

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

MICHAEL B. CHLADEK and : CIVIL ACTION
MARIE CHLADEK :
 :
v. :
 :
COMMONWEALTH OF PENNSYLVANIA, et al. : NO. 97-0355

MEMORANDUM AND ORDER

HUTTON, J.

January 28, 1998

Presently before this Court is the Motion of Defendants Pennsylvania Board of Probation and Parole, David Milligan and Donna Henry to Dismiss the Plaintiffs' Amended Complaint (Docket No. 27) and the Motion by Defendants David M. Dettinburn, John E. Founds, and David M. Knorr to Dismiss the Amended Complaint (Docket No. 29). For the reasons set forth below, the defendants' Motions are **GRANTED in part and DENIED in part.**

I. BACKGROUND

The plaintiffs have alleged the following facts. On the morning of September 17, 1996, plaintiff Michael Chladek heard "banging at [the] front door" of his home. Pls.' Am. Compl. ¶ 25. Michael Chladek proceeded towards the door, where he saw several officers standing on the porch. Id. Plaintiff Marie Chladek opened the foyer door, and several officers forced their way into the plaintiffs' house. Id. ¶ 44. Michael Chladek then heard a "crashing noise at the back door," and "proceeded to

the rear of his home where he viewed several more [officers] break in his back door." Id. ¶ 25.

David Milligan, Donna Henry, David M. Dettinburn, John E. Founds, Thomas J. Micek, and two unknown persons, all state parole agents (collectively referred to as "state parole agents"), entered the plaintiffs' "house and struck, punched, hit and wrestled Michael Chladek to the floor." Id. ¶ 26. The state parole agents handcuffed Michael Chladek's hands behind his back and took him into custody. Id. ¶¶ 26-27.

After he was handcuffed, the state parol agents "pulled . . . Chladek to his knees and began a vicious assault upon him, beating him about his body, legs, arms and back with a club and/or other instruments." Id. ¶ 28. The state parole agents dragged Chladek out of his home through the front door. Id. ¶ 29. Once outside, the state parole agents continued to "beat . . . Michael Chladek on his back, chest, arms, legs, and about his body with their clubs and other instruments and knocked [Michael Chladek] against an automobile." Id. ¶ 33. Michael Chladek suffered vast bodily injuries from the attack. Id. ¶ 28.

Marie Chladek witnessed the attack, until the state parole officers struck, pushed and grabbed her, forcing her into "a small space" inside the house. Id. ¶ 46. The state parole agents held Marie Chladek in that space "without allowing her to move." Id.

Although Michael Chladek informed the state parole officers that he was injured, Michael Chladek's "plea for medical attention" was ignored. Id. ¶ 35. The state parole agents transported Michael Chladek to the divisional headquarters of the Pennsylvania Board of Probation and Parole. Id. ¶ 36.

Once Michael Chladek arrived at the divisional headquarters, a state parole officer placed Michael Chladek "in a holding cell for approximately [seven] hours." Id. ¶ 37. Again, Michael Chladek's requests for medical attention were ignored. Id.

Michael Chladek was then transferred to the Pennsylvania State Correctional Institution at Graterford ("Graterford Prison"), where prison guards "left [Michael Chladek] in his cell overnight without any medical attention." Id. ¶ 38. At 7 a.m. the next morning, Michael Chladek "was finally taken to the prison infirmary," where he "remained . . . for two weeks before a medical specialist examined him." Id.

When a medical specialist finally examined Michael Chladek, the medical specialist "immediately sent . . . Chladek to Suburban General Hospital for emergency surgery." Id. ¶ 38. Doctors at Suburban General Hospital "operated to correct . . . Michael Chladek's collapsed lung." Id.

The plaintiffs filed the instant suit on January 16, 1997. In their Amended Complaint, they named the following

parties as defendants: (1) the Commonwealth of Pennsylvania; (2) the Pennsylvania Board of Probation and Parole (the "Board"); (3) State Parole Agent David Milligan ("Milligan"); (4) State Parole Agent Donna Henry ("Henry"); (5) State Parole Agent David M. Dettinburn ("Dettinburn"); (6) State Parole Agent John E. Founds ("Founds"); (7) State Parole Agent Thomas J. Micek ("Micek"); (8) two unknown state parole agents; (9) the Pennsylvania Department of Corrections; (10) Prisoner Commissioner Martin Horn ("Horn"); (11) Deputy Prison Commissioner for Central Region Jeffrey Beard ("Beard"); (12) Superintendent Donald Vaughn ("Vaughn"); and (13) four unknown Graterford Prison guards.¹ In their Amended Complaint, plaintiffs assert numerous causes of action that can be divided into two categories: (1) violations of Michael and Marie Chladek's civil rights; and (2) various pendant state law tort claims.² On July 22 and August 7, 1997, the defendants filed the instant motions to dismiss, pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

II. DISCUSSION

A. Legal Standard

1. On July 21, 1997, this Court granted the Uncontested Motion of Defendants Commonwealth of Pennsylvania, Pennsylvania Department of Corrections, Horn, Beard and Vaughn to Dismiss the Plaintiffs' Amended Complaint.

2. The plaintiffs allege that the defendants' conduct violates sections 1983, 1985(3), 1986, and 1988, under the First, Fourth, Eighth and Fourteenth Amendments. Moreover, the plaintiffs have asserted claims for Assault and Battery (Count VI), Malicious Abuse of Process (Count VII), False Arrest (Count VIII), False Imprisonment (Count IX), and Intentional Infliction of Emotional Distress (Count X).

1. Standard for Dismissal under Rule 12(b)(1)

Pursuant to Federal Rule of Civil Procedure 12(b)(1), a district court can grant a dismissal based on the legal insufficiency of a claim. Dismissal is proper only when the claim clearly appears to be either immaterial and solely for the purpose of obtaining jurisdiction, or is wholly insubstantial and frivolous. Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1408-09 (3d Cir.), cert. denied, 501 U.S. 1222 (1991). When the subject matter jurisdiction of the court is challenged, the party that invokes the court's jurisdiction bears the burden of persuasion. Kehr Packages, 926 F.2d at 1409 (citing Mortensen v. First Fed. Sav. and Loan Ass'n, 549 F.2d 884, 891 (3d Cir.1977)). Moreover, the district court is not restricted to the face of the pleadings, but may review any evidence to resolve factual disputes concerning the existence of jurisdiction. McCarthy v. United States, 850 F.2d 558, 560 (9th Cir. 1988) (citations omitted), cert. denied, 489 U.S. 1052 (1989).

2. Standard for Dismissal under Rule 12(b)(6)

Federal Rule of Civil Procedure 8(a) requires that a plaintiff's complaint set forth "a short and plain statement of the claim showing that the pleader is entitled to relief" Fed. R. Civ. P. 8(a)(2). Accordingly, the plaintiff does not have to "set out in detail the facts upon which he bases his claim." Conley v. Gibson, 355 U.S. 41, 47 (1957) (emphasis

added). In other words, the plaintiff need only "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Id. (emphasis added).

When considering a motion to dismiss a complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6),³ this Court must "accept as true the facts alleged in the complaint and all reasonable inferences that can be drawn from them. Dismissal under Rule 12(b)(6) . . . is limited to those instances where it is certain that no relief could be granted under any set of facts that could be proved." Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990) (citing Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988)); see H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 249-50 (1989). The court will only dismiss the complaint if "'it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.'" H.J. Inc., 492 U.S. at 249-50 (quoting Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)).

³. Rule 12(b)(6) provides that:

Every defense, in law or fact, to a claim for relief in any pleading . . . shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: . . . (6) failure to state a claim upon which relief can be granted

Fed. R. Civ. P. 12(b)(6).

B. Analysis of Plaintiffs' Claims

In the present motion, the moving defendants have raised three general issues. First, they assert that the Eleventh Amendment bars the plaintiffs' claims against the Board and against the state parole agents in their official capacities. Second, they argue that the plaintiffs have failed to state a claim under sections 1985 and 1986. Third, they contend that the state parole agents are completely immune from the pendent state law claims asserted against them.

1. Section 1983

a. Pennsylvania Board of Probation and Parole

A § 1983 action has two essential elements: (1) that the conduct complained of was committed by a person acting under color of state law; and (2) that this conduct deprived a person of rights, privileges, or immunities secured by the Constitution or laws of the United States. 42 U.S.C. § 1983.⁴ Neither a

4. Section 1983 provides as follows:

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. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1983.

state nor its officials acting in their official capacities are "persons" under § 1983. Will v. Michigan Dept. of State Police, 491 U.S. 58, 71 (1989). Moreover, "governmental entities that are considered 'arms of the State'" are not persons under § 1983. Id. at 70.

In Fitchik v. New Jersey Transit Rail Operations, Inc., the United States Court of Appeals for the Third Circuit listed the factors a court must consider when determining whether an entity is an "arm of the State" under Will:

- (1) Whether the money that would pay the judgment would come from the state (this includes three . . . factors-whether payment would come from the state's treasury, whether the agency has the money to satisfy the judgment, and whether the sovereign has immunized itself from responsibility for the agency's debts);
- (2) The status of the agency under state law (this includes four factors-how state law treats the agency generally, whether the entity is separately incorporated, whether the agency can sue or be sued in its own right, and whether it is immune from state taxation); and
- (3) What degree of autonomy the agency has.

873 F.2d 655, 659 (3d Cir.), cert. denied, 493 U.S. 850 (1989); see Bolden v. SEPTA, 953 F.2d 807, 814-16 (3d Cir. 1991), cert. denied, 504 U.S. 943 (1992).

The Third Circuit has "repeatedly held that the most important factor in determining whether an entity is an 'arm of the State' . . . is 'whether any judgment would be paid from the state treasury.'" Independent Enters., Inc. v. Pittsburgh Water and Sewer Auth., 103 F.3d 1165, 1172 (3d Cir. 1997) (quoting

Fitchik, 873 F.2d at 659). In the instant case, the Board's funding comes directly from the Commonwealth of Pennsylvania. 61 Pa. Cons. Stat. Ann. § 331.2 (West Supp. 1996); 71 Pa. Cons. Stat. Ann. § 230(b) (West 1990). "[T]he Board enjoys no financial independence from the Commonwealth." Ahmad v. Burke, 436 F. Supp. 1307, 1311 (E.D. Pa. 1977). Accordingly, any judgment against the Board would be "paid from the state treasury." This weighs heavily in favor of the Board's "being considered 'an arm of the State.'" Independent Entrs., 103 F.3d at 1173.

Moreover, the second and third factors also weigh in favor of this conclusion. Pennsylvania courts have found that the Board enjoys sovereign immunity. Reiff v. City of Philadelphia, 365 A.2d 1357, 1358 (Pa. Commw. Ct. 1976). Furthermore, "[t]he Board's powers, in short, are not those of an agency 'sufficiently distinct and independent from the state as not to be considered a part of the state.'" Ahmad, 436 F. Supp. at 1311 (quoting Flesch v. Eastern Pennsylvania Psychiatric Inst., 434 F. Supp. 963, 976 (E.D. Pa. 1977)).

Accordingly, this Court finds that the Board is an "arm of the State," and thus not a person under § 1983. As Judge Edmond V. Ludwig recently stated:

plaintiff's claim against the Pennsylvania Board of Probation and Parole must be dismissed. As an agency of the Commonwealth of Pennsylvania, a suit against the Board of Probation and Parole is, in essence, a suit

against the Commonwealth. The Supreme Court has held that a state may not be sued under § 1983 for either damages or injunctive relief. Will v. Michigan Dept. of State Police, 491 U.S. 58 (1989); see also Abdul-Akbar v. Watson, 775 F. Supp. 735 (D. Del. 1991).

Carotenuto v. Angelli, No.CIV.A.95-1981, 1995 WL 217619, at * 1 (E.D. Pa. Apr. 12, 1995); See Kubis v. Pennsylvania Bd. of Probation and Parole, No.CIV.A.95-5875, 1996 WL 253324, at * 4 (E.D. Pa. May 14, 1996); McCullough v. Pennsylvania Bd. of Probation and Parole, No.CIV.A.85-1640, 1985 WL 2843, at *1 (E.D. Pa. Oct. 2, 1985) (finding Board "is not a 'person' for purposes of § 1983 action" and "as a state agency . . . is protected by the Eleventh Amendment"). Therefore, the plaintiffs' claims against the Board under section 1983 must be dismissed.

b. State Parole Agents -- Official Capacity and Personal Capacity

The Eleventh Amendment bars suits against the State both when it is the named party and when it is the party in fact. Scheuer v. Rhodes, 416 U.S. 232, 237 (1974), overruled on other grounds, Davis v. Scherer, 468 U.S. 183 (1984). "[A] suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office. . . . As such, it is no different from a suit against the state itself." Will, 491 U.S. at 71. However, "the Eleventh Amendment provides no shield for a state official

confronted by a claim that he had deprived another of a federal right under the color of state law." Id.; see also Rode v. Dellarciprete, 617 F. Supp. 721, 723 n.3 (M.D. Pa. 1985) ("[T]he Eleventh Amendment does not prohibit plaintiff from suing the appropriate state official.").

The distinction between official-capacity and personal-capacity suits is, by all accounts, a difficult one. See Kentucky v. Graham, 473 U.S. 159, 165 (1985) ("[T]his distinction apparently continues to confuse lawyers and lower courts.").

[T]he distinction between official-capacity suits and personal-capacity suits is more than "a mere pleading device." . . . State officers sued for damages in their official capacity are not "persons" for purposes of the suit because they assume the identity of the government that employs them By contrast, officers sued in their personal capacity come to court as individuals. A government official in the role of personal-capacity defendant thus fits comfortably within the statutory term "person."

Hafer v. Melo, 502 U.S. 21, 27 (1991). "On the merits, to establish personal liability in a § 1983 action, it is enough to show that the official, acting under color of state law, caused the deprivation of a federal right." Graham, 473 U.S. at 166.

In the instant case, therefore, plaintiffs' official-capacity claims against defendants Milligan, Henry, Dettinburn, Founds, and Knorr must be dismissed, pursuant to Will. For the personal-capacity claims, however, plaintiffs have met the pleading requirements of showing that the acts were committed under color of state law and caused a deprivation of a federal

right. Accordingly, plaintiffs may maintain the action against defendants Milligan, Henry, Dettinburn, Founds, and Knorr in their personal capacities.

2. Sections 1985 and 1986

The plaintiffs seek to proceed against the defendants under 42 U.S.C. §§ 1985 and 1986, two provisions of the Ku Klux Klan Act of 1871. These provisions establish:

[A] cause of action against any person who enters into a private conspiracy for the purpose of depriving the claimant of the equal protection of the laws . . . [and] against any person who, knowing that a violation of § 1985 is about to be committed and possessing power to prevent its occurrence, fails to take action to frustrate its execution.

Rogin v. Bensalem Township, 616 F.2d 680, 696 (3d Cir. 1980), cert. denied sub nom., Mark-Garner Assoc., Inc. v. Bensalem Township, 450 U.S. 1029 (1981).

To make out a valid cause of action under § 1985, a plaintiff must allege each of the following: (i) a conspiracy; (ii) for the purpose of depriving either directly or indirectly, any person or class of persons of the equal protection of the laws or of the equal privileges and immunities under the laws; (iii) an act in furtherance of the conspiracy; and (iv) injury to either person or property, or deprivation of any right or privilege of a United States citizen. Griffin v. Breckenridge, 403 U.S. 88, 102-103 (1971) (citing 42 U.S.C. § 1985(3)). Once a

plaintiff satisfies the § 1985 requirements, he may also maintain a § 1986 action, if he can prove that the defendants had knowledge of the § 1985 violations and neglected to prevent their occurrence. 42 U.S.C. § 1986 (1994). If, however, a plaintiff cannot set forth a cause of action under § 1985, he cannot set forth a claim under § 1986. Rogin, 616 F.2d at 696.

In their complaint, the plaintiffs fail to allege that a conspiracy existed between the defendants. Furthermore, the plaintiffs do not allege that the purpose of the alleged conspiracy was to deprive the plaintiffs of a constitutional right. Finally, the plaintiffs do not allege any act in furtherance of that conspiracy. Therefore, the plaintiffs fail to state a cause of action under § 1985(3). Moreover, because the plaintiffs cannot set forth a cause of action under § 1985(3), they cannot seek relief under § 1986. Consequently, the plaintiffs cannot maintain either a § 1985 or § 1986 action against these defendants.

Moreover, even if the plaintiffs had alleged that these defendants had engaged in and acted in furtherance of a conspiracy to deprive the plaintiffs of a constitutional right, this Court would still be forced to dismiss the claims brought against the Board, as well as defendants Milligan, Henry, Dettinburn, Founds, and Knorr in their official capacity, under sections 1985 and 1986. "[S]tate officials acting in their

official capacities are not 'persons' under Section 1983. This holding also applies to Section 1985." Wright v. Philadelphia Hous. Auth., No.CIV.A.94-1601, 1994 WL 597716, at *2 (E.D. Pa. Nov. 1, 1994) (citations omitted). Moreover, "[i]t is well-settled that a state and its agencies are not 'persons' under §§ 1983 and 1985." Rode, 617 F. Supp. at 723. Accordingly, this Court would still be required to dismiss the plaintiffs' claims brought under sections 1985 and 1986 against these defendants.\⁵

3. Pendent State Law Claims

The plaintiffs claim that Milligan, Henry, Dettinburn, Founds, and Knorr committed the following torts against them: assault and battery, malicious abuse of process, false arrest, false imprisonment, and intentional infliction of emotional distress. Moreover, the plaintiffs state that "all acts performed and/or omitted by Defendants were performed and/or omitted as agents, servants, workmen, and/or employees of" the Board. Pls.' Am. Compl. ¶ 51. The defendants contend that all of the plaintiffs' pendent state law claims are barred by statutory immunity. Pennsylvania's governmental immunity statute, which is codified at 1 Pa. Cons. State. Ann. § 2310, provides that officers acting within their official capacities are generally immune from state law tort claims. Goldey v.

5. See Blanciak v. Allegheny Ludlum Corp., 77 F.3d 690, 697-98 (3d Cir. 1996); Wright, 1994 WL 597716, at * 2.

Pennsylvania, No.CIV.A.92-6932, 1993 WL 460808, at * 3 (E.D. Pa. Nov. 5, 1993). While there are exceptions under the statute, none are applicable to this case.⁶ However, while state officers and employees enjoy the protection of Pennsylvania's governmental immunity statute when "acting within the scope of their duties," 1 Pa. Cons. Stat. Ann. § 2310, this protection does not apply when the state officers and employees are acting outside the scope of their duties.

The defendants do not argue that Milligan, Henry, Dettinburn, Founds, and Knorr acted within the scope of their duties. Instead, they argue that the plaintiffs have pled that Milligan, Henry, Dettinburn, Founds, and Knorr were acting within the scope of their duties. This Court cannot accept the defendants' interpretation of the plaintiffs' Amended Complaint. The plaintiffs merely allege that when Milligan, Henry, Dettinburn, Founds, and Knorr committed the intentional torts, they were employed by the Board. Accordingly, the defendants'

6. The General Assembly has enumerated nine exclusive exceptions to section 2310. The exceptions are for negligent acts involving: (1) vehicle liability; (2) medical-professional liability; (3) care, custody, or control of personal property; (4) Commonwealth owned real property; (5) potholes and other dangerous conditions; (6) care, custody and control of animals; (7) liquor store sales; (8) National Guard activities; and (9) toxoids and vaccines. 42 Pa. Cons. Stat. Ann. § 8522(b) (West Supp. 1997). While the plaintiffs claim that the state parole officers' failure to provide medical attention meets the second exclusive exception, their argument is flawed. Section 8522(b) provides that sovereign immunity is waived for "[a]cts of health care employees of Commonwealth agency medical facilities or institutions or by a Commonwealth party who is a doctor, dentist, nurse or related health care personnel." Obviously, the state parole officers do not "fall within this category." Johnson v. Pennsylvania Dep't of Corrections, No.CIV.A.92-5149, 1992 WL 392601, at *1 (E.D. Pa. Dec. 18, 1992).

motion to dismiss must be denied with respect to the pendent state law claims against defendants Milligan, Henry, Dettinburn, Founds, and Knorr.

An appropriate Order follows.

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

MICHAEL B. CHLADEK and : CIVIL ACTION
MARIE CHLADEK :
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v. :
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COMMONWEALTH OF PENNSYLVANIA, et al. : NO. 97-0355

O R D E R

AND NOW, this 28th day of January, 1998, upon consideration of the Motion of Defendants Pennsylvania Board of Probation and Parole, David Milligan and Donna Henry to Dismiss the Plaintiffs' Amended Complaint (Docket No. 27) and the Motion by Defendants David M. Dettinburn, John E. Founds, and David M. Knorr to Dismiss the Amended Complaint (Docket No. 29), IT IS HEREBY ORDERED that:

(1) all claims against Defendant Pennsylvania Board of Probation and Parole are dismissed with prejudice;

(2) all claims against Defendants David Milligan, Donna Henry, David M. Dettinburn, John E. Founds, and David M. Knorr in their official capacities are dismissed with prejudice;

(3) all claims against Defendants David Milligan, Donna Henry, David M. Dettinburn, John E. Founds, and David M. Knorr based on 42 U.S.C. §§ 1985 and 1986 are dismissed with prejudice;

(4) the Defendants' Motions to Dismiss are denied with respect to the Plaintiffs' claims against Defendants David Milligan, Donna Henry, David M. Dettinburn, John E. Founds, and

David M. Knorr in their personal capacities based on 42 U.S.C. § 1983; and

(5) the Defendants' Motions to Dismiss are denied with respect to the Plaintiffs' pendent state law claims against Defendants David Milligan, Donna Henry, David M. Dettinburn, John E. Founds, and David M. Knorr.

BY THE COURT:

HERBERT J. HUTTON, J.