

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

ANDREW JOHNSON : CIVIL ACTION
 :
 v. :
 :
 CITY OF PHILADELPHIA, et. al. : NO. 00-0150

MEMORANDUM AND ORDER

HUTTON, J.

March 8, 2001

Presently before the Court are the Plaintiff's Motion to Proceed In Forma Pauperis (Docket Nos. 1 and 4), and Motion for Appointment of Counsel.

I. BACKGROUND

Plaintiff, Andrew Johnson, filed a pro se motion to proceed in forma pauperis containing a motion for appointment of counsel and factual allegations comprising a "Complaint" on January 11, 2001. The Plaintiff's motion was denied without prejudice on January 16, 2001 for failure to submit the proper documentation in support of his motion. On February 8, 2001, the Plaintiff submitted to this Court a motion for leave to proceed in forma pauperis under a heading for the Supreme Court of the United States. Looked at in tandem, the two insufficient motions for leave to proceed in forma pauperis contain the necessary information for the Court to evaluate the Plaintiff's request. Therefore, the Court will construe the motions together.

In summary, the Plaintiff seeks recovery from the City of Philadelphia as well as three John Doe and one Jane Doe defendants who are employed as Sheriffs for the City of Philadelphia. The Plaintiff asserts that he sustained personal injury while being transported on the Sheriff's bus from the prison to the Criminal Justice Center. The injuries were allegedly a direct result of the carelessness of the four "Doe" Defendants.

II. DISCUSSION

A. Motion to Proceed In Forma Pauperis

The federal in forma pauperis statute is designed to provide access to the federal courts to indigent litigants. See Neitzke, et. al. v. Williams, 490 U.S. 319, 324 (1989); see also 28 U.S.C.A. § 1915(a) (West Supp. 2000). Once an indigent litigant provides an affidavit containing the proscribed information, the Court "may authorize the commencement, prosecution or defense of any suit, . . . without prepayment of fees." § 1915(a). In support of his motion to proceed in forma pauperis, Plaintiff has submitted an affidavit stating that he has no money, real estate, stock, bonds, notes, automobiles or other valuable property. It appears from his affidavit that Plaintiff does not have the funds necessary to pay the fees associated with pursuing this action. As a result, leave to proceed in forma pauperis is granted.

B. Motion for Appointment of Counsel.

The Plaintiff included a motion for appointment of counsel

with his motion to proceed in forma pauperis. Congress has provided that a district court "may request an attorney to represent any person unable to afford counsel." 28 U.S.C.A. § 1915(e)(1) (West Supp. 2000). Because the statute gives the district court broad discretion, the United States Court of Appeals for the Third Circuit has set forth a two-tiered analysis to guide the courts in their exercise of that discretion. See Tabron v. Grace, 6 F.3d 147, 155-58 (3d Cir. 1993). Under the Tabron court's analysis, a district court must first determine whether the case has arguable legal and factual merit. Id. at 155. If the case is meritorious, then a court must consider whether: (1) the plaintiff is able to present her case; (2) the degree of difficulty or complexity of the legal issues; (3) the "degree to which factual investigation will be required and the ability of the indigent plaintiff to pursue such investigation," including whether discovery will be extensive; and (4) the extent to which the case will turn on credibility determinations and experts will be needed. Id. at 155-56.

The Plaintiff has prepared his "Complaint" pro se, therefore the Court will view it under a "less stringent standard[] than formal pleadings drafted by lawyers." Haines v. Kerner, 404 U.S. 519, 520, 92 S.Ct. 594, 596 (1972). The Plaintiff complains of injuries suffered on the Sheriff's bus while being transported from the prison to the Criminal Justice Center. See Pl.['s] Statement

of Facts. According to the Plaintiff's allegations, his injury was a direct result of the carelessness of the Defendants. See Pl.['s] Statement of Claims. Specifically, the Plaintiff accuses the Defendants of (1) operating a motor vehicle without due regard for the rights, safety, and position of the plaintiff, (2) failing to operate the motor vehicle in an attentive manner, (3) failing to keep a proper lookout, (4) failing to use due care under the circumstances, and (5) failing to execute proper policy and procedure. See Pl.['s] Statement of Claims. All of the Plaintiff's allegations indicate a claim for negligence against the Defendants. While the Plaintiff does not explicitly state a federal cause of action, the Court looks at the Plaintiff's "Complaint" liberally and finds that the only federal cause of action that could be supported by his allegations is a claim for relief under 42 U.S.C.A. § 1983 (West Supp. 2000).

In order to bring a successful section 1983 claim, a plaintiff must demonstrate that the challenged conduct was committed by a person acting under color of state law and that the conduct deprived the plaintiff of a right, privilege, or immunity secured by the Constitution or federal law. See 42 U.S.C.A. § 1983 (West Supp. 2000); Piecknick v. Pennsylvania, 36 F.3d 1250, 1255-56 (3d Cir. 1994). The starting point "in evaluating a section 1983 claim is to 'identify the exact contours of the underlying right said to have been violated' and to determine 'whether the plaintiff has

alleged a deprivation of a constitutional right at all.'" Nicini v. Morra, 212 F.3d 798, 806 (3d Cir. 2000)(quoting County of Sacramento v. Lewis, 523 U.S. 833, 841 n.5, 118 S.Ct. 1708 (1998)). The only federal right implicated by the Plaintiff's allegations are the protections against deprivation of life, liberty, or property without due process of law as guaranteed by the Fourteenth Amendment. See Daniels v. Williams, 474 U.S. 327, 328, 106 S.Ct. 662, 663 (1986)(personal injury incurred as result of sheriff's negligence "'deprived' petitioner of his 'liberty' interest in freedom from bodily injury").

An allegation of mere negligence is not enough to support a due process violation in a section 1983 claim. See id. at 330, 106 S.Ct. at 664; see also Nicini, 212 F.3d at 806. "Not only does the word 'deprive' in the Due Process Clause connote more than a negligent act, but we should not 'open the federal courts to lawsuits where there has been no affirmative abuse of power.'" Id. at 330, 106 S.Ct. at 664. To do otherwise would "trivialize the centuries-old principle of due process of law." Id. at 332, 106 S.Ct. at 665. In the instant case, nothing in the Plaintiff's allegations suggest anything more than mere negligence. As a result, the Plaintiff's section 1983 claim supported by a violation of the Fourteenth Amendment must fail.

Because the Plaintiff fails to state a claim under section 1983 and there is no other federal cause of action asserted by the

Plaintiff, the Court finds that the Plaintiff's allegations lack legal merit. Therefore, the Plaintiff fails to make it past the initial stage of the Tabron analysis and the Court must deny the Plaintiff's motion for appointment of counsel. In addition, because the Plaintiff's Complaint fails to state a claim upon which relief may be granted, the Court must dismiss the case pursuant to 28 U.S.C.A. § 1915(e)(2)(B)(i)(ii) (West Supp. 2000).

An appropriate Order follows.

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ORDER

AND NOW, this 8th day of March, 2001, upon consideration of the Plaintiff's Motion to Proceed In Forma Pauperis (Docket Nos. 1 and 4), and Motion for Appointment of Counsel, IT IS HEREBY ORDERED that the Plaintiff's Motion to Proceed In Forma Pauperis is **GRANTED**;

IT IS HEREBY FURTHER ORDERED that Plaintiff's Motion for Appointment of Counsel is **DENIED**; and

IT IS HEREBY FURTHER ORDERED that the Plaintiff's action is **DISMISSED** for failure to state a claim upon which relief may be granted.

BY THE COURT:

HERBERT J. HUTTON, J.