

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

JERRY J. IRONS : CIVIL ACTION
 :
 v. :
 :
 TRANSCORP AMERICA, et al. : NO. 01-4328

ORDER AND MEMORANDUM

AND NOW, this 28th day of November, 2001, upon consideration of Barry Stanton's Motion to Dismiss, or in the Alternative, Motion for Summary Judgment (Docket No. 12), and the opposition and reply thereto, IT IS HEREBY ORDERED THAT the motion is GRANTED, and the complaint is dismissed without prejudice for the reasons discussed below.'

In this case, plaintiff alleges that his civil rights were violated. Barry Stanton is named as a defendant, identified as "Superintendent of the Prince Georges {sic} Correctional Facility." Complaint ¶ 8. Defendant argues that the claim must be dismissed as against Mr. Stanton both in his individual capacity, and in his official capacity, for failure to state a claim, and lack of personal jurisdiction. Defendant does not explain why this Court lacks personal jurisdiction over him so the motion on that ground is denied.

¹ Defendant Barry Stanton attached to his motion an affidavit. The Court will not consider the affidavit at this early stage, and grants this dismissal only on the basis of the pleadings.

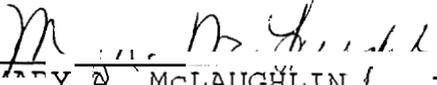
As to failure to state a claim, plaintiff claims liability here based upon Mr. Stanton's supervisory authority. A supervisory defendant in a civil rights action must have personal involvement in the alleged wrongs to be held liable; liability cannot be predicated solely on the operation of *respondeat superior*. See Robinson v. City of Pittsburgh, 120 F.3d 1286, 1293-4 (3d Cir. 1997); Baker v. Monroe Twp., 50 F.3d 1186, 1190-91 (3d Cir. 1995) (citations omitted). Personal involvement can be shown through allegations of personal direction or of actual knowledge and acquiescence. Robinson, 120 F.3d at 1294 (citations omitted). Allegations of participation or actual knowledge and acquiescence must be made with appropriate particularity. See Rode v. Dellarciprete, 845 F.2d 1195, 1207-08 (3d Cir. 1988).

In this Circuit, a pleading is sufficient if it alleges the conduct violating rights, the time, the place, and those responsible. See Rode, *id.* (citing Boykins v. Ambridge Area Sch. Dist., 621 F.2d 75, 80 (3d Cir. 1980) and Hall v. Pennsylvania State Police, 570 F.2d 86, 89 (3d Cir. 1978)). This Court finds that Plaintiff's allegations are not sufficient here. Although plaintiff states that defendants "acted jointly and in concert with each other," and that each "failed and refused to perform" a duty to protect plaintiff, he says nothing specific about Mr. Stanton, or about Mr. Stanton's personal participation, knowledge, or) acquiescence. Complaint ¶¶ 8, 14.

Defendant also argues that any claim against Mr. Stanton in his official capacity should be dismissed. The Court agrees. Naming a government official in his official capacity is the equivalent of naming the government entity itself, and requires the plaintiff to make out proof of an official policy or custom as the cause of any constitutional violation. See Hafer v. Mello, 502 U.S. 21, 25 (1991); Kentucky v. Graham, 473 U.S. 159, 165-66 (1985) (citing Monell v. New York City Dept. of Social Servs., 436 U.S. 658, 690 n.55 (1978)). Here, Plaintiff has made no such allegations regarding a policy or custom. The Court notes that any such claim brought against Mr. Irons in his official capacity would be duplicative of a claim brought against the governmental entity. See Hafer, 502 U.S. at 25; Graham, 473 U.S. at 165-66; Burton v. City of Philadelphia, 121 F. Supp.2d 810, 812-13 (E.D. Pa. 2000); Satterfield v. Borough of Schuylkill Haven, 12 F. Supp.2d 423, 432 (E.D. Pa. 1998).

By previous order, this Court has granted plaintiff until December 31, 2001, to make any amendments to his complaint.

BY THE COURT:



MARY B. McLAUGHLIN, J.