

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

CLARENCE COMBS	:	
	:	
Plaintiff ,	:	CIVIL ACTION
	:	
v.	:	NO. 99-3812
	:	
SCHOOL DISTRICT OF	:	
PHILADELPHIA, et al.	:	
	:	
Defendants.	:	

MEMORANDUM

BUCKWALTER, J.

November 29, 1999

Presently before the Court in this 42 U.S.C. §1983 action is Defendant School District of Philadelphia, David Hornbeck (“Hornbeck”), Yvonne Jones (“Jones”), Joseph Roberts (“Roberts”), and Beverly Brown’s (“Brown”) (collectively, “School District Defendants”)¹ Rule 12(b)(6) Motion to Dismiss and Plaintiff Clarence Combs’ (“Plaintiff”) response thereto. For the reasons set forth below, the School District Defendants’ Motion will be granted in part and denied in part.

1. Plaintiff brings this action against the School District of the City of Philadelphia; Hornbeck, the Superintendent of the School District of the City of Philadelphia; Jones, the Principal of Overbrook High School; Roberts, the School District Security Officer; and Brown, the School District Non-Teaching Assistant. Plaintiff’s Complaint also contains state law claims against his three alleged attackers, Dante Jones, William Porter, and Eric Walters. Jones, Porter, and Walters are essentially non-parties to the Motion to Dismiss before us. Named Defendant Michael Lodise, the President of the School Police Association of Philadelphia has not been a named party to this Motion to Dismiss, therefore, all claims against him survive.

I. BACKGROUND

Plaintiff was a student attending Overbrook High School (“Overbrook”) in Philadelphia when he was allegedly attacked and physically beaten in the fourth floor hallway by three fellow students. On May 6, 1999, Plaintiff was attending Overbrook during regular school hours. That particular day, Roberts and Brown were assigned to Overbrook for the purpose of protecting the welfare of the students and maintaining control. While Plaintiff was in the hallway between classes, three fellow students allegedly started assaulting him. In response to the assault being inflicted upon Plaintiff, Roberts allegedly announced, “I’m not going down there, it’s just another fight.”

At some point following Roberts statement, Plaintiff’s attackers continued to physically beat Plaintiff for another twenty minutes. Plaintiff contends that, while the assault continued to take place, Roberts and Brown were aware of what was happening and failed to react. As a result of the said attack, Plaintiff suffered emotional, psychological, and physical injuries. He was temporarily unable to attend school, and became withdrawn, fearful and embarrassed.

Plaintiff asserts that this is not the first instance of abusive conduct at Overbrook. On prior occasions, the same three attackers contacted, harassed, intimidated, threatened, and assaulted various students. Plaintiff contends that these continued episodes of violence involving other students were reported to school authorities, including the School District Defendants and other school administrators, teachers, security officers, and non-teaching assistants. It is alleged that the School District Defendants received specific complaints about the participation of Plaintiff’s attackers in these assaults.

Plaintiff brings this action against the School District Defendants under Title 42 U.S.C. § 1983 for a violation of the Fourteenth Amendment of the United States Constitution and for negligent infliction of emotional distress under state law.

II. STANDARD

“A motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) may be granted only if, accepting all well-pleaded allegations in the complaint as true, and viewing them in the light most favorable to plaintiff, plaintiff is not entitled to relief.” In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1420 (3d Cir. 1997). That is, a reviewing court must “refrain from granting a dismissal unless it is certain that no relief can be granted under any set of facts which could be proved.” Schuylkill Energy Resources, Inc. v. Pennsylvania Power & Light Co., 113 F.3d 405, 412 n.5 (3d Cir.) (quoting Fuentes v. South Hills Cardiology, 946 F.2d 196, 201 (3d Cir. 1991)), cert. denied, 118 S. Ct. 435 (1997). “The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims.” Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

III. DISCUSSION

A. Punitive Damages Under § 1983:

In the Motion to Dismiss, School District Defendants contend that, as a matter of law, punitive damages are not recoverable against government agencies. In Newport v. Fact Concerns, Inc., 453 U.S. 247 (1981), the United States Supreme Court explicitly held punitive damages were not recoverable against a municipality pursuant to Section 1983. Id. at 260. Plaintiff counters this by citing to the United States Court of Appeals for the Third Circuit’s

holding in Coleman v. Kaye, 87 F.3d 1491 (3d Cir.1996). In Kaye, the Third Circuit decided that punitive damages may be awarded under Section 1983 “when the defendant’s conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others.” Id. at 1497 (quoting Smith v. Wade, 461 U.S. 30, 56 (1983)).² However, Section 1983 only allows “persons” to be sued. In an action for damages, state officials acting in their official capacities are not “persons” under Section 1983. See Will v. Michigan Dep’t of State Police, 491 U.S. 58, 64, 71 (1989). For liability to attach at the individual level, the state official must have been personally involved in the challenged conduct or knowingly acquiesced in it; liability cannot be predicated on principles of respondeat superior alone. See Paratt v. Taylor, 451 U.S. 527, 537 n.3 (1981); accord Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988) (“Personal involvement can be shown through allegations of personal direction or of actual knowledge and acquiescence . . . made with appropriate particularity.”).

It is apparent that Plaintiff’s Complaint constructs Count One as a Section 1983 cause of action against the collective grouping entitled “School District of the City of Philadelphia Defendants.” In the Complaint, Plaintiff specifically lists the individuals, as well as the School District itself, as a distinct and separate entity and distinguishes it from another grouping entitled “Private Party Defendants.”³ Furthermore, in his Memorandum in Response to Defendants’ Motion to Dismiss, Plaintiff concedes that his Section 1983 action was filed against

2. The Court in Kaye, cites to the United States Supreme Court decision in Smith v. Wade, 461 U.S. 30 (1983) however, both Kaye and Wade are distinguishable from the case at bar in that, the plaintiffs filed Section 1983 claims against defendants in their respective individual capacities. Here, we are dealing with a School District and its administrators, acting in an official capacity.

3. The Private Party Defendants are a collective grouping of Plaintiff’s alleged attackers.

the School District Defendants in their official capacity.⁴ See Pl.’s Mem. in Response to Defs.’ Mot. to Dismiss at 10-11 (Plaintiff’s “cause of action against the school district defendants in their official capacity is tenable.”). Therefore, because Plaintiff has filed his Section 1983 cause of action against the School District Defendants in their official capacity, the motion to dismiss will be granted on this count for punitive damages. However, the Motion to Dismiss will not be granted as it pertains to defendants Roberts and Brown.

B. State Law Claims:

Count Four of Plaintiff’s Complaint alleges that this Court has jurisdiction over his state law claims for negligent infliction of emotional distress. School District Defendants contend that Plaintiff may not raise any state law claim against them by virtue of the Political Subdivision Tort Claims Act, 42 Pa.C.S.A. § 8541, et seq. (PSTCA).⁵ School District Defendants claim that the PSTCA immunizes local agencies and their employees from tort liability for negligent acts except as specifically provided in the statutory exceptions to the general liability afforded by the Act. 42 Pa.C.S.A. § 8542(b), § 8545.

Section 8542(b)(3) explicitly states:

The following acts by a local agency or any of its employees may result in the imposition of liability on a local agency:
(3) real property.--The care, custody or control of real property in the possession of the local agency, except that the local agency

4. Plaintiff sufficiently alleges that both Roberts and Brown are being sued in their official and individual capacities, and for that reason, the Motion to Dismiss the punitive damages against them is denied.

5. Section 8541 provides:

Except as otherwise provided in this subchapter, no local agency shall be liable for any damages on account of any injury to a person or property caused by any act of the local agency or an employee thereof or any other person. 42 Pa.C.S.A. §8541.

shall not be liable for damages on account of any injury sustained by a person intentionally trespassing on real property in the possession of the local agency.

42 Pa.C.S.A. § 8542(b)(3).

Plaintiff cites Vann v. Board of Education, School District of Philadelphia, 76 Pa.Commw. 604, 464 A.2d 684 (1983) and contends that the PSTCA is inapplicable to the present matter. The Court in Vann found that immunity from suit is denied a local agency whenever there is negligence which makes government-owned property unsafe for regular activities, intended uses or reasonably foreseeable uses. Plaintiff asserts that the government owned property is Overbrook and the intended use of that property is educating students. The Complaint alleges that the School District Defendants did create and maintain a dangerous condition within the hallway at Overbrook.⁶

In Vann, the plaintiff was assaulted and forcibly taken through an unsecured gate in the fence that surrounded the school to an unlighted area of the school grounds where she was then beaten. Id. at 685. The plaintiff stated a cause of action against the school district alleging negligence in failing to maintain adequate lighting, thereby allowing the property to be used for criminal activity directed at a passerby. Id. The defendant school district defended on the grounds of Section 8541 immunity. Id. The Court of Common Pleas, Philadelphia County, granted governmental immunity to the school district and the plaintiff appealed. Pursuant to the plaintiff's appeal, the Commonwealth Court affirmed the lower court's decision and held that:

6. The Complaint states that a dangerous condition was maintained within the fourth floor hallway at Overbrook because of the following: (a) the building doors were locked prohibiting Plaintiff from exiting at will; (b) violent youths were permitted to take control of the hallway and commit acts of violence upon other students; (c) hallway security cameras were improperly monitored; and (d) the school district defendants assigned Roberts and Brown to supervise and administer the hallway without proper training, instruction or supervision. See Amended Complaint at 17-18.

Section 8542(b)(3) does not waive immunity as to any unfortunate incident solely because it occurs on government-owned premises. We believe the Section must be read as a narrow exception to a general legislative grant of immunity and we construe it to impose liability only for negligence which makes government-owned property unsafe for the activities for which it is regularly used, for which it is intended to be used, or for which it may be reasonably foreseen to be used. Violent criminal acts such as occurred here are not a reasonably foreseeable use of school property such that the exception will be applied.

Id. at 686 (citing Wimbish v. School District of Penn Hills, 59 Pa.Comm. Ct. 620, 430 A.2d 710 (1981)). While Plaintiff is correct in his assertion that School District Defendants would be denied immunity as a result of negligence which makes the government-owned property unsafe for regular activities, intended uses or reasonably foreseeable uses, it is essential that we explore whether or not the hallway was “unsafe” for the purposes of the Section 8542(b)(3) exception.

The Pennsylvania Supreme Court clarified that Section 8542(b)(3) “can be applied only to those cases where it is alleged that the artificial condition or defect of land itself causes the injury, not merely when it facilitates the injury by the acts of others, whose acts are outside the statute's scope of liability.” Mascaro v. Youth Study Center, 514 Pa. 351, 363, 523 A.2d 1118 (1987) (see also Cotter v. School District of Philadelphia, 128 Pa.Cmw. 159, 162 562 A.2d 1029 (the real estate exception does not apply to damages which are the result of the acts of third parties)). Clearly, the Complaint does not allege facts which fall under Section 8542(b)(3)’s exception, for Plaintiff’s injuries were not caused by any artificial condition or defect of land, but rather by the actions of fellow students in the hallway. Therefore, I find that the School District Defendants are immune from liability for the alleged state law claim of negligent infliction of emotional distress.

C. Title IX and Section 1983:

School District Defendants contend that pursuant to the Sea Clammers doctrine, Plaintiff may not maintain a Section 1983 claim and a Title IX claim. Middlesex County Sewage Auth. v. National Sea Clammers Ass'n, 453 U.S. 1, (1981). The United States Court of Appeals for the Third Circuit, in Williams v. School District of Bethlehem, 998 F.2d 168, 176 (3d Cir.1993), followed the Sea Clammers doctrine and held that the lower court improperly reached the Section 1983 issues. The Third Circuit held that “constitutional claims are ‘subsumed’ in Title IX and that the District court, having addressed the Title IX claim, properly refused to hear plaintiff’s Section 1983 claim.” Id. (citing Pfeiffer v. Marion Center Area School District, 917 F.2d 779, 789 (3d Cir. 1990)). However, while the Complaint does make reference to Title IX, it is clear that Plaintiff has no intention of raising a Title IX claim. The Complaint states a Section 1983 cause of action, and this court will treat it that way. Therefore, the School District Defendants’ contention that Plaintiff’s Section 1983 claim be dismissed is denied.

D. Federal Cause of Action Against School District Defendants in Their Official Capacity:

Simply stated, School District Defendants assert that Plaintiff’s Section 1983 claim against Hornbeck, Jones, Roberts and Brown in their official capacities is nothing more than a claim against the School District itself, and therefore, must fail. Plaintiff contends that because the Complaint alleged that the official policy of the school district defendants caused him harm and because the superintendent and principal were responsible for carrying out the official policy of the School District Defendants, Plaintiff’s cause of action against them in their official capacity is tenable. The only case that School District Defendants rely is one that deals

with this issue after the case was resolved pursuant to settlement. In Kentucky v. Graham, 473 U.S. 159 (1985), the issue of damages prompted the United States Supreme Court's attention. Therefore, I will not dismiss the Section 1983 claim against Hornbeck, Jones, Roberts, and/or Brown in their official capacity. See Id.

IV. CONCLUSION

For the reasons set forth above, the Court will grant the School District Defendants' Motion to Dismiss as it applies to punitive damages under Section 1983 and the Plaintiff's state law claim of Negligent Infliction of Emotional Distress. Pursuant to the following Order, the surviving counts from the Complaint are Count One against the School District Defendants and Counts Two, Three and Four against Josie, Porter, and Walters (the alleged attackers). Further, all claims raised against Lodise, the President of the School Police Association of Philadelphia, survive this motion as well. Count Four has been dismissed as it pertains to the School District Defendants, as a result of their being immune pursuant to PSTCA. 42 Pa.C.S.A. § 8542(b)(3). Finally, while punitive damages are not recoverable against Roberts and Brown in their official capacity, such damages may exist as they remain potentially liable in their individual capacities.

An appropriate Order follows.

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	:	
Defendants.	:	

ORDER

AND NOW, this 29th day of November, 1999, upon consideration of Defendants School District of Philadelphia, et al's Motion to Dismiss and Plaintiff Clarence Combs' response thereto, it is hereby ORDERED and DECREED that said Motion is GRANTED in part and DENIED in part in the following respects:

1. Defendants' Motion to Dismiss as it pertains to the recoverability of punitive damages under Title 42 U.S.C. § 1983 is GRANTED. However as set forth in the Court's Memorandum of even date, Defendants' Motion to Dismiss as it pertains to Section 1983 claims against defendants David Hornbeck and Yvonne Jones in their official capacity is DENIED, and is also DENIED as it pertains to Joseph Roberts and Beverly Brown, in their official and individual capacity.

2. Defendants' Motion to Dismiss as it pertains to Count Four of the Complaint is GRANTED, however all claims against Defendants William Porter, Dante Josie, and Eric Walters survive.

3. Defendants' Motion to Dismiss as it pertains to Section 1983 claims being subsumed in a Title IX claim is DENIED.

4. Finally, as the Memorandum in Support of the Motion to Dismiss fails to make mention of defendant Michael Lodise, all claims against him survive.

BY THE COURT:

RONALD L. BUCKWALTER, J.