

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

OMAR L. ANDREWS	:	CIVIL ACTION
	:	
v.	:	NO. 05-CV-4351
	:	
BERKS COUNTY PRISON, <u>et al.</u>	:	

MEMORANDUM AND ORDER

Kauffman, J.

August 21, 2006

Plaintiff Omar L. Andrews (“Plaintiff”) brings this pro se action for violations of 42 U.S.C. § 1983 (“§ 1983”) against Defendants Berks County Prison (“BCP”) and PrimeCare Medical, Inc. (“PrimeCare”). Both Defendants have filed motions to dismiss the Complaint. For the reasons that follow Defendants’ motions 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. While incarcerated at BCP, Plaintiff sought treatment for a rash-like infection at the prison clinic operated by PrimeCare. Complaint ¶ 1-2. He was examined by one of the clinic employees, who prescribed an antibiotic cream and an anti-itch cream. Id. Two weeks later, Plaintiff learned that other inmates experienced a similar condition due to a Staph infection. Plaintiff alleges that he was left with scars on his left arm and buttocks as a result of the infection. Id.

Plaintiff further complains about a number of conditions of his confinement which, he argues, amount to violations of his civil rights: (1) the bedding in his cell was never disinfected; (2) the prison was unresponsive to his requests for a special diet that would not trigger his food

allergies, as well as his repeated requests for a new uniform; (3) he was forced to eat all three meals in his cell; (4) for six days in December 2004, the prison temperature was too low. Id. at ¶¶ 3-6.

II. LEGAL STANDARD

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. Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1250, 1261 (3d Cir. 1994). The Court must accept as true all well-pleaded allegations of the complaint and view them in the light most favorable to the plaintiff. Angelastro v. Prudential-Bache Sec., Inc., 764 F.2d 939, 944 (3d Cir. 1985). A Rule 12(b)(6) motion will be granted only when it is certain that no relief could be granted under any set of facts that could be proved by the plaintiff. Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988).

III. ANALYSIS

Section 1983 does not in itself create substantive rights. Gonzalez v. Young, 560 F.2d 160, 168 (3d Cir. 1977). “It merely provides a federal cause of action for the violation of federal rights that are independently established either in the Federal Constitution or in federal statutory law.” Nevada v. Hicks, 533 U.S. 353, 404 (2001).¹ Plaintiff does not state the statutory basis for

¹ 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....

his claim. Rather, he asks the Court to “find the defendants guilty of Discrimination of Civil Rights” and award him \$350,000 in damages.

A. Claims against BCP

Plaintiff complains about a series of conditions of his confinement, including the nature and quality of medical care, the type of food provided by the prison cafeteria, the temperature in the prison, the unsanitary condition of his cell, and the prison’s unresponsiveness to his request for a new uniform. Complaint ¶¶ 3-6.

Plaintiff’s Complaint does not name officials of BCP, but the prison as an entity. It is well-established that a prison does not constitute a “person” and may not be sued for civil rights violations under § 1983. Muhammad v. Hilbert, 906 F. Supp. 267, 269 (E.D. Pa. 1995); Gonzalez v. Lancaster County Prison, 1995 WL 46697 at *1 (E.D. Pa. Feb. 1, 1995).

Accordingly, the claims against BCP will be dismissed.

B. Claim against PrimeCare

In order to state a cognizable § 1983 claim for deprivation of medical care, a prisoner must “allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs.” Estelle v. Gamble, 429 U.S. 97, 106 (1976). A prisoner’s complaint that the treating physician misdiagnosed his medical condition does not state a viable constitutional claim. Jackson v. Baddick, 2004 WL 1737635 at *13 (E.D. Pa. Aug. 2, 2004). Similarly, allegations of negligence, or medical malpractice, do not give rise to a constitutional violation. Anderson v. Snyder, 2006 WL 1876655 at *1 (3d Cir. July 7, 2006).

The basis for Plaintiff’s § 1983 claim for deprivation of medical care is that: (1) one of PrimeCare’s employees treated Plaintiff’s skin infection with an antibiotic cream and anti-itch

cream, (2) shortly thereafter he learned that he had a Staph infection that some of the other inmates had also acquired, and (3) his left arm and buttocks were scarred by the infection. Complaint ¶ 2.² Plaintiff has failed to allege conduct evidencing “deliberate indifference” to his medical needs. Accordingly, his § 1983 claim for deprivation of medical care will be dismissed.

IV. CONCLUSION

For the foregoing reasons, Plaintiff’s § 1983 claims against BCP and PrimeCare will be dismissed. An appropriate Order follows.

² Plaintiff’s allegations of inadequate medical care are the sole basis of his claim against PrimeCare.

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

OMAR L. ANDREWS	:	CIVIL ACTION
	:	
v.	:	NO. 05-CV-4351
	:	
BERKS COUNTY PRISON, <u>et al.</u>	:	

MEMORANDUM AND ORDER

AND NOW, this 21st day of August, 2006, upon consideration of the motions to dismiss of Defendants PrimeCare Medical, Inc. (docket no. 6), and Berks County Prison (docket no. 11) and all responses thereto, and for the reasons stated in the accompanying Memorandum, it is **ORDERED** that the motions are **GRANTED**. It is **FURTHER ORDERED** that Plaintiff's Complaint is dismissed, and the Clerk of the Court shall mark this case **CLOSED**.

BY THE COURT:

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