

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

<b>DAMEKA BEY, <u>et al.</u></b>	<b>:</b>	<b>CIVIL ACTION</b>
	<b>:</b>	
<b>v.</b>	<b>:</b>	<b>NO. 05-CV-0686</b>
	<b>:</b>	
<b>CITY OF PHILADELPHIA, <u>et al.</u></b>	<b>:</b>	

**MEMORANDUM AND ORDER**

**Kauffman, J.**

**August 1, 2006**

Plaintiffs Dameka Bey, Acquano Bey, Aliyah Muhammad, and Ameerah Muhammad (“Plaintiffs”) bring this action for violations of 42 U.S.C. § 1983 against the City of Philadelphia and various employees of the Philadelphia Department of Human Services (“DHS”) and the Philadelphia Police Department. Presently before the Court is Defendant Alba Martinez’s (“Martinez”) Motion for Judgment on the Pleadings.<sup>1</sup> For the reasons that follow, the Motion will be granted.

**I. BACKGROUND**

Accepting as true the allegations of the Complaint, as we must at this stage of the proceedings, the pertinent facts are as follows: On November 8, 2002, Plaintiff Dameka Bey was granted primary physical custody of her two children, Plaintiffs Aliyah and Ameerah Muhammad; the children’s father, Jeffrey Jews, was granted visitation rights. Amended Complaint ¶¶ 14-15. On July 27, 2003, the day after she delivered her daughters to Mr. Jews for a weekend visit, Ms. Bey was notified that he had contacted the police and reported that Aliyah

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<sup>1</sup> At the time of the alleged incident, Martinez was the Commissioner of DHS. She has been sued both in her official and in her individual capacities.

had been abused by her stepfather, Plaintiff Acquano Bey. Id. at ¶¶ 18-19. Without seeking modification of the custody order, DHS informed Ms. Bey that in light of the allegations against her, the children would remain with Mr. Jews pending an investigation. Id. at ¶ 20. The DHS social workers assigned to the case refused to allow Ms. Bey to see her daughters, which prompted her to retain counsel. Id. at ¶ 34.

On or about August 21, 2003, upon learning that no court order had been issued authorizing DHS to remove her children, Ms. Bey, accompanied by a police officer, went to Mr. Jews' home and retrieved her daughters. Id. at ¶¶ 35-36. That evening, after obtaining an authorization letter from a DHS social worker, Mr. Jews, accompanied by two police officers, went to Ms. Bey's home to recover his daughters. Id. at ¶ 37. When Ms. Bey objected and showed the police officers the custody order, the officers stated that the DHS letter overrode the custody order. Id. at ¶ 38. The allegations of abuse against the Beys were later dismissed at a court hearing. Notwithstanding the dismissal, DHS advised the Department of Public Welfare that the Beys had abused Aliyah. The Beys appealed the report, which was ultimately expunged. Id. at ¶¶ 41, 44-46.

Plaintiffs allege that removal of the children from the custody of Ms. Bey without a hearing violated their constitutional rights. Now before the Court is a Motion for Judgment on the Pleadings brought by Martinez seeking dismissal of the claims brought against her both in her official and in her individual capacities.

## **II. LEGAL STANDARD**

Motions for judgment on the pleadings brought pursuant to Federal Rule of Civil Procedure 12(c) are reviewed under the same standard as motions to dismiss pursuant to Rule

12(b)(6). See Spruill v. Gillis, 372 F.3d 218, 223 (3d Cir. 2004). A district court may not grant a motion for judgment on the pleadings ““unless the movant clearly establishes that no material issue of fact remains to be resolved and that he is entitled to judgment as a matter of law.””

Kruzits v. Okuma Machine Tool, Inc., 40 F.3d 52, 54 (3d. Cir. 1994) (quoting Society Hill Civic Ass’n v. Harris, 632 F.2d 1045, 1054 (3d. Cir. 1980)).

### **III. DISCUSSION**

Martinez is charged with § 1983 violations stemming from her supervisory role at DHS during the time of the incident.<sup>2</sup> In Count II of the Complaint, Plaintiffs allege that, as Commissioner of DHS, Martinez “knew or should have known that her employees, agents or servants were not trained or supervised in the constitutional rights of the citizens her agency serves.” Amended Complaint ¶ 58. Plaintiffs further allege that Martinez “knew or should have known that the constitutional rights of Dameka Bey were being violated by her employees and acquiesced in their conduct.” Id. at ¶ 59. Plaintiffs do not allege that Martinez engaged in any affirmative wrongful acts. Rather, they assert that her liability arises from her role as policymaker and supervisor at DHS at the time Aliyah and Ameerah were removed from the Beys’ home. Plaintiffs are suing Martinez both in her official and in her individual capacities.

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<sup>2</sup> 42 U.S.C. § 1983 provides in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....

Id. at ¶ 12.

A. Official Capacity

Martinez argues that any claims brought against her in her *official* capacity should be treated as claims against the City of Philadelphia, a defendant in this action. The Court agrees that a claim against Martinez in her official capacity as former Commissioner is properly equated with the actions of the City of Philadelphia. Since the City is a named defendant in this action, no reason exists for maintaining a separate action against Martinez in her official capacity. See Brandon v. Holt, 469 U.S. 464, 472 (1985) (suit against the director in his official capacity was in effect suit against the city); Stana v. School Dist. of City of Pittsburgh, 775 F.2d 122, 130 (3d Cir. 1985) (“actions of an official acting in his or her official capacity are to be equated with the actions of the city itself”). Accordingly, Plaintiffs’ claim against Martinez in her official capacity will be dismissed.

B. Individual Capacity

Martinez contends that the Amended Complaint is devoid of any allegation that she played any role in the alleged violations, and therefore fails to state a claim against her individually. Motion for Judgment on the Pleadings, p. 2. While liability arising from § 1983 violations cannot be imposed under the doctrine of *respondeat superior* (see Monell v. Dept. of Social Serv. Of City of N.Y., 436 U.S. 658, 691 (1978)), individuals who assume a supervisory role and serve as policymakers may be liable under § 1983 if it is shown that they acted with “deliberate indifference” to constitutional rights, and established and “recklessly maintained” a “policy, practice or custom which directly caused the constitutional harm.” Stoneking v. Bradford Area School Dist., 882 F.2d 720, 725 (3d Cir. 1989); A.M. v. Luzerne County Juvenile Detention

Ctr., 372 F.3d 572, 586 (3d Cir. 2004). Relatedly, a supervisor's failure to train or supervise subordinates is actionable pursuant to § 1983 if such failure evidences "deliberate indifference" on the part of the supervisor. See City of Canton v. Harris, 489 U.S. 378, 379 (1989).

In C.H. ex rel. Z.H. v. Oliva, 226 F.3d 198, 202 (3d Cir. 2000), the Third Circuit articulated a test for supervisory liability under § 1983: "A plaintiff asserting a failure to supervise claim must not only identify a specific supervisory practice that the defendant failed to employ, he or she must also allege both (1) contemporaneous knowledge of the offending incident or knowledge of a prior pattern of similar incidents, and (2) circumstances under which the supervisor's inaction could be found to have communicated a message of approval. See also Chinchello v. Fenton, 805 F.2d 126, 132 (3d Cir. 1986); Hays v. Jefferson County, Ky., 668 F.2d 869, 872 (6th Cir. 1982) ("the law is clear that liability of supervisory personnel must be based on more than merely the right to control employees. Without more, such a theory would allow liability on a respondeat superior basis -- a basis expressly rejected by the Supreme Court").

Here, Plaintiffs' claim consists of allegations that (1) Martinez was an "authorized policymaker" for the City of Philadelphia, (2) as Commissioner of DHS, she "knows, knew or should have known that her employees, agents or servants were not trained or supervised in the constitutional rights of the citizens her agency serves" and (3) she "knew or should have known that the constitutional rights of Dameka Bey were being violated by her employees and acquiesced in their conduct." Amended Complaint ¶¶ 5, 58-59. Plaintiffs do not identify a specific supervisory practice that Martinez failed to employ in connection with the alleged incident. Nor do they refer to a pattern of prior constitutional violations that would have put

Martinez on notice of a risk of future violations. See Sample v. Diecks, 885 F.2d 1099, 1118 (3d Cir. 1989) (“normally, an unreasonable risk in a supervisory liability case will be shown by evidence that such harm has in fact occurred on numerous occasions.”). Furthermore, Plaintiffs fail to allege any conduct on Martinez’s part that would have given her subordinates the impression that she approved of the alleged violations. Chinchello, 805 F.2d at 132. Accordingly, Plaintiffs’ allegations do not meet the pleading standard for supervisory liability, and the claim against Martinez in her individual capacity will be dismissed.

#### **IV. CONCLUSION**

For the foregoing reasons, Martinez’s Motion for Judgment on the Pleadings will be granted. An appropriate Order follows.

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**ORDER**

**AND NOW**, this 1<sup>st</sup> day of August, 2006, upon consideration of Defendant Alba E. Martinez’s Motion for Judgment on the Pleadings (docket no. 24) and all responses thereto, and for the reasons stated in the accompanying Memorandum, it is **ORDERED** that the Motion is **GRANTED**. Accordingly, Plaintiffs’ claims against Martinez are **DISMISSED** without prejudice.

**BY THE COURT:**

/s/ Bruce W. Kauffman  
**BRUCE W. KAUFFMAN, J.**