended to harm Mr. Allen, and because Mr. Blead is entitled to qualified immunity, we dismiss Mr. Blead from plaintiff's Amended Complaint.

Because we conclude that a suit against a person in his official capacity is the same as suing the entity for whom that person is an official and because we note that plaintiff sued John Toggas in his official capacity, as well as the Parkland School District, we dismiss John Toggas in his official capacity from plaintiff's Amended Complaint.

Because we conclude that plaintiff has averred sufficient facts to state a Constitutional claim against defendants Parkland School District and John Toggas in his individual capacity, but has failed to state with specificity which provisions of the Constitution these defendants allegedly violated, we deny defendants' motion in this regard. Moreover, we grant plaintiff leave to amend his Complaint by October 31, 2003 to enumerate the Constitutional provisions which permit plaintiff to assert a cause of action under 42 U.S.C. § 1983 based on the facts pled in plaintiff's first Amended Complaint.

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

JAMES ALLEN;)	
ELIZABETH ALLEN; and)	
WILLIAM ALLEN,)	
)	Civil Action
Plaintiffs)	No. 02-CV-1679
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vs.)	
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PARKLAND SCHOOL DISTRICT;)	
CHRISTOPHER BLEAM, in his)	
individual and official capacity;)	
and JOHN TOGGAS, in his)	
individual and official capacity,)	
)	
Defendants)	

O R D E R

NOW, this 30th day of September, 2003, upon consideration of the Motion to Dismiss Amended Complaint of Defendants Parkland School District, Christopher Bleam, and John Toggas filed December 19, 2002; upon consideration of Plaintiff's Response to Defendants' Motion to Dismiss Pursuant to Rule 12(b)(6) filed January 6, 2003; upon consideration of the briefs of the parties; and for the reasons expressed in the accompanying Opinion,

IT IS ORDERED that defendants' motion to dismiss is granted in part and denied in part.

IT IS FURTHER ORDERED that Counts IV and VI against defendant Christopher Bleam are dismissed with prejudice from plaintiff's Amended Complaint.

IT IS FURTHER ORDERED that Counts I, II, III, and VI against defendant John Toggas in his official capacity are

dismissed with prejudice from plaintiff's Amended Complaint.

IT IS FURTHER ORDERED that defendants' motion to dismiss Counts I, II, III, and VI of plaintiff's Amended Complaint against defendant Parkland School District, and to dismiss Counts I, II, III, and IV of plaintiff's Amended Complaint against defendant John Toggas in his individual capacity is denied.

IT IS FURTHER ORDERED, it appearing that plaintiff's Amended Complaint contains no averments on behalf of plaintiffs Elizabeth Allen and William Allen, that Elizabeth Allen and William Allen are dismissed as plaintiffs from the within civil action with prejudice.

IT IS FURTHER ORDERED that plaintiff James Allen shall have until October 31, 2003 to file a Second Amended Complaint enumerating the specific Constitutional provisions which permit plaintiff to assert a cause of action under 42 U.S.C. § 1983 based upon the facts pled in plaintiff's first Amended Complaint.

IT IS FURTHER ORDERED that in the event plaintiff James Allen does not file a second Amended Complaint as aforesaid, the within civil action may be dismissed with prejudice.

BY THE COURT:

James Knoll Gardner
United States District Judge