

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

JAMES MILLER : CIVIL ACTION
 :
 v. :
 :
 STANLEY HOFFMAN, M.D., et al. : NO. 97-7987

MEMORANDUM AND ORDER

HUTTON, J.

July 1, 1998

Presently before this Court is the Motion by Defendant Joseph Dimino to Dismiss the Amended Complaint of James Miller (Docket No. 23) and the Motion by Defendant Correctional Physician Services to Dismiss the Amended Complaint of James Miller (Docket No. 24). For the reasons stated below, defendant Correctional Physician Services' Motion is **GRANTED** and defendant Joseph Dimino's Motion is **DENIED**.

I. BACKGROUND

The plaintiff, James Miller ("Miller"), has alleged the following facts. Miller is currently an inmate at the Pennsylvania State Correctional Institution at Graterford ("Graterford"). Pl.'s Am. Compl. ¶ 1. On April 16, 1997, Miller fell in the kitchen at Graterford, injuring his left elbow. Id. ¶ 11. On April 17, 1997, Miller's supervisor gave him a pass to the infirmary. Id. ¶ 13. On his way there, however, Graterford Officer James Davis ("Davis") stopped Miller and refused to let Miller proceed to the infirmary.

Id. ¶ 14. When Miller objected, Davis falsely reported that Miller had threatened him. Id. ¶ 19. Davis's report caused Miller to be placed in disciplinary custody. Id. ¶ 20. Further, a physician did not examine Miller until April 26, 1997. Id.

On May 2, 1997, Dr. Stanley Hoffman ("Hoffman"), the former medical director at Graterford, examined Miller. Id. ¶ 23. Hoffman injected steroids into Miller's elbow. Id. ¶ 24. This injection far exceeded the largest recommended dosage of steroids, and a few days later the wound began to leak pus, blood, and pieces of tissue. Id. ¶¶ 25, 28. This condition lasted for three months. Id. ¶ 29. Although Miller repeatedly requested permission to be seen by an orthopedic specialist or surgeon, Hoffman denied the requests. Id. ¶¶ 34-38.

On August 28, 1997, Dr. Stempler ("Stempler"), the visiting orthopedic specialist at Graterford, examined Miller. Id. ¶ 40. Stempler found that if Miller's elbow did not heal, surgery would be necessary. Id. When Hoffman discovered that Stempler had treated Miller, he became upset and threatened the nurse who had assisted Stempler. Id. ¶ 41.

On August 29, 1997 and September 6, 1997, Miller "filed grievances directed to [Graterford] Superintendent Donald Vaughn regarding Health Care Administrator Donna Hale's failure to respond to [Miller's] previous grievances against . . . Hoffman." Id. ¶ 43. Moreover, on September 1, 1997 and September 3, 1997, Miller

"wrote letters to Deputy Superintendent David DiGuglielmo, Deputy Superintendent Jackson and to Frank Botto, the Correctional Physicians Services Administrator, putting them on notice of his problems with his medical treatment and his serious medical need to have proper treatment." Id. ¶ 44. Finally, on September 5, 1997, plaintiff's attorney contacted Daniel Perlman of the Pennsylvania Department of Corrections, and requested that Miller be seen by an orthopedic surgeon or specialist. Id. ¶ 46. Despite these complaints and requests, Hoffman refused to permit the plaintiff access to another physician. Id. ¶¶ 47, 48.

On October 17, 1997, Miller was seen by another specialist, Dr. Ernest Rosato of Thomas Jefferson University Hospital. Id. ¶ 55. Dr. Ernest Rosato also found that surgery on Miller's elbow would be required, and informed Hoffman that "we will schedule this as to the patient's availability." Id. ¶ 56. However, the plaintiff was not permitted to return to Dr. Ernest Rosato for the recommended treatment. Id. ¶ 59.

On November 21, 1997, Hoffman discontinued the plaintiff's pain medication without any consultation with the plaintiff regarding his need for pain relief measures. Id. ¶ 60. On December 1, 1997, Dr. Francis Rosato examined Miller at Thomas Jefferson University Hospital and concluded that he no longer required surgery. Id. ¶ 61. However, Dr. Francis Rosato opined that the wound could reopen at any time. Id. ¶ 62. Moreover, Dr.

Francis Rosato informed the plaintiff that the loss of mobility he experiences and the pain in his elbow is the result of nerve damage caused by the infected wound. Id. ¶ 63.

The plaintiff filed the instant suit on December 23, 1997. In his Amended Complaint, he names the following parties as defendants: (1) Hoffman; (2) Dr. Joseph Dimino, the Regional Director of Correctional Physician Services and Hoffman's supervisor; (3) Correctional Physician Services ("CPS"); (4) the Department of Corrections for the Commonwealth of Pennsylvania ("DOC");¹ (5) DOC Graterford Superintendent Donald Vaughn; (6) DOC Graterford Health Care Administrator Donna Hale; (7) DOC Graterford Deputy Superintendent David DiGugliemo; (8) DOC Graterford Deputy Superintendent Jackson; and (9) DOC Graterford Officer J. Davis.

In his Amended Complaint, the plaintiff asserts a cause of action against all defendants pursuant to 42 U.S.C. § 1983, for violations of the plaintiff's Eighth Amendment rights (Counts I and IV). Further, the plaintiff asserts two claims against defendant Hoffman and defendant CPS for reckless and negligent treatment (Count II) and for Intentional Infliction of Emotional Distress (Count III). On March 30, 1998, defendants CPS and Dimino filed the instant motions to dismiss, pursuant to Federal Rule of Civil Procedure 12(b)(6).

1. On April 16, 1998, the plaintiff and defendant DOC stipulated to the dismissal of all claims against defendant DOC.

II. DISCUSSION

A. 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),² 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.

2. 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).

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)).

B. Analysis of Plaintiff's Eighth Amendment Claims

The Eighth Amendment to the United States Constitution provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII. An inmate setting forth a Section 1983 claim³ for violations of the inmate's Eighth

3. This section 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 (1994). Thus, Section 1983 requires the plaintiff to demonstrate: (1) a person deprived him of a federal right; and (2) the person who deprived him of that right acted under color of state law. Groman v. Township of Manalapan, 47 F.3d 628, 633 (3d Cir. 1995). The defendants do not dispute that they were acting under color of state law during the relevant time period alleged in the plaintiff's Amended Complaint. See West v. Atkins, 487 U.S. 42, 54 (1988) (holding "a physician employed by [a state] to provide medical services to state prison inmates, acted under color of state law for purposes of § 1983 when undertaking his duties in treating [an inmate's] injuries."); Duffy v. Delaware County Bd. of Prison Inspectors, No. CIV.A.89-9125, 1990 WL 156658, at * 8 (E.D. Pa. Oct. 12, 1990) (applying West to health care corporation treating inmates under contract with state).

Amendment rights on the basis of a failure to provide necessary medical treatment must show both that his medical needs were serious and that the defendants' failure to attend to his medical needs rose to the level of deliberate indifference. Monmouth County Correctional Inst. Inmates v. Lanzaro, 834 F.2d 326, 346 (3d Cir.1987), cert. denied, 486 U.S. 1006 (1988).

A serious medical need is "one that has been diagnosed by a physician as requiring treatment or one that is so obvious that a lay person would easily recognize the necessity for a doctor's attention." Id. at 347 (citations and internal quotations omitted). In addition, the United States Supreme Court has held that a prison official is deliberately indifferent to the serious medical needs of an inmate when that official "knows of and disregards an excessive risk to inmate health and safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of harm exists, and he must also draw the inference." Farmer v. Brennan, 511 U.S. 825, 837 (1994).

1. Defendant Dimino

In order to prevail in a Section 1983 suit against a supervisory official, a plaintiff may not predicate the defendant's liability solely on a theory of respondeat superior. Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988) (citing Parratt v. Taylor, 451 U.S. 527, 537 n.3 (1981), overruled on other grounds by, Daniels v. Williams, 474 U.S. 327 (1986)); Hampton v.

Holmesburg Prison Officials, 546 F.2d 1077, 1081 (3d Cir. 1976). Instead, he must demonstrate that the supervising defendant had personal involvement in the alleged wrongs. Andrews v. City of Philadelphia, 895 F.2d 1469, 1478 (3d Cir. 1990) (citing Rizzo v. Goode, 423 U.S. 362, 377 (1976)); Rode, 845 F.2d at 1207 (citations omitted). This "necessary involvement can be shown in two ways, either 'through allegations of personal direction or of actual knowledge and acquiescence,' or through proof of direct [action] by the supervisor. The existence of an order or acquiescence leading to [the violation] must be pled and proven with appropriate specificity." Andrews, 895 F.2d at 1478 (quoting Rode, 845 F.2d at 1207).

In the case at hand, defendant Dimino contends that the plaintiffs' Amended Complaint should be dismissed to the extent the plaintiff alleges that Dimino is liable under Section 1983 for violating the plaintiff's Eight Amendment rights. More specifically, Dimino argues that the plaintiff does not allege that Dimino personally acted with deliberate indifference. In the alternative, Dimino asserts that the plaintiff's claim must fall because the plaintiff merely alleges respondeat superior liability against Dimino, which is invalid under Section 1983. Def. Dimino's Mem. at 2-3. In response, the plaintiff states that he "does not allege that Dimino is liable to him based on a theory of respondeat superior, but rather that Dimino had personal knowledge of and

acquiesced in the actions that deprived [the plaintiff] of his constitutional rights." Pl.'s Mem. in Opp'n to Def. Dimino's Mot. at 4.

In the Amended Complaint, the plaintiff mentions defendant Dimino by name in only one paragraph, wherein the plaintiff states: "Dr. Dimino is the Regional Director of Correctional Physician Services, and the supervisor of Dr. Hoffman." Pl.'s Am. Compl. ¶ 3. However, the plaintiff does allege that the

defendants . . . have willfully and deliberately refused to provide the necessary medical treatment for Mr. Miller's serious medical condition.

. . . .
. . . [and] that defendants had subjective knowledge of the substantial risk of serious and permanent harm to Mr. Miller when Dr. Hoffman refused to provide the appropriate care to plaintiff's serious medical needs, cancelled [sic] plaintiff's appointments with orthopedic specialists, wrote false remarks in plaintiff's medical charts, placed plaintiff in reverse isolation, refused to follow the course of treatment recommended by orthopedic specialists and engaged in other deliberately indifferent, reckless and malicious conduct.

Id. ¶¶ 72, 88.

Accepting as true the facts alleged in the complaint and all reasonable inferences that can be drawn from them, this Court finds that the plaintiff has set forth a valid claim against defendant Dimino under Section 1983. The plaintiff alleges that Dimino had personal involvement in the alleged wrongs "through

allegations of . . . actual knowledge and acquiescence,' " Andrews, 895 F.2d at 1478 (quoting Rode, 845 F.2d at 1207), of Hoffman's deliberate indifference of the plaintiff's serious medical needs, Monmouth County Correctional. Inst. Inmates, 834 F.2d at 346. Accordingly, the plaintiff has alleged that defendant Dimino had personal involvement in the alleged violations, and, thus, defendant Dimino's Motion must be denied.

2. Defendant CPS

The United States Supreme Court has determined that a local governmental entity, such as a municipality, may be a "person" for purposes of § 1983. Monell v. Department of Soc. Servs., 436 U.S. 658, 690 (1978). Although a local government may not be held liable based strictly on a theory of respondeat superior, it may be held liable where a governmental policy, practice, or custom causes the claimed injury. Id. at 690-94. Furthermore,

[p]roof of a single incident of unconstitutional activity is not sufficient to impose liability under Monell, unless proof of the incident includes proof that it was caused by an existing, unconstitutional municipal policy, which policy can be attributed to a municipal policy maker. Otherwise the existence of the unconstitutional policy, and its origin, must be separately proved. But where the policy relied upon is not itself unconstitutional, considerably more proof than the single incident will be necessary in every case to establish both the requisite fault on the part of the municipality, and the casual

connection between the "policy" and the constitutional deprivation.

City of Oklahoma City v. Tuttle, 471 U.S. 808, 823-24 (1985) (footnotes omitted). In other words, if a plaintiff alleges unconstitutional behavior, he must demonstrate an "affirmative link" between the alleged misconduct and the municipality's policy or custom. Rizzo, 423 U.S. at 371.

The same standard applies where a plaintiff names a private corporation, acting under color of state law, as a defendant in a Section 1983 case. Miller v. City of Philadelphia, No. CIV.A.96-3578, 1996 WL 683827, at * 3-4 (E.D. Pa. Nov. 26, 1996). While a private corporation cannot be held vicariously liable for the actions of its staff, it may be held liable if "it knew of and acquiesced in the deprivation of plaintiffs' rights." Id. at * 4 (citations omitted). To meet this burden with respect to a private corporation, the plaintiff must show that the corporation, "with 'deliberate indifference to the consequences, established and maintained a policy, practice or custom which directly caused [plaintiffs'] constitutional harm.'" Id. (quoting Stoneking v. Bradford Area Sch. Dist., 882 F.2d 720, 725 (3d Cir. 1989), cert. denied, 493 U.S. 1044 (1990)).

In this case, defendant CPS is a private corporation "under contract with the Commonwealth of Pennsylvania to provide medical care to prisoners at []Graterford." Pl.'s Am. Compl. ¶ 4. CPS employs defendants Hoffman and Dimino. Id. ¶¶ 2, 3. The

plaintiff does not proceed on a theory of respondeat superior, but instead contends that "CPS had personal knowledge of and acquiesced in the actions that deprived [the plaintiff] of his constitutional rights." Pl.'s Mem. in Opp'n to Def. CPS's Mot. at 3.

While the plaintiff again points to paragraphs seventy-two and eighty-eight of his complaint in response to defendant CPS's motion, these allegations fail to set forth a valid Section 1983 claim against CPS. The plaintiff does allege that CPS had knowledge of Hoffman's deliberate indifference to the plaintiff's medical needs, but the plaintiff does not satisfy the Monell standard by pointing to a CPS "policy, practice, or custom caus[ing] the claimed injury." Monell, 436 U.S. at 690-94. Accordingly, the plaintiff fails to set forth a valid Section 1983 claim against defendant CPS, and, thus, defendant CPS's Motion must be granted.

An appropriate Order follows.

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O R D E R

AND NOW, this 1st day of July, 1998, upon consideration of the Motion by Defendant Joseph Dimino to Dismiss the Amended Complaint of James Miller (Docket No. 23) and the Motion by Defendant Correctional Physician Services to Dismiss the Amended Complaint of James Miller (Docket No. 24), IT IS HEREBY ORDERED that defendant Correctional Physician Services' Motion is **GRANTED** and defendant Dimino's Motion is **DENIED**.

IT IS FURTHER ORDERED that Counts I and IV of the plaintiff's Amended Complaint are **DISMISSED** with regard to defendant Correctional Physician Services.

BY THE COURT:

HERBERT J. HUTTON, J.