

**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.

July 8, 2004

Plaintiffs Luke and Betty Devern bring this action on behalf of the estate of John Devern for claims related to the medical treatment John Devern received while incarcerated in the State Correctional Institution at Graterford (“Graterford”). Plaintiffs assert claims pursuant to 42 U.S.C. § 1983 and state law claims for, inter alia, negligence. Presently before the Court is the motion of Defendants Dennis Iaccarino, a physician at Graterford, and George Bruno, who Plaintiffs allege was the “chief of medical staff” at the prison, to dismiss Plaintiffs’ § 1983 claim against both Defendants and to dismiss all claims against Defendant Bruno. For the reasons set out below, Defendants’ motion is denied.

The relevant factual and legal background of this case was set out in the Court’s Memorandum and Order of May 24, 2004, which, in relevant part, denied Graterford Warden Donald Vaughn’s motion to dismiss Plaintiffs’ § 1983 claims. *Devern v. Graterford State Corr. Inst.*, Civ. No. 03-6950, 2004 WL 1166574, 2004 U.S. Dist. LEXIS 9377 (E.D. Pa. May 24, 2004) (hereinafter “May 24 Order”). Because Plaintiffs assert the same allegations against Defendants Bruno and Iaccarino as they raised against Defendant Vaughn (Compl. at Count I), the motion to dismiss

Plaintiffs' § 1983 claims pursuant to Rule 12(b)(6) is denied for the reasons set forth in the May 24 Order.

In addition to challenging the sufficiency of the Complaint in general, Defendant Bruno argues specifically that, as a non-physician, he cannot be held liable for inadequate medical care under the Eighth Amendment. Regarding such claims, the Third Circuit has held that a non-physician supervisor cannot be held liable for an inmate's inadequate medical care where the inmate was being treated by a prison physician. *See Durmer v. O'Carroll*, 991 F.2d 64 (3d Cir. 1993). This holding, however, was recently limited by *Sprull v. Gillis*, --- F.3d ---, 2004 WL 1366974 (3d Cir. June 18, 2004), in which the Third Circuit held that a non-physician supervisor may be liable under § 1983 if he had knowledge or reason to know of the medical mistreatment. *Id.* at *14. As discussed in the May 24 Order, the Complaint alleges that Plaintiff informed Defendants of his urgent need for medical care but was ignored. (Compl. at Count I.) Thus, the Complaint, when assumed to be true and construed in Plaintiffs' favor, alleges that Defendant Bruno had actual knowledge of Devern's mistreatment. Accordingly, it would be inappropriate to dismiss Plaintiffs' § 1983 claim against Bruno at this stage of the proceedings.

Finally, Defendant Bruno argues that he cannot be held liable for medical malpractice because he is not a physician. The Complaint, however, does not appear to allege medical malpractice on the part of Bruno, but rather "general negligence." (Compl. at Count II.) Plaintiffs concede as much in their response to the motion to dismiss. (Pls.' Resp. to Mot. to Dismiss, Part III.B¹ (identifying relevant issue as "[w]hether a cause of action for negligence has been or can be

¹ Continuing a pattern the Court noted in the May 24 Order, Plaintiffs' counsel declines to paginate his filings or to use any other method that would facilitate the Court's or opposing counsel's attempts to cite to these documents.

asserted against defendant Bruno *absent medical malpractice*”) (emphasis added).) Thus, the Court denies Defendant Bruno’s motion. An appropriate Order follows.

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Defendants.	:	

ORDER

AND NOW, this 8th day of **July, 2004**, upon consideration of Defendants Dennis Iaccarino and George Bruno's Motion to Dismiss (Document No. 10) and Plaintiffs' response thereto, it is hereby **ORDERED** that:

Defendants' Motion to Dismiss is **DENIED**.

BY THE COURT:

Berle M. Schiller, J.