

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

JOSEPH THOMPSON : CIVIL ACTION  
 :  
 v. : 96-8684  
 :  
 MEDICAL STAFF, GRATERFORD SCI :  
 DR. SPRAGUE, DR. MOYER, :  
 DR. SCHWARTZ :

M E M O R A N D U M

Broderick, J.

September 14, 1999

Plaintiff Joseph Thompson, a prisoner presently confined at the State Correctional Institute at Albion, Pennsylvania, brings this action pro se. Pursuant to 42 U.S.C. § 1983, Plaintiff alleges that while a prisoner at Graterford State Correctional Institute, Defendants violated his civil rights in failing to provide him with adequate medical care.

In his Complaint, Plaintiff names the following Defendants: Medical Staff -- Graterford SCI; William Sprague, M.D.; Dennis Moyer, M.D., and Arnold Schwartz, M.D. Although Plaintiff also named the Pennsylvania Department of Corrections as a Defendant, by Order of this Court dated January 27, 1997, that claim was dismissed as frivolous pursuant to 28 U.S.C. § 1915(e), on the ground that the Eleventh Amendment bars any lawsuit against a state agency in federal court.

Currently pending before the Court are two Motions, one to strike "Medical Staff, Graterford SCI" as a defendant, and the other to dismiss the complaint against Dr. Sprague, Dr. Moyer and Dr. Schwartz for failure to state a claim pursuant to

Fed.R.Civ.P. 12(b)(6). Although the Defendants served Plaintiff with a "Notice of Motion" advising him that he had fourteen days in which to respond or otherwise plead, Plaintiff has failed to respond to Defendants' motions. Local Rule 7.1(c) allows the Court to grant as uncontested a motion to which there has been no timely response. However, being mindful of the Plaintiff's pro se status, the Court will examine Plaintiff's claims as though a response had been filed. For the reasons stated below, the Court will grant both of Defendants' motions.

Plaintiff's Complaint is premised on his allegation that the medical staff and the doctors at Graterford were negligent in failing to provide him with the medication he needed to treat his seizure disorder. In his Complaint, Plaintiff alleges that on a Monday evening, March 18, 1996, he finished his medication and was instructed by an unnamed nurse to go to "sick call," which he did the following morning. Plaintiff further alleges that "Dr. Moyer or Dr. Sprague" -- he does not specify which -- ordered more medication for him, and told Plaintiff he would have it in two days. When he had not received his medication by Friday, March 22, he returned to sick call, where Dr. Schwartz told him he would place another prescription with the pharmacy. The next morning, Saturday, March 23, Plaintiff was informed by another unnamed nurse that his medication had not yet arrived. Plaintiff alleges that later that morning he had a grand mal seizure. He was taken to the infirmary where he was informed that his

medicine had actually arrived the night before.

In deciding a Motion to Dismiss pursuant to Fed.R.Civ.P. 12(b)(6), the Court accepts as true all factual allegations contained in the complaint, as well as all reasonable inferences which could be drawn therefrom, and views them in the light most favorable to the plaintiff. H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 249-50 (1989); Zlotnick v. TIE Communications, 836 F.2d 818, 819 (3d Cir. 1988).

The Court holds the allegations of a pro se complaint to "less stringent standards than formal pleadings drafted by lawyers." Haines v. Kerner, 404 U.S. 519, 520-521 (1972). Accordingly, the Court will allow a pro se litigant the opportunity to offer supporting evidence of his allegations unless it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Id.

In Estelle v. Gamble, the Supreme Court recognized that "deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain,' proscribed by the Eighth Amendment," and is therefore actionable under § 1983. 429 U.S. 97, 103-104 (1976). The Supreme Court made clear, however, that "an inadvertent failure to provide adequate medical care can not be said to constitute 'an unnecessary and wanton infliction of pain.'" Id. Therefore, a

complainant who only alleges that defendants negligently denied him adequate medical care "does not state a valid claim of medical mistreatment under the Eighth Amendment." Id. at 105-106.

A prisoner who seeks to establish a "deliberate indifference" claim under § 1983 must allege that a prison "official was subjectively aware of the [substantial] risk" of serious harm. Farmer v. Brennan, 511 U.S. 825, 828(1994). A prison official can not be held liable for an Eighth Amendment violation if that official was not subjectively aware that the inmate faced a substantial health risk. Id. at 838. This is so even if a substantial risk existed, and the defendant was negligent in failing to notice it. Id.

In the instant case, Plaintiff has failed to allege a § 1983 claim of "deliberate indifference" against Defendants. Plaintiff has not alleged facts in his Complaint which, if proven, would establish that Defendants acted or failed to act despite their subjective awareness of a substantial health risk facing Plaintiff.

With respect to Dr. Sprague and Dr. Moyer, Plaintiff makes no allegations that they acted or failed to act despite their subjective knowledge of a serious risk facing Plaintiff. Plaintiff's allegation that Dr. Sprague or Dr. Moyer ordered a prescription from the pharmacy which did not arrive as quickly as Plaintiff was told it would does not amount to an allegation that

either Doctor acted or failed to act despite his actual knowledge of a substantial risk to Plaintiff's health. Similarly, Plaintiff's allegation that Defendant Schwartz sent another prescription to the pharmacy when the first order failed to arrive does not amount to an allegation that he failed to act despite actual knowledge of a substantial risk to Plaintiff's health. Finally, Plaintiff's allegation that on the day he had a seizure, he was told his medication had not arrived, when in fact it had arrived the previous day, does not constitute an allegation that any of the named Defendants acted or failed to act despite actual knowledge of a substantial risk to Plaintiff's health.

Accordingly, Plaintiff has not alleged a § 1983 claim of "deliberate indifference" against Dr. Sprague, Dr. Moyer, or Dr. Schwartz. The Court will dismiss Plaintiff's Complaint against these Defendants pursuant to Fed.R.Civ.P. 12(b)(6) for failure to state a claim upon which relief can be granted.

Finally, the Court will order that "Medical Staff, Graterford SCI" shall be dismissed and be stricken from the caption of this action. The Court previously dismissed the Department of Corrections pursuant to 28 U.S.C. § 1915(e) because the Eleventh Amendment bars any lawsuit against a state in a federal court. Similarly, the "Medical Staff, Graterford SCI" is not an entity which can be sued as a component of the state institution.

An appropriate Order follows.

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O R D E R

AND NOW, this 14th day of September, 1999; Defendants having filed a motion to strike "Medical Staff, Graterford SCI" from the caption of this action; Defendants having also filed a motion to dismiss Plaintiff's claims against Dr. Sprague, Dr. Moyer, and Dr. Schwartz pursuant to Fed.R.Civ.P. 12(b)(6); Plaintiff having failed to respond to these motions; and for the reasons stated in this Court's Memorandum of this date;

**IT IS ORDERED:** Defendants' motion to strike "Medical Staff, Graterford SCI" from the caption of this action (Docket No. 11) is **GRANTED** and the Clerk of the Courts shall strike "Medical Staff, Graterford SCI" from the caption of this action and shall dismiss the Complaint for the reasons stated in the Court's memorandum;

**IT IS FURTHER ORDERED:** Defendants' motion to dismiss Plaintiff's claims against Dr. Sprague, Dr. Moyer, and Dr.

Schwartz (Docket No. 12) is **GRANTED**, and the Complaint shall be dismissed for the reasons stated in the Court's memorandum.

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**RAYMOND J. BRODERICK, J.**