

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

DAVID PRENDERGAST : CIVIL ACTION
 :
 v. :
 :
 PETER BALDINO, et al. : NO. 98-269

ORDER - MEMORANDUM

AND NOW, this 16th day of November, 1998 plaintiff David Prendergast's motion to amend his pro se complaint is granted and defendants' objections are overruled. Fed. R. Civ. P. 15(a). The amended complaint, attached to the motion, shall be docketed and may be served by plaintiff on the individual defendants and on the added defendants Wackenhut Corrections Corporation, the Delaware County Board of Prison Inspectors, and the County of Delaware.

Defendants object on the ground that (1) the statute of limitations has run on new claims; (2) Wackenhut was responsible for security and medical services at all times in question; and (3) there are no allegations of policy or custom on the part of the County Board of Prison Inspectors or the County itself. Def. mem. at 3, 6.¹

¹ Whether a defendant has standing to assert defenses, such as the statute of limitations, on behalf of a proposed new defendant has not been raised. There appears to be no case law on this subject. In the analogous setting of joinder of third parties, it has been observed that third parties do not have standing to contest the joinder because they are not of record. 4 Moore's Federal Practice 3d, § 14.21[2]. Arguably, the same point could be made as to the addition of defendants by amendment. However, the amendment cases have consistently decided new-defendant defenses asserted by existing defendants. See, e.g., Kemco Sales, Inc. v. Control Papers Co., Inc., 1998 WL 684257 (continued...)

The complaint in this § 1983 action alleges unconstitutional prison conditions and deprivation of medical care. The statute of limitations is two years. See Owens v. Okure, 488 U.s. 235, 236 (1989); 42 Pa. C.S.A. § 5524. Since the incidents in this case are alleged to have occurred no later than April 1996, the statute of limitations bars claims instituted after April 1998. Plaintiff's original complaint was filed on February 23, 1998 and the motion to amend on September 23, 1998. Therefore, allegations against the proposed new defendants can withstand a limitations defense only if they relate back to the initial filing.

Here, those allegations relate back because they comport with Fed. R. Civ. P. 15(c). See also Esnouf v. Matty, 635 F. Supp. 211, 213 (E.D. Pa. 1986) (noting that Rule 15(c)(3) has been held to apply to cases in which original defendants were retained and additional parties named). First, the claims arise out of the same conduct and transactions as alleged in the complaint. Fed. R. Civ. P. 15(c)(3). Although the new claims assert a different legal theory, they arise from the same underlying allegations of unlawful abuse and failure to provide medical treatment.

Second, defendants Wackenhut, the County Board, and the County had notice of the claims inasmuch as it was their employees who were sued originally and served at the Delaware County Prison. Pl. mem. ex. B. Fed. R. Civ. P. 15(c)(3)(A). Cf. Esnouf, 635 F. Supp. at 213-14 (finding that the employer of a named individual

¹(...continued)
(D.N.J. 1998), and Wine v. EMSA Limited Partnership, 167 F.R.D. 34 (E.D Pa. 1996). That practice has been followed here.

defendant could be added to the amended complaint because employer had notice of the action from its employee). Moreover, counsel for the originally-named defendants traditionally represents the defendants sought to be added. Pl. mem. at 8 and n.3. Accordingly, these defendants had constructive notice that an action had been filed against their employees.

Third, defendants knew or should have known that, but for the plaintiff's lack of legal sophistication, an action probably would have been brought against them. Fed. R. Civ. P. 15(c)(3)(B). Cf. Kinnally v. Bell of Pennsylvania, 748 F. Supp. 1136, 1142 (E.D. Pa. 1990) (allowing pro se plaintiff suing under Title VII to amend complaint to add individual supervisors as defendants); Taliferro v. Costello, 467 F. Supp. 33, 36 (E.D. Pa. 1979) (allowing plaintiffs to add the City in a civil rights suit because "plaintiffs' failure to sue the City reflected a narrow view of the causes of action set forth in their Pro se complaint which would probably not have been taken had a lawyer familiar with the legal terrain drawn their first pleading.").

Allowing the amended pleading will not subject defendants to undue prejudice. See Coventry v. U.S. Steel Corp., 856 F.2d 514, 519 (3d Cir. 1988) (observing that undue prejudice to the non-movant is the "touchstone" for denying leave to amend) (internal citations omitted). Although this action was begun in February, 1998, no discovery has been undertaken, purportedly, according to plaintiff, because of his being pro se. Pl. mem. at 9. Counsel only recently appeared on behalf of two of the originally named defendants. Appearance, Oct. 8, 1998. Since this case has not

progressed beyond an answer to the complaint, it is hard to see how defendants will be unduly prejudiced. Also, leave to amend should be freely given. Fed. R. Civ. P. 15(a).

The argument that the Delaware County Board of Prison Inspectors and the County of Delaware cannot be held liable because Wackenhut was in control of prison security and services is premature. So is the lack of policy or custom averments. Such determination cannot be made at this pleading amendment stage.

Edmund V. Ludwig, J.