

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

<p style="text-align:center">DIANE DEBRO, Plaintiff,</p> <p style="text-align:center">v.</p> <p style="text-align:center">LAWRENCE ROTH, et al., Defendants.</p>	<p style="text-align:center">CIVIL ACTION</p> <p style="text-align:center">No. 96-5403</p>
--	--

O R D E R   A N D   M E M O R A N D U M

AND NOW, this 13th day of June, 1997, upon consideration of defendants' Lawrence Roth, Anthony Bucci, Dennis Molyneaux, Julio Algarin, Montgomery County and Montgomery County Correctional Facility Motion for Summary Judgment, and defendants' Grondwaldt, Gessner, and EMSA's Motion for Summary Judgment, and the response thereto, it is hereby **ORDERED** that the motion is **GRANTED** as to plaintiff's § 1983 and § 1985 claims. The court in its discretion dismisses plaintiff's state law claims for plaintiff to pursue in state court.

I. Background

On August 3, 1994, plaintiff Diane Debro, purchased and used three bags of heroin. Def. Montgomery County Mot. Ex. A. She went to meet an acquaintance who had asked her to obtain some heroin for him, and when she did so, the Pennsylvania State Police arrested her on drug charges. Id. The arrest occurred approximately an hour and a half after Debro had injected two bags of heroin. Id. After an interrogation, Debro was taken to the Montgomery County Correctional Facility ("MCCF") shortly after 12:00 a.m. on August 4. Id. Ex. B. Debro was taken to a

preliminary arraignment; in the course of the arraignment she complained about her need for medical treatment. Id. Ex. A. In the course of an initial medical screening at MCCF, Debro reported that she was a heroin addict, and that she had lower back problems. Id. Exs., A, C. The medical screening was performed by a prison employee. Id. Ex. D. The medical staff was contacted after the screening pursuant to a procedure used by the prison. Id. Ex. D. At 1:00 p.m. on August 4, a registered nurse, Elizabeth Knighton, evaluated Debro; at that time Debro stated that she was in heroin withdrawal and attributed her back problems to prior nerve damage. Id. Ex. E. Another nurse, Marianne Laughran, evaluated Debro at 3:30 p.m., after Debro had been assigned to a housing pod at MCCF. Id. Ex. D. Laughran learned that Debro was experiencing heroin withdrawal, and she placed Debro on a standard opiate withdrawal therapy on the orders of defendant Dr. Victoria Gessner. Id. Ex. G.

At MCCF, an inmate undergoing opiate withdrawal is treated with the drugs Vistaril, Donnatal, and Maalox four times per day. Id. Ex. H. Debro received these medications beginning on August 4, and continuing through August 6, according to set guidelines. Id. Ex. I. Throughout this period of time, Debro complained about chills, vomiting, and diarrhea. Id. Ex. A.

On August 6, Debro again lost control of her bowels and vomited; she was escorted to the medical area and got into a bathtub to take a shower. Id. Ex. A. She then had a seizure and went into cardiac arrest; she was taken to Suburban General Hospital, where she remained until August 12. Id. Ex. A. Debro

filed this action, which includes claims under § 1983 and § 1985, as well as pendent state law claims. The defendants Gessner, Grondwaldt, and EMSA (the "EMSA defendants") and Roth, Bucci, Molyneaux, Algarin, Montgomery County and MCCF (the "Montgomery County defendants") have filed motions for summary judgment.

## II. Standard

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party has the burden of demonstrating the absence of any genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

When ruling on a summary judgment motion, the court must construe the evidence and any reasonable inferences drawn therefrom in favor of the non-moving party. Tiggs Corp. v. Dow Corning Corp., 822 F.2d 358, 361 (3d Cir. 1987); Baker v. Lukens Steel Corp., 793 F.2d 509, 511 (3d Cir. 1986). In other words, if the evidence presented by the parties conflicts, the court must accept as true the allegations of the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986).

When the movant does not have the burden of proof on the underlying claim or claims, that movant has no obligation to produce evidence negating its opponent's case, but merely has to point to the lack of any evidence supporting the non-movant's

claim. When the party moving for summary judgment is the party with the burden of proof at trial, and the motion fails to establish the absence of a genuine factual issue, the district court should deny summary judgment even if no opposing evidentiary matter is presented. National State Bank v. Federal Reserve Bank, 979 F.2d 1579, 1582 (3d Cir. 1992).

### III. Discussion

#### 1. Section 1983 claims

##### a. Qualified Immunity

The individual Montgomery County defendants assert a defense of qualified immunity from suit. See Harlow v. Fitzgerald, 457 U.S. 800, 817-19 (1982). Qualified immunity is determined by an objective standard: an official must not violate clearly established rights of which a reasonable person would have known. Id. at 818. The clearly established "right" must be a federal constitutional or statutory right; violations of clearly established state law do not suffice to defeat an official's qualified immunity under Harlow. See Davis v. Scherer, 468 U.S. 183, 193-96 (1984).

As a result, this court must look to the defendants' actions to determine whether a reasonable official acting as the individual defendants did would know that his actions violated a clearly established right. Their actions need not violate a specific law, but "in light of pre-existing law, the unlawfulness must be apparent." Anderson v. Creighton, 483 U.S. 635, 640 (1987) (citations omitted); see also Grant v. City of Pittsburgh, 98 F.3d

116 (1996). As a result, although a defense of qualified immunity is generally a question of law, not fact, for the court to resolve, the question at hand may be unavoidably fact-specific. See Anderson, 483 U.S. at 641; Hunter v. Bryant, 502 U.S. 224, 227-28 (1991) (per curiam).

Eighth Amendment jurisprudence clearly dictates that prison officials cannot be deliberately indifferent to the serious medical needs of inmates. Farmer v. Brennan, 114 S. Ct. 1970, cite (1994); Estelle v. Gamble, 429 U.S. 97, 105-06 (1976). Claims by pretrial detainees such as Debro are covered by the Fourteenth Amendment's due process clause, but the Eighth Amendment "deliberate indifference" standard also applies to pretrial detainees who challenge the conditions of their confinement. Boring v. Kozakiewicz, 833 F.2d 468 (3d Cir. 1987).

In order for the plaintiff to prevail on her claims, Debro must show that the defendants knew that the plaintiff faced a substantial risk of serious harm and disregarded that risk by failing to take reasonable measures to abate it. Farmer, 114 S. Ct. at 1984. Under Farmer, there is both an objective and subjective standard which must be met by the plaintiff to prove a violation. First, the alleged deprivation must be objectively "sufficiently serious." 114 S. Ct. at 1977. Second, a prison official must subjectively have "a sufficiently culpable state of mind." Id. The Farmer court also defined the requisite state of mind required for a finding of "deliberate indifference" for an Eighth Amendment claim as being one of subjective recklessness,

which may only be found when a person has disregarded a risk of harm of which he was aware. Farmer, 114 S. Ct. at 1973. Debro must also demonstrate a causal connection between the defendants' conduct and the constitutional deprivation of treatment she alleges. See Best v. Essex County, New Jersey Hall of Records, 986 F.2d 54, 56 (3d Cir. 1993)

A medical need is considered serious if the lack of treatment leads to substantial suffering, injury, or death. See Colburn v. Upper Darby Township, 946 F.2d 1017 (3d Cir. 1991). Debro experienced a grand mal seizure and cardiac arrest, and the events of August 6, 1994, have resulted in ongoing effects for the plaintiff, such as migraines, pain, and weakness. See Montgomery County Defs. Mot. Ex. A. Accordingly, Debro's medical needs were sufficiently serious. However, she cannot demonstrate that the individual Montgomery County defendants knew of her individual medical needs and disregarded them, as she admitted in her deposition and as the individual defendants' affidavits state. See id. Exs. A, J. Nor can she demonstrate any causal connection between the deprivation she alleges and the actions of these individual defendants. Id. Ex. A. As a result, defendants Roth, Bucci, Molyneaux, and Algarin are immune from this suit.

b. Liability of defendants Gessner and Grondwaldt

Plaintiff has alleged that defendants Gessner and Grondwaldt denied her the medical care she repeatedly requested. See EMSA Defs. Mot. Ex. A. The standard for evaluating individual defendants Gessner and Grondwaldt's behavior is also a

determination of whether these individual defendants were deliberately indifferent to plaintiff's serious medical needs. See Farmer, 114 S. Ct. at 1980. There is no indication in the record that defendants Gessner and Grondwaldt knew of and disregarded an excessive risk to her health. Id. at 1979; EMSA Defs. Mot Ex. B. At most, Debro has stated a claim for medical malpractice, and allegations that merely state a claim for medical malpractice will not support a § 1983 claim for deliberate indifference. See White v. Napoleon, 897 F.2d 103, 108 (3d Cir. 1990). Summary judgment is entered against Debro on her claims against defendants Grondwaldt and Gessner.

c. Municipal Liability

Debro's claims of municipal liability rest on the theories set forth in Monell v. Department of Social Services, 436 U.S. 658, 690-91, 694 (1978) and City of Canton v. Harris, 489 U.S. 378, 380, 390-92 (1989). In order to assert a claim of municipal liability under § 1983, the plaintiff must assert that the municipal defendants followed some unconstitutional policy or custom or failed to train its employees; no § 1983 liability exists on a respondeat superior theory. Harris, 489 U.S. at 392; Monell, 436 U.S. at 690-91. In the words of this Circuit, "[l]iability will be imposed when the policy or custom itself violated the constitution or when the policy or custom, while not unconstitutional itself, is the moving force behind the constitutional tort of one [of] its employees." Colburn v. Upper Darby Township, 946 F.2d 1017, 1027 (3d Cir. 1991).

Debro has set forth no evidence of an unconstitutional policy or custom. Accordingly, summary judgment is entered on her claims of municipal liability.

d. Liability of EMSA

In West v. Atkins, 487 U.S. 42 (1988), the Supreme Court ruled that a private medical provider is a state actor for the purposes of § 1983 liability, and EMSA is considered a state actor by virtue of its status as the private medical provider at MCCF. Id. at 52-56. In any event, plaintiff Debro has not demonstrated the requisite deliberate indifference to her serious medical needs on the part of EMSA to establish a question of material fact on its § 1983 claims against EMSA. See EMSA defendants Mot. for Summ. Judg. Exs. B, C. Summary judgment is entered against Debro on these claims.

e. Punitive damages

A municipality is immune from punitive damages under § 1983. See Newport v. Fact Concerts, Inc., 453 U.S. 247, 271 (1981). As for the individual defendants, they can be held liable for punitive damages if their conduct can be shown "to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others." See Smith v. Wade, 461 U.S. 30, 56 (1983). Debro has not set forth adequate evidence of the intent of the individual defendants to mandate consideration of punitive damages.

## 2. Section 1985 claims

Plaintiff has produced no evidence of a § 1985 conspiracy. A claim under § 1985(3) must establish 1) a conspiracy; 2) motivated by a racial or class-based discriminatory animus designed to deprive, directly or indirectly, any person or class of persons to the equal protection of the laws; 3) an act in furtherance of the conspiracy; and 4) an injury to person or property or the deprivation of any right or privilege of a citizen of the United States. Lake v. Arnold, Civ. A. No. 96-3412, 1997 WL 217624, at \*2 (3d Cir. May 2, 1997).<sup>1</sup> While there are no precise definitions of what constitutes a "class" under § 1985(3), a class must be "something more than individuals who share a desire to engage in conduct that the § 1985(3) defendant disfavors." Id. (citing Bray v. Alexandria Women's Health Clinic, 506 U.S. 263, 269 (1993)). Debro has neither argued that she is part of a discrete class that receives protection under § 1985(3), nor has she demonstrated any sort of conspiracy based in animus towards that class occurred, nor has she set forth any evidence of record to indicate that any form of constitutional deprivation occurred.

---

1. Debro has alleged a conspiracy as a § 1983 violation. The court addresses the merits of her conspiracy allegations as a § 1985 claim, as the plaintiff has not set forth any facts or law to indicate the existence of any "conspiracy" that might constitute a § 1983 claim. See, e.g., Defeo v. Sill, 810 F. Supp. 648, 658 (E.D. Pa. 1993).

The court enters summary judgment on Debro's § 1985 claims.

**BY THE COURT:**

---

**MARVIN KATZ, J.**