

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

JERRY J. IRONS : CIVIL ACTION
: :
v. : :
: :
TRANSCOR AMERICA, et al. : NO. 01-4328

~~MEMORANDUM AND ORDER~~

McLaughlin, J.

July 8, 2002

In this civil rights action, the plaintiff claims that several individuals and entities, acting under color of state law, denied him adequate medical treatment while charged with his custody, deprived him of his constitutional rights, and violated state law. Before the Court are motions to dismiss by defendants Prince George's County, Maryland; Barry Stanton; the County of Burlington, New Jersey and Juel Cole; and Rafael Cruz-Martinez, Kenneth Blick, Bhawani Poochoon, and Michael DeMoss. Each of the defendants has moved to dismiss for lack of personal jurisdiction; some have also moved to dismiss for failure to state a claim.

For purposes of this analysis, the facts are as follows.¹ The plaintiff, Jerry J. Irons is a resident of

¹ In considering motions to dismiss under Rule 12(b) (6) for failure to state a claim, the Court "take[s] all well pleaded allegations as true, construe[s] the complaint in the light most favorable to the plaintiff, and determine[s] whether, under any reasonable reading of the pleadings, the plaintiff may be entitled to relief." Colburn v. Upper Darby Twp., 838 F.2d 663,

(continued..)

Philadelphia who has AIDS. He was stopped by the Hyattsville, Maryland police for an alleged traffic violation. The police arrested him during the traffic stop because of an alleged outstanding warrant against him in Ohio.

The plaintiff was imprisoned in Prince George's County, Maryland ("PG County"), from approximately May 3, 2000, until May 17, 2000, awaiting extradition to Ohio. PG County did not have a policy or practice in place to insure that prisoners with AIDS received adequate medical care. Barry Stanton, the Director of the Department of Corrections for PG County, knew that such prisoners were not receiving adequate medical care. He did not take any corrective action or supervise his officers and agents in this regard.

On or about May 17, 2000, the plaintiff was taken into custody by defendant TransCor, a private company that transports prisoners. TransCor was to transport Irons to Ohio pursuant to the extradition order.

¹(...continued)
665 (3d Cir. 1988), cert. denied, 489 U.S. 1065 (1989). In responding to a motion to dismiss for lack of personal jurisdiction under 12(b)(2), a plaintiff must support its jurisdictional allegations with appropriate affidavits or documents. Time Share Vacation Club v. Atlantic Resorts, Ltd., 735 F.2d 61, 67 n.9 (3d Cir. 1984). *Any* disputes created **by** the affidavits, documents, or other record evidence submitted for the court's consideration are resolved in favor of the non-moving party. Aircraft Guaranty Corp. v. Strato-Lift, Inc., 974 F. Supp. 468, 475 (E.D. Pa. 1997).

From approximately May 17, 2000 until May 25, 2000, TransCor employees Rafael Cruz-Martinez, Kenneth Blick, Bhawani Poochoon, and Michael DeMoss (the "Individual TransCor Defendants") transported Irons through various states. In Pennsylvania, they made stops at prisons in Gratersford, Philadelphia, and Camp Hill. While in Pennsylvania, the plaintiff informed each of the Individual TransCor Defendants that he had **AIDS** and he requested medical attention. Each of the Individual TransCor Defendants witnessed his symptoms, but none provided him with medical attention. His medical condition worsened.

While en route, the plaintiff was taken into custody overnight at correctional facilities in PG County and in Burlington County, New Jersey. At each of the facilities, the plaintiff informed employees and medical providers that he suffered from AIDS, that he was ill, and that he required medication for his AIDS-related symptoms. He did not receive care, and his condition continued to grow worse. Juel Cole, the warden of the Burlington County Correctional Facility, knew that prisoners like Irons were not receiving adequate and proper medical care. He did not take any corrective action or supervise his officers and agents in this regard.

The plaintiff was later transported by TransCor to a prison in New Bedford, Massachusetts. After examining the plaintiff, a staff nurse recommended that he be taken to the

hospital. TransCor released him into the custody of St. Luke's Hospital on May 23, 2000. The hospital released him on May 24, 2000, and his mother transported him to Philadelphia. On June 8, 2000, he was admitted to Graduate Hospital in Philadelphia, where he received treatment, including surgery, for his injuries and illnesses.

The plaintiff has sued TransCor, the Individual TransCor Defendants, PG County, Stanton, Burlington County, and Cole under section 1983 and for violations of state law. PG County, Stanton, County of Burlington, Cole, and the Individual TransCor Defendants filed motions to dismiss under 12(b) (2) for lack of personal jurisdiction. The plaintiff does not allege or assert that the moving defendants reside, are incorporated, or have a principal place of business in Pennsylvania.'

Personal jurisdiction over non-resident defendants is governed by a two-part test. A court first determines if the state long-arm statute provides for jurisdiction. If so, the court determines if asserting jurisdiction comports with due process requirements. Imo Indus. v. Kiekert AG, 155 F.3d 254, 259 (3d Cir.

² PG County is alleged to be a municipality in Maryland. Amended Compl. ¶ 9. Burlington County Correctional Facility is alleged to be located in Mount Holly, New Jersey, and there is no specific allegation about Burlington County as a municipal entity. Id. ¶ 8. Blick is alleged to reside in Kentucky, and Cruz-Martinez, Poochoon and DeMoss in Tennessee. Id. ¶¶ 4-7. There are no allegations regarding either Stanton's or Cole's state of residence. Id. ¶¶ 10, 11.

1998). Because the Pennsylvania long-arm statute reaches to the fullest extent allowed by the federal constitution, this Court need only focus on the due process inquiry. Time Share Vacation Club v. Atlantic Resorts, 735 F.2d 61, 63 (3d Cir. 1984); 42 Pa. C.S.A. § 5322(b).

Courts recognize two theories of personal jurisdiction that comport with due process requirements. General jurisdiction exists when a defendant has "continuous and systematic" contacts with a forum, even if the plaintiff's cause of action arises from non-forum related activities. Remick v. Manfredy, 238 F.3d 248, 255 (3d Cir. 2001) (citation omitted). Specific jurisdiction exists when a defendant purposefully directs his activities at a forum such that he has minimum contacts with that forum, when litigation results from injuries that "arise out of or relate to" those contacts, and when assertion of jurisdiction complies with traditional notions of fair play and substantial justice. BP Chems. Ltd. v. Formosa Chem. & Fibre Corp., 229 F.3d 254, 259 (3d Cir. 2000); Imo Indus. v. Kiekert AG, 155 F.3d 254, 259 (3d Cir. 1998).

When a defendant raises a personal jurisdictional defense, the plaintiff must show with reasonable particularity sufficient contacts that establish jurisdiction, and must support its jurisdictional allegations with appropriate affidavits or other competent evidence. Provident Nat'l Bank v. California Fed. Sav. &

Loan Ass'n, 819 F.2d 434, 437 (3d Cir. 1987) (citation omitted);
Time Share, 735 F.2d at 67 n.9.

Burlington County and Juel Cole. Burlington County and Juel Cole argue that neither have sufficient contacts with Pennsylvania to satisfy due process requirements. Irons asserts that the Court has both general and specific personal jurisdiction over these defendants.

The Court finds that it lacks general jurisdiction over Juel Cole. The plaintiff makes no allegations and provides no support otherwise to show that Cole has substantial or continuous contacts with Pennsylvania.

The Court also finds that it lacks general jurisdiction over Burlington County, because the plaintiff has not shown that the County has substantial or continuous contacts with Pennsylvania. The plaintiff asserts that the Court has general jurisdiction over the County because the correctional facility there: (1) regularly conducts business with agencies and prisons in Pennsylvania; (2) is located in New Jersey, which, like Pennsylvania, is a signatory to an interstate compact regarding detainers and the transporting and holding of prisoners crossing state lines (the "Compact"); and (3) by "reasonabl[e] infer[ence]," transferred and received prisoners to and from Pennsylvania.

The plaintiff's first argument fails to set forth relevant facts with reasonable particularity. The statement that the correctional facility regularly conducts business with agencies and prisons in Pennsylvania is unsupported by an affidavit or other evidence. It also lacks specificity as to with which prisons and agencies the New Jersey facility regularly conducts business, how "regularly" business is conducted, and what type of business is conducted. See, e.g., Holland v. Consol. Freightways Corp., 99 F. Supp. 2d 570, 572 & n.1 (E.D. Pa. 2000).

That New Jersey is a signatory to the Compact is also insufficient to confer general jurisdiction over the County. The Compact, to which thirty-eight states and the District of Columbia are signatories, authorizes states to enter into contracts with one another for the exchange and confinement of inmates, and dictates standards of care relating thereto. The plaintiff has not alleged that any contract exists between New Jersey and Pennsylvania under the Compact. The Court finds that the mere fact of New Jersey's being a signatory to the Compact is too insubstantial a basis for general jurisdiction, which would allow for the County to be sued in this district **on** matters unrelated to prisoners or the correctional facility. See, e.g., 16 Moore's Federal Practice § 108.41[3] (Matthew Bender 3d ed. 2000) (general jurisdiction is rarely asserted, even when contacts with a foreign state are quite extensive).

Finally, the plaintiff's argument that "it can be reasonably inferred" that the correctional facility in Burlington County transferred and received prisoners to and from Pennsylvania is insufficient. It is based only on statements by Irons made in an affidavit concerning: (1) TransCor's relationship with prisons in Pennsylvania and New Jersey; (2) Irons' having observed prisoners get picked up in Pennsylvania and transported to New Jersey prisons; and (3) Irons' having observed Burlington County's receiving payment from TransCor for housing TransCor prisoners overnight. Irons Aff. at 1. Irons' statements do not establish, with reasonable particularity, the frequency of any such contacts, to which prisons in New Jersey prisoners from Pennsylvania were transported, or how Burlington County itself had contacts with Pennsylvania, as opposed to TransCor.

The Court also finds that it has no specific jurisdiction over either Burlington County or Juel Cole because the plaintiff has not demonstrated that either has sufficient contacts with Pennsylvania relevant to this case.

Irons argues that there are sufficient contacts with Pennsylvania relating to the Compact. But he has not established that the Compact **is** relevant to these defendants. Burlington County is not a signatory to the Compact - New Jersey is. The plaintiff points to no contract pursuant to the Compact under which Burlington County or Cole transports prisoners to or from Pennsylvania. Even if the plaintiff identified such a contract, he

has not established that it would be relevant here. Irons has not alleged that he was a prisoner from Pennsylvania; he had been arrested and imprisoned in Maryland.

The Court therefore dismisses the amended complaint as against Burlington County and Juel Cole.

PG County and Barry Stanton. Although the plaintiff asserts that both general and specific jurisdiction exist over PG County and Barry Stanton, the Court finds there to be no basis for either. The plaintiff has not shown that either defendant has systematic or continuous contacts with Pennsylvania, or sufficient minimum contacts related to this case.

As to general jurisdiction, the plaintiff again relies primarily on the fact that Maryland is a signatory to the Compact. As noted above, the mere fact of Maryland's being a signatory to the Compact is too insubstantial a basis on which to establish general jurisdiction over PG County or Stanton in Pennsylvania.

As to specific jurisdiction, the plaintiff asserts that the County "set the actions in motion that sent Plaintiff on a trip through Pennsylvania, New Jersey and other Atlantic seaboard states" and that "[i]n doing **so** it was acting under the Interstate Compact" Pl. Opp'n Br. at 6 (Docket No. 33). This is unsupported by any affidavit or other evidence. The plaintiff also fails to link up, with reasonable particularity, the County's activities with any Pennsylvania contacts. He does not assert that

PG County or Stanton sent the plaintiff to Pennsylvania pursuant to a contract under the Compact, or even that a contract under the Compact exists between Maryland and Pennsylvania.³ Nor does he assert that PG County or Stanton knew Irons was going to travel through Pennsylvania.

In his response to the defendants' motion, the plaintiff incorporates the arguments he made in response to the motion to dismiss of defendants Burlington County and Juel Cole. Except for his reference to the Compact, however, the plaintiff describes no contacts that either PG County or Stanton have with Pennsylvania, much less how those contacts are similar to Burlington County's or Juel Cole's.

The amended complaint is therefore dismissed as against PG County and Barry Stanton.

Individual TransCor Defendants. The Individual TransCor Defendants move to dismiss the amended complaint as against them in their individual capacities for lack of personal jurisdiction. The Court will deny the motion.

³ Even if there were contacts between PG County or Stanton and Pennsylvania relating to the Compact, Irons has not established that they would **be** relevant to the conduct about which he complains here. In the amended complaint, the plaintiff alleges that PG County's and Stanton's violations resulted from the absence of a policy to ensure that prisoners with AIDS receive adequate medical care, and from Stanton's not taking action to correct the situation. Nowhere does the plaintiff assert that this conduct, occurring wholly within PG County and relating to a prisoner arrested in PG County, involves the Compact, nor is it logical to conclude that it does.

The Court finds that due process supports exercising specific personal jurisdiction over these individual defendants. According to the alleged facts as the Court must view them,⁴ each of the Individual TransCor Defendants participated in tortious activity in this state, and the plaintiff suffered an injury here relating to that activity.

In the amended complaint, and in a supplemental affidavit, the plaintiff alleges and asserts that the Individual TransCor Defendants transported the plaintiff; that they travelled through Pennsylvania and made stops in Philadelphia, Gratersford, and Camp Hill; that the plaintiff repeatedly informed them that he suffered from AIDS and requested medicine and other medical attention; that each witnessed him suffering from throat pains, cold sweats, dizziness, high fevers, and other visible illnesses; that they denied him any medical assistance and ridiculed him; and that his condition therefore worsened while in Pennsylvania.

These defendants argue that the Court should not exercise jurisdiction over them because their contacts here were only in their corporate capacities. This argument rests on a doctrine commonly known as the "fiduciary shield," which posits that individuals performing acts in a state in their corporate capacity are not subject to the personal jurisdiction of the courts

⁴ For the purposes of this motion, the Individual TransCor Defendants do not dispute the allegations or assertions discussed below. See Def. **Reply** Br. (Docket No. 39), at 1-2.

of that state for those acts. See, e.g., D&S Screen Fund II v. Ferrari, 174 F. Supp. 2d 343, 347 (E.D. Pa. 2001).

The Supreme Court appears to have rejected the proposition that this doctrine is a requirement of federal due process in Calder v. Jones, 465 U.S. 783, 790 (1984), and Keeton v. Hustler, 465 U.S. 770, 781 n.13 (1984).⁵ Calder involved a suit against an out-of-state newspaper reporter and editor. The Supreme Court, in finding jurisdiction proper under due process standards, held that, although

petitioners are correct that their contacts [with the forum state] are not to be judged according to their employer's activities there their status as employees does not somehow shield them from jurisdiction. Each defendant's contacts with the forum state must be assessed individually.

465 U.S. at 790. In Keeton, issued the same day, the Court stated: "We today reject the suggestion that employees who act in their official capacity are somehow shielded from suit in their individual capacity." 465 U.S. at 781 n.13 (citing Calder).

Courts of Appeals have, like this Court, read Calder and Keeton to state that due process does not require the fiduciary shield. See, e.g., Hardin Roller Corp. v. Universal Printing Machinery, Inc., 236 F.3d 839, 842 (7th Cir. 2001); Davis v. Metro Productions, 885 F.2d 515, 521 (9th Cir. 1989). See also Robert C.

⁵ As noted above, because federal due process is the only limit on Pennsylvania's long-arm jurisdiction, the Court need only examine federal due process standards. Time Share, 735 F.2d at 63.

Casad & William B. Richman, Jurisdiction in Civil Actions § 4-3[3], at 490 & n.392 (3d ed. 1998); William Meade Fletcher, Fletcher Cyc Corp § 1296.20, at 655 & n.15 (Perm.ed., 1994). Many courts that have continued to apply the doctrine after Calder and Keeton were decided have done so as a function of state law. See, e.g., Hardin, 236 F.3d at 842; Western Contracting Corp. v. Bechtel Corp., 885 F.2d 1196, 1199 (4th Cir. 1989); Rollins v. Ellwood, 565 N.E.2d 1302, 1315 (Ill. 1990); Casad § 4-3[3].

The Pennsylvania Supreme Court has not addressed the applicability of the fiduciary shield doctrine in this state, nor has the Third Circuit. Ordinarily, this Court would have to predict whether the Pennsylvania Supreme Court would adopt the doctrine.⁶ However, the Court need not do so here, because it finds that the doctrine, even if adopted, would not apply based on the facts of this case.

Courts have recognized exceptions to the fiduciary shield doctrine in situations where: (1) a corporate agent engages in tortious conduct in his corporate capacity within the forum; and/or (2) the corporate agent is charged with violating a

⁶ Several **judges** in this district have applied some version of the doctrine to evaluate jurisdiction under Pennsylvania's long-arm statute. See, e.g., D&S Screen Fund II v. Ferrari, 174 F. Supp. 2d 343, 347 (E.D. Pa. 2001); Lautman v. Loewen Group, No. 99-75, 2000 WL 772818, at *5 (E.D. Pa. June 15, 2000). Others have rejected it based on the Supreme Court's holdings in Calder and Keeton. See General Elec. Capital Corp. v. Alleco, Inc., No. 00-5226, 2001 WL 253850, at *3 (E.D. Pa. Mar. 13, 2001); Forbes v. Eagleson, No. 95-7021, 1997 U.S. Dist. LEXIS 18052, at *20 (E.D. Pa. Nov. 7, 1997).

statutory scheme that provides for personal, as well as corporate, liability. See, e.g., Lautman v. Loewen Group, 2000 WL 772818, at *5; National Precast Crypt Co. v. Dy-Core of Pa., 785 F. Supp. 1186, 1191 (W.D. Pa. 1992); Casad § 4-3, at 492 & n.400.

Both exceptions apply here. The Individual TransCor Defendants were alleged to be in Pennsylvania in their corporate capacity, and to have engaged in tortious activity in Pennsylvania that resulted in harm in Pennsylvania. Additionally, each has been sued under section 1983, which provides specifically for individual liability. See 42 U.S.C. § 1983; Sheldon H. Nahmod, Civil Rights and Civil Liberties Litigation § 1:15 (West 1999).

The Court will deny the Individual TransCor Defendants' motions to dismiss based on personal jurisdiction.

The Individual TransCor Defendants, Barry Stanton, and PG County have also moved for dismissal of the amended complaint for failure to state a claim. Because Stanton's and PG County's dismissal motions based on personal jurisdiction will be granted, the Court need not address their arguments under Rule 12(b)(6).

The Individual TransCor Defendants argue that the claims against them in their official, or corporate, capacities should be dismissed as duplicative of the plaintiff's claim against TransCor. The Court will grant this motion. First, the plaintiff stated in his response to the motion that the plaintiff is not suing the Individual TransCor Defendants in their corporate capacities.

Second, even if he were, claims against individuals in their official capacities are duplicative of claims against governmental units - or, in this case, the private entity charged with the governmental function, TransCor - and therefore dismissal is appropriate. Kentucky v. Graham, 473 U.S. 159, 169 n.14 (1985); Burton v. Philadelphia, 121 F. Supp. 2d 810, 812-13 (E.D. Pa 2000); Martin A. Schwartz & John E. Kirklin, Section 1983 Litigation: Claims and Defenses § 7.1, at 3 (1997).

An appropriate Order follows.

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

JERRY J. IRONS : CIVIL ACTION
v. :
TRANSCOR AMERICA, et al. : NO. 01-4328

ORDER

AND NOW, this ^{8th} day of July, 2002, upon consideration of the Motion by Defendants County of Burlington and Juel Cole to Dismiss Plaintiff's Complaint Pursuant to F.R.C.P. 12(b)(2) for Lack of Personal Jurisdiction (Docket No. 29), and the opposition and reply thereto; the Motion by Barry Stanton to Dismiss the Amended Complaint (Docket No. 26), the Motion by Defendant Prince George's County to Dismiss the Amended Complaint (Docket No. 27), the Motion by Defendant Prince George's County and Barry Stanton to Dismiss the Amended Complaint for Lack of Personal Jurisdiction (Docket No. 28), and the collective opposition thereto; and the Motion by Defendants Rafael Cruz Martinez, Kenneth Blick, Bhawani Poochoon, and Michael DeMoss to Dismiss for Lack of Personal Jurisdiction and Failure to State a Claim (Docket No. 35), and the opposition and reply thereto, IT IS HEREBY ORDERED THAT, for the reasons set forth in a memorandum of today's date:

(1) the Motion by Defendants County of Burlington and Juel Cole (Docket No. 29) is GRANTED;

(2) the Motion by Defendant Prince George's County and Barry Stanton To Dismiss the Amended Complaint for Lack of Personal Jurisdiction (Docket No. 28) is GRANTED;

(3) the Motion by Barry Stanton to Dismiss the Amended Complaint (Docket No. 26), and the Motion by Defendant Prince George's County to Dismiss the Amended Complaint (Docket No. 27), are DENIED as MOOT; and

(4) the Motion by Defendants Rafael Cruz Martinez, Kenneth Blick, Bhawani Poochoon, and Michael DeMoss to Dismiss for Lack of Personal Jurisdiction and Failure to State a Claim (Docket No. 35), is GRANTED IN PART and DENIED IN PART. The motions is granted as to the defendants' failure to state a claim argument, and the amended complaint is thus dismissed against the defendants in their official, corporate capacities. It is denied as to personal jurisdiction against the defendants in their individual capacities.

BY THE COURT:

A handwritten signature in cursive script, appearing to read "Mary A. McLaughlin", is written over a horizontal line.

Mary A. McLaughlin, J.