

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

LUKE J. DEVERN, et al.	:	
Plaintiffs,	:	CIVIL ACTION
	:	
v.	:	
	:	
GRATERFORD STATE	:	No. 03-6950
CORRECTIONAL INSTITUTION, et al.,	:	
Defendants.	:	

MEMORANDUM AND ORDER

Schiller, J.

May 24, 2004

Plaintiffs Luke and Betty Devern bring this action both in their own right and on behalf of the estate of John Devern, Luke’s father and Betty’s husband, for claims related to the medical treatment John Devern received while incarcerated in the State Correctional Institution at Graterford (“Graterford”). Defendants Graterford and Warden Donald Vaughn now move to dismiss Plaintiffs’ suit for failure to state a claim on which relief could be granted.¹ For the reasons set out below, Defendants’ motion is granted in part and denied in part.

I. BACKGROUND

The following facts are set out in the light most favorable to Plaintiffs. John Devern was incarcerated at Graterford beginning on February 16, 2003. (Compl. ¶ 1 (General Allegations)).²

¹ It appears that the two other named Defendants, Drs. George Bruno and Dennis Iaccarino, have not yet been served with process.

² The Court calls Plaintiffs’ counsel’s attention to Fed. R. Civ. P. 10(b), which requires a complaint to set forth each assertion in a numbered paragraph that can be “referred to by number” thereafter. *See* 5 CHARLES A. WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE & PROCEDURE § 1323 (2d ed. 1990) (noting that purpose of Rule 10(b) “is to provide an easy mode

On April 14, he developed abdominal pain and constipation. (*Id.* ¶ 2.) On April 15, he informed prison personnel of his worsening pain, as well as vomiting, constipation, and lack of appetite. (*Id.* ¶ 3.) The prison staff performed a blood test which showed abnormalities (*id.* ¶ 5), but provided Devern with no treatment other than an over-the-counter acid blocker (*id.* ¶¶ 4-5). Despite his worsening condition, the prison staff “effectively ignored” his complaints for three days. (*Id.* ¶ 6.) Finally, on April 18, he was taken to a hospital, where doctors determined that he required surgery due to a bowel obstruction and related conditions. (*Id.* ¶¶ 6-8.) This surgery was unsuccessful, and Devern died of sepsis on April 19. (*Id.* ¶ 9.)

Plaintiffs assert a four-count Complaint. Count I alleges claims pursuant to the Eighth Amendment³ and 42 U.S.C. § 1983, and Counts II through IV allege state-law claims for negligence, survivorship, and wrongful death, respectively.

II. STANDARD OF REVIEW

When deciding a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the court may look only to the facts alleged in the complaint and its attachments. *See Jordan v. Fox,*

of identification for referring to a particular paragraph” in pleadings).

³ Plaintiffs’ Complaint states that Defendants violated John Devern’s “Fifth, Eighth, Ninth, and Fourteenth Amendment rights,” but it is clear from both the face of the Complaint and Plaintiffs’ response to the motion to dismiss that Count I is, at heart, an Eighth and Fourteenth Amendment claim. To the extent that Plaintiffs assert a Fifth Amendment due process claim (Compl. ¶ 7 (Count I)), this claim is frivolous, for the Fifth Amendment Due Process Clause applies only to the federal government. *See San Francisco Arts & Athletics, Inc. v. U.S. Olympic Comm.*, 483 U.S. 522, 543 n.21 (1987) (“The Fourteenth Amendment applies to actions by a State. . . . The Fifth Amendment, however, [applies] to the Federal Government . . .”). As to the Ninth Amendment, it is unclear to the Court whether the Complaint actually alleges a violation thereof, but because neither party has yet addressed this issue, Plaintiffs’ Ninth Amendment claim, if any, is unaffected by the instant Opinion.

Rothschild, O'Brien & Frankel, 20 F.3d 1250, 1261 (3d Cir. 1994). The court must accept as true all of the factual allegations pleaded in the complaint and draw all reasonable inferences in favor of the non-moving party. *See Bd. of Trs. of Bricklayers & Allied Craftsmen Local 6 of N.J. Welfare Fund v. Wettlin Assocs., Inc.*, 237 F.3d 270, 272 (3d Cir. 2001). A motion to dismiss will only be granted if it is clear that relief cannot be granted to the plaintiff under any set of facts that could be proven consistent with the complaint's allegations. *See Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984) (citing *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)).

III. DISCUSSION

Defendants move to dismiss all four Counts of the Complaint. Plaintiffs do not contest the dismissal of Counts II, III, and IV, and they concede that dismissal of Count I is appropriate as to Defendant Vaughn in his official capacity and as to Graterford.⁴ Thus, the only remaining claim at issue is the § 1983 claim against Vaughn in his individual capacity.

In order to make out a case of liability pursuant to § 1983, Plaintiffs must demonstrate that Devern's constitutional rights were violated by persons acting under color of state law. 42 U.S.C. § 1983. As Defendants do not contest that the state action requirement is satisfied, the question at issue is whether Plaintiffs have properly alleged a violation of Devern's Eighth Amendment right

⁴ Plaintiffs' response to the motion to dismiss explicitly concedes that Count I must be dismissed as to Graterford on Eleventh Amendment grounds (Pls.' Mem. in Opp. to Mot. to Dismiss at 1), and tacitly concedes the same point as to Vaughn in his official capacity (*see id.* at 2 (arguing only that Vaughn may be held "personally liable" under § 1983)). The response, however, makes no statement of any kind—legal, factual, or otherwise—regarding Counts II through IV. Thus, to the extent that Plaintiff has not formally conceded the dismissal of these Counts, the Court grants the motion to dismiss Counts II, III, and IV as uncontested pursuant to Local Rule 7.1(c).

to adequate medical care while incarcerated. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976) (holding that plaintiff’s allegation that prison doctors should have performed certain diagnostic tests instead of tests actually performed did not state claim under § 1983). “In order to establish a violation of [a prisoner’s] constitutional right to adequate medical care, evidence must show (i) a serious medical need, and (ii) acts or omissions by prison officials that indicate deliberate indifference to that need.” *Natale v. Camden County Corr. Facility*, 318 F.3d 575, 582 (3d Cir. 2003). The inquiry into whether the prisoner had a serious medical need is objective; the deliberate indifference inquiry is subjective. *Montgomery v. Pinchak*, 294 F.3d 492, 499 (3d Cir. 2002). A serious medical need is one that “has been diagnosed by a physician as requiring treatment or . . . is so obvious that a lay person would easily recognize the necessity for a doctor’s attention.” *Monmouth County Corr. Inst. Inmates v. Lanzaro*, 834 F.2d 326, 347 (3d Cir. 1987) (collecting cases). In order to make out a case of deliberate indifference, the plaintiff is required to show that the defendant “kn[ew] of and disregard[ed] an excessive risk to inmate health or safety.” *Natale* 318 F.3d at 582 (citing *Farmer v. Brennan*, 511 U.S. 825, 837 (1994)). While neither “an inadvertent failure to provide adequate medical care” nor “negligen[ce] in diagnosing or treating a medical condition” satisfy the deliberate indifference standard, *Estelle*, 429 U.S. at 105-06, the Third Circuit has found deliberate indifference “in situations where ‘necessary medical treatment is delayed for non-medical reasons.’” *Natale* 318 F.3d at 582 (quoting *Monmouth County*, 834 F.2d at 347). Furthermore, in order to state a cause of action against Vaughn in his individual capacity, Plaintiffs must allege that Vaughn either directed the constitutional violation to occur or knew that it was occurring and acquiesced thereto. *Baker v. Monroe Township*, 50 F.3d 1186, 1200 (3d Cir. 1995) (setting out Third Circuit’s “well established standard for individual liability” under § 1983).

Plaintiffs' § 1983 claim alleges that Vaughn violated the Eighth Amendment prohibition on cruel and unusual punishment by ignoring John Devern's patent and dire need for medical treatment. Accepting Plaintiffs' allegations as true and drawing all factual inferences therefrom in their favor, the Complaint properly alleges an Eighth Amendment violation. Specifically, Plaintiffs allege that Devern repeatedly informed prison officials of his "severe" and "excruciating" abdominal pain, vomiting, and lack of bowel movements, yet he was refused any treatment beyond over-the-counter antacids. (Compl. ¶¶ 3-4, 6.) From these allegations, a reasonable factfinder could infer both an objectively serious medical condition and deliberate indifference to that condition on the part of prison officials, thus meeting the Third Circuit's standard for pleading Eighth Amendment medical violations. *See, e.g., Natale*, 318 F.3d at 582-83 (holding that standard was satisfied where diabetic prisoner informed nurse of his need for insulin but was not given it for 21 hours); *Montgomery*, 294 F.3d at 500-01 (reversing magistrate judge's determination that HIV-positive prisoner's allegation that prison staff failed to give him proper tests and treatment was without merit). In addition, Plaintiff has alleged that Defendants acted "with knowledge of [John Devern's] medical needs," which, if true and construed favorably, could be interpreted to mean that Vaughn acquiesced to the lack of treatment which constitutes the alleged underlying violation, thus subjecting him to individual liability. In total, therefore, the Complaint states a claim upon which relief might be granted against Vaughn in his individual capacity,⁵ and the motion to dismiss the § 1983 claim is therefore denied in this respect.

⁵ The Court cautions Plaintiffs that these vague allegations will not be sufficient to defeat a motion for summary judgment.

IV. CONCLUSION

For the foregoing reasons, all claims are dismissed as to Defendant Graterford, all claims are dismissed as to Defendant Vaughn in his official capacity, and all claims except Count I are dismissed as to Defendant Vaughn in his individual capacity. An appropriate Order follows.

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Defendants.	:	

ORDER

AND NOW, this 24th day of **May, 2004**, upon consideration of Defendant State Correctional Institution at Graterford and Defendant Donald Vaughn’s Motion to Dismiss (Document No. 4) and Plaintiffs’ response thereto, it is hereby **ORDERED** that:

1. Defendants’ Motion to Dismiss is **GRANTED in part** and **DENIED in part**, as follows:
 - a. Counts II, III, and IV of the Complaint are **DISMISSED** with regard to Defendants Graterford and Vaughn.
 - b. Count I of the Complaint is **DISMISSED** as to Defendant Graterford and as to Defendant Vaughn in his official capacity.
 - c. In all other respects, Defendants’ Motion is **DENIED**.

BY THE COURT:

Berle M. Schiller, J.