

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

NATHANIEL MCGHEE and	:	
ERNESTINE WEARING,	:	
	:	
Plaintiffs,	:	CIVIL ACTION
v.	:	
	:	NO. 02-8992
CITY OF PHILADELPHIA, <u>et al.</u>	:	
	:	
Defendants.	:	

MEMORANDUM

Giles, C.J.

October __, 2003

I. Introduction

Nathaniel McGhee and Ernestine Wearing have brought this action against the City of Philadelphia (“the City”), Police Officer Smith, Tom Lewis and the Aquarius Lounge seeking damages based on both federal and state law claims. Before the Court is a motion of the City and Smith, to dismiss Counts I, II, III, and IV of the plaintiffs’ amended complaint, pursuant to Federal Rule of Civil Procedure 12(b)(6), for failure to state a claim for which relief can be granted. Jurisdiction has been asserted under 28 U.S.C. § 1331 since the claims in counts I-IV present questions of federal law over which there is original jurisdiction. For the reasons that follow, the motion is granted.

II. Factual Background

Consistent with the review standards applicable to a motion to dismiss under Fed. R. Civ. P. 12(b)(6), facts follow in the light most favorable to the non-moving party. Only facts relating to the alleged involvement of the City and Smith are discussed here because the other defendants are not parties to this motion.

On December 6, 2001, plaintiffs McGhee and Wearing were patrons in the Aquarius Lounge. (Pls.' Am. Compl. at ¶ 23.) While plaintiffs were inside the bar, Smith entered the bar in hot pursuit of an unidentified individual. (Id.) Smith collided with both McGhee and Wearing, knocking them to the ground or against the wall. (Id.) McGhee and Wearing suffered serious, severe, and permanent physical and emotional injuries. (Id. at ¶ 38.)

On June 17, 2003, plaintiffs filed suit against the City, Smith, Lewis, and the Aquarius Lounge seeking money damages for physical and emotional injuries caused by the collision and for deprivation of their rights, privileges and immunities guaranteed by the United States Constitution. (Id.)

The City and Smith move to dismiss counts I-X on the grounds that plaintiffs cannot state a claim for which relief could be granted. (Defs.' Mot. to Dismiss at 10-11.) On July 16, 2003, plaintiffs responded to the motion to dismiss. (Pls.' Mem. in Supp. of Resp. to Mot. to Dismiss at 1.) Plaintiffs agree that counts V-X should be stricken. (Id. at Point 4.) However, plaintiffs argue that counts I-IV stated valid claims under Fed. R. Civ. P. 12(b)(6). (Id. at Points 1-2.)

III. Discussion

A. Legal Standard for 12(b)(6) Motion to Dismiss

Fed. R. Civ. P. 12(b)(6) requires a court to dismiss a suit if the pleading fails to state a claim upon which relief can be granted. In reviewing a motion to dismiss under Fed. R. Civ. P. 12(b)(6), the court is required to view the alleged facts in the light most favorable to the non-moving party. See United States v. Occidental Chemical Corp., 200 F.3d 143, 147 (3d Cir.1999). Dismissal of a complaint pursuant to Rule 12(b)(6) is proper 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).

C. Claims Against the City

1. Counts I & II: Violation of Substantive Due Process under 42 U.S.C. § 1983

In counts I and II, plaintiffs claim under 42 U.S.C. § 1983 that the City violated their Fourteenth Amendment civil rights. (Pls.' Am. Compl. at ¶ 34-43.) Under that statute, a municipal government cannot be held liable for the constitutional torts of its employees under the doctrine of respondeat superior. See Monell v. Dep't of Soc. Serv., 436 U.S. 658, 691 (1978). Rather, a claim may be stated 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. at 694. Because plaintiffs have not pled any official policy or custom of the City that resulted in the conduct of Smith, the motion to dismiss counts I and II against the City must be granted.

2. Counts III & IV: Liability under the State Created Danger Exception to 42 U.S.C. § 1983

In counts III and IV, plaintiffs claim that the City violated their substantive due process rights based on the state created danger exception to 42 U.S.C. § 1983. (Pls.' Am. Compl. at ¶ 44-61.) In DeShaney v. Winnebago County Dep't of Soc. Serv., 489 U.S. 189, 196 (1989), the Supreme Court stated that the focus of the Due Process Clause of the Fourteenth Amendment is to “protect the people from the State, not to ensure that the State protect them from each other.” The Court explained that the general rule is that governments and government actors do not have an affirmative obligation to protect citizens from violations of life, liberty, or property committed by a private actor. Id. at 196. Despite this general rule, DeShaney did recognize that in certain exceptional situations the State can be held liable for an act of violence committed against an individual by a private actor through either the special relationship exception or the state created danger exception. Id. at 197. These exceptions specifically address rare situations where it is

appropriate to hold a public actor liable for injuries inflicted upon an individual by a private citizen.

Deshaney's exceptions have no place here because the act of violence was committed by Smith, a public actor, and not by a private citizen. The appropriate statutory remedy for intentional injury by police officers is 42 U.S.C. § 1983. Because the state created danger exception does not apply, the motion to dismiss counts III and IV against the City must be granted.

D. Claims Against Smith

1. Counts I & II: Violation of Substantive Due Process under 42 U.S.C. § 1983

Plaintiffs assert § 1983 claims against Smith in counts I and II alleging a violation of Fourteenth Amendment substantive due process rights. (Pls.' Mem. in Supp. of Resp. to Mot. to Dismiss at point 1.) In Fagan v. City of Vineland, the third circuit held that the "shocks the conscience" standard is the appropriate test for substantive due process violations involving high speed police chases. 22 F.3d 1296, 1304 (3d Cir. 1994). In County of Sacramento v. Lewis, the Supreme Court determined that the "shocks the conscience" standard is the appropriate test for a wide range of substantive due process issues. 523 U.S. 833, 847-48 (1998). Following Lewis, the third circuit held that the "shocks the conscience" standard was applicable to all substantive due process cases. 174 F.3d 368, 374-75 (3d Cir. 1999).

Lewis made it clear that what is required to shock the conscience will vary based on the circumstances surrounding the offense. Lewis, 523 U.S. at 848-49. In pressure-filled situations where state actors do not have time to deliberate, courts have consistently required proof that a state actor intended to harm the plaintiff to find that the state actor's behavior shocked the conscience. See Fagan, 22 F.3d at 1307 (refusing to find that police behavior during a high

speed chase that resulted in the deaths of the suspects shocked the conscience because the officers did not have the necessary intent); Miller, 174 F.3d at 375-76 (refusing to find that the behavior of a Philadelphia Department of Human Services worker who removed two children from a parent's custody shocked the conscience because the government worker did not have a purpose to cause harm); Davis v. Township of Hillside, 190 F.3d 167, 171 (3d Cir. 1999) (refusing to find that police behavior in a high speed chase that resulted in the death of a bystander, shocked the conscience because the police did not intend to harm the victim); Stewart v. Trask, 2003 WL 21500018, at *9 (E.D. Pa. June 27, 2003) (refusing to find that police behavior during a high speed chase that injured a passenger in the vehicle under pursuit shocked the conscience because the officers did not intend to harm the passenger); Newell v. Kuryan, 155 F. Supp. 2d 402, 407 (E.D. Pa. 2001) (refusing to find that the behavior of a police officer who inadvertently shot the plaintiff while trying to shoot plaintiff's pit bull shocked the conscience because the officer did not intend to harm the victim); Opoku v. City of Philadelphia, 152 F. Supp. 2d 809, 812 (E.D. Pa. 2001) (refusing to find that the behavior of a police officer who fired his gun through a car window in an unsuccessful attempt to rescue the driver from his burning car shocked the conscience because the officer did not intend to harm the driver).

Plaintiffs have not alleged that Smith intended to injure either the plaintiffs or even the suspect Smith pursued into the bar. The only inference of Smith's intent is found in counts III and IV where plaintiffs claim that Smith acted with deliberate indifference. (Pls.' Am. Compl. at ¶ 49, 58). In Lewis, 523 U.S. at 853, the Supreme Court specifically held that the "shocks the conscience" standard requires more than deliberate indifference in hurried, pressurized situations that dictate prompt action. Lewis controls. Because plaintiffs have not alleged the necessary intent to shock the conscience under the admitted hot pursuit facts, the motion to dismiss counts I

and II against Smith must be granted.

2. Counts III & IV: Liability under the State Created Danger Exception to 42 U.S.C. § 1983

In counts III and IV, plaintiffs claim that Smith is liable under the state created danger exception to 42 U.S.C. §1983. (Pls.' Am. Compl. at ¶ 44-61.) For the reasons already stated, the state created danger exception to 42 U.S.C. §1983 is inapplicable in this case. Accordingly, the motion to dismiss counts III and IV against Smith must be granted.

E. Conclusion

For the foregoing reasons, the motion to dismiss is granted. An appropriate order follows.