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

AISHA LEACH, A MINOR BY AND THROUGH HER PARENT AND NATURAL GUARDIAN, ETHEL DYSON Plaintiffs, v. PRINCIPAL JOSEPH J. BAUM, JR. AND SCHOOL DISTRICT OF PHILADELPHIA, Defendants.	:	Civil Action NO. 04-135

Opinion and Order

Newcomer, S.J. October 28, 2004

Presently before the Court is Defendants' Motion for Summary Judgment as to Plaintiff's excessive force claim under the Fourth Amendment and her state tort claims. For the reasons set forth below, this Motion is granted in part and denied in part. An appropriate order follows.

I. BACKGROUND

The facts of this case are based on an incident that occurred when Plaintiff was a ten-year old, fifth grade student at Cleveland Elementary School. On January 13, 2004, Plaintiff filed her Complaint under the Pennsylvania Minority Tolling provisions against her former school principal Joseph J. Bahm, Jr. ("Bahm").[1] The incident underlying Plaintiff's several

[1] Joseph J. Bahm, Jr. has responded to this lawsuit that incorrectly names him as Joseph J. Baum, Jr.

claims occurred on May 20, 1996 when Plaintiff was sent to principal's office for disciplinary reasons including kicking her own teacher, Ms. Yarnall. Soon after she entered the Defendant Bahm's office, there was a confrontation between Plaintiff and Defendant Bahm. Defendant Bahm called Plaintiff's father about the incident, and then she began repeatedly screaming into the telephone that the police were going to "lock her up." According to Plaintiff, Defendant Bahm grabbed her right hand and wrist, bent it back, and told her to be quiet. Plaintiff does not remember if she dropped the phone, but recalls a cracking or breaking sound after the Defendant's alleged conduct. Plaintiff asserts that after her wrist/hand was broken, only the School Police Officer, Fred Waters, ("Officer Waters") placed her in handcuffs. Shortly after Plaintiff was handcuffed, the Philadelphia Police arrived and arrested her.

Philadelphia Police Officer Nelson requested that the school nurse, Kathleen Callaghan, examine Plaintiff's wrist/hand. Even though ice was applied to the injury, the handcuffs were re-applied, and Philadelphia Police transported Plaintiff to the hospital for treatment prior to being brought to the police station for processing. At the hospital, Plaintiff was diagnosed with a broken right wrist. Defendant Bahm disputes these facts, claiming that Plaintiff was very unruly and disruptive in his office. He claims that she became "out of control" in his office

while waiting for the police, raised a glass paperweight about the size of a tennis ball over her head, and indicated that she planned to throw it at him. Defendant responds that this conduct caused him to grab her hand in an effort to stop her. Defendant Bahm also asserts that both he and Officer Waters struggled to handcuff her while they awaited the arrival of the police. Plaintiff's height at the time was about five-feet and five inches, and Defendant Bahm's height was approximately five-feet and eight inches.

On April 16, 2004, this Court partially granted Defendants' Motion to Dismiss, which left open counts against Defendant Bahm individually including Count I (excessive force), III (false arrest/imprisonment), IV (assault and battery) and V (intentional infliction of emotional distress). The only remaining count after said Order against Defendant School District of Philadelphia is Count II, a Monell claim. In her Response to Defendants' Motion for Summary Judgment, Plaintiff has not challenged Defendants' Motion with respect to Count II (Monell claim) or Count III (false arrest/imprisonment). Summary judgment is GRANTED on those claims. Thus, the only remaining Counts to be resolved in this Order are Counts I, IV, and V.

II. LEGAL STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file,

together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c). A genuine issue is one in which the evidence is such that a reasonable jury could return a verdict for the nonmoving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). When deciding a motion for summary judgment, a court must draw all reasonable inferences in the light most favorable to the non-moving party. See Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992). Finally, depositions may be considered in ruling on a motion for summary judgment pursuant to FED. R. CIV. P. 56(c). See Palm Bay Imps., Inc. v. Miron, 55 Fed. Appx. 52, 57 (3d Cir. 2002).

III. DISCUSSION

The Court will first rule on the constitutional claim for excessive force, and then turn to the state tort claims.

A. Constitutional Claim

Defendant Bahm is not entitled to summary judgment on Plaintiff's Fourth Amendment claim for excessive force. As previously discussed in this Court's Order dated April 16, 2004, a claim for excessive force under the Fourth Amendment is

governed by a reasonableness standard.[2] A school administrator violates the Fourth Amendment if the restriction of liberty is unreasonable under the circumstances then existing and apparent.

There is a genuine issue of material fact as to the excessive force claim. In her deposition, Plaintiff testified that Defendant Bahm injured her hand before Officer Waters, a school security guard, placed her in handcuffs. Defendant Bahm does not dispute the fact that he tried to restrain her with Officer Waters; however, it remains questionable whether the restraint was reasonable under the circumstances. In addition, Defendant testified that after the phone call to her father, there was a struggle over a paperweight, which she raised over her head as if to throw it at him. Plaintiff denies this incident occurred. Viewing the facts in the light most favorable to Plaintiff, there is a genuine dispute of material fact as to who caused the injury, and under what circumstances. A jury will have to determine, after deciding what the real risk to Defendant Bahm was, and what was objectively reasonable for a school administrator to believe about his safety, giving due regard to

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[2] See Leach v. Baum, No. 04-135, 2004 WL 834732, *2 (E.D. Pa. Apr. 16, 2004) (citing Wallace v. Batavia School Dist., 68 F.3d 1010, 1013 (7th Cir. 1995)) (reasoning that when a school official is performing an administrative function, the Fourth Amendment protections apply to seizures of students); c.f. Saucier v. Katz, 533 U.S. 194, 207 (2001) (finding that "[e]xcessive force claims, like most other Fourth Amendment issues, are evaluated for objective reasonableness based upon the information the officers had when the conduct occurred.").

the pressures of the situation. C.f. Abraham v. Raso, 183 F.3d 279, 294 (3d Cir. 1999).

Similarly, Defendant cannot seek refuge under qualified immunity for the excessive force claim under the Fourth Amendment In order to resolve this issue, the Court must apply the two-step inquiry set forth by the Supreme Court in Saucier v. Katz, 533 U.S. 194, 201 (2001). The first inquiry is whether the facts alleged, viewed in the light most favorable to the party asserting the injury, show the officer's conduct violated a constitutional right. See id.; Assaf v. Fields, 178 F.3d 170, 174 (3d Cir. 1997). "A right is clearly established if its outlines are sufficiently clear that a reasonable officer would understand that his actions violate that right." Sterling v. Borough of Minersville, 232 F.3d 190, 193 (3d Cir. 2000) (citing Kornegay v. Cottingham, 120 F.3d 393, 396 (3d Cir. 1997)). In this case, the first inquiry is easily satisfied because Plaintiff has alleged facts that demonstrate the officer's conduct violated her right to be free from excessive force during a seizure. The Court need not go into a recitation of these facts, and instead references its April 6, 2004 Order, which permitted an excessive force claim to survive a Motion to Dismiss. Thus, the first inquiry is satisfied.

The second inquiry is whether it would be clear to a reasonable school administrator that his conduct was unlawful in

the situation he confronted. See id. at 202 (citing Wilson v. Layne, 526 U.S. 603, 605 (1999); Kornegay v. Cottingham, 120 F.3d 393, 396 (3d Cir. 1997). The rationale for this second requirement is that, as a policy matter, it is unfair to impose personal liability on government employees unless they had advance notice that the conduct was unlawful. This inquiry requires the Court to resolve a question of law as to whether a reasonable school official would not have known that this conduct was in violation of the Fourth Amendment, or stated another way that his conduct was objectively unreasonable. C.f. Kopec v. Tate, 361 F.3d 772, 777 (3d Cir. 2004). However, because the facts as to who caused the injury, and under what circumstances the conduct occurred are material and in dispute, this Court - at least at this time - cannot rule on whether a reasonable school administrator could have believed that the conduct was lawful. See Russoli v. Salisbury Twp., 126 F. Supp. 2d 821, 844 (E.D. Pa. 2000) (citing Sharrar v. Felsing, 128 F.3d 810, 828 (3d Cir. 1997) (noting that even though the determination of the reasonableness as to the officers' beliefs and actions is a question of law, the jury must determine the material facts in dispute). Therefore, this Court will deny Defendants' Motion based on an assertion of qualified immunity without prejudice because the disputed facts will have to be resolved by a jury.

B. State Law Claims

(1) Assault; Battery

Under Pennsylvania law, "an assault occurs when an actor intends to cause an imminent apprehension of a harmful or offensive bodily contact." Sides v. Cleland, 648 A.2d 793, 796 (Pa. Super. 1994) (citing Restatement (Second) of Torts § 21). An assault requires both the actor's intent to place the individual in imminent apprehension of harmful or offensive conduct and the individual's actual imminent apprehension. See Restatement (Second) of Torts, § 21. "A battery is committed whenever the violence menaced in an assault is actually done, though in ever so small a degree, upon the person." Renk v. City of Pittsburgh, 641 A.2d 289, 293 (Pa. 1994).

Plaintiff's assault and battery claims survive summary judgment because there are genuine issues of material fact as to whether Defendant Bahm or Officer Waters caused the contact that led to the injury, and as to whether Plaintiff was about to throw a paperweight at Mr. Bahm, which allegedly caused him to restrain Plaintiff. In addition, Defendants are not entitled to immunity for these tort claims. Under the Political Subdivision Tort Claims Act ("Act"), an employee is not immune if the employee's act causing the injury is judicially determined to constitute "willful misconduct." See 42 PA. CONS. STAT. § 8550. Under Pennsylvania law, assault and battery, in the context of this

type of case qualify as "willful acts" because they are intentional torts.[3] Furthermore, Defendants' mistakenly rely on 18 PA. CONS. STAT. § 509(2) for the proposition that this justification defense is a defense to civil tort claims. This statute operates as an affirmative defense to criminal counts of child abuse. See Kurilla v. Callahan, 68 F. Supp. 2d 556, 558 n.1 (M.D. Pa. 1999) (noting that this statute is a justification defense to criminal harassment); Commonwealth v. Douglass, 588 A.2d 53 (Pa. Super. 1991); Commonwealth v. Tullius, 582 A.2d 1 (Pa. Super. 1990). The Court is not aware of any civil case in which a Defendant has relied on this statute as a defense against state tort claims. Therefore, the statute is inapplicable in this case, and the state law claims may proceed to trial.

(2) Intentional Infliction of Emotional Distress

Defendants are entitled to summary judgment on this claim because the conduct alleged, if true, is not so extreme and outrageous that it constitutes an intentional infliction of emotional distress. In order to survive a motion for summary

[3] See Maples v. Boyd, No. 03-6325, 2004 U.S. Dist. LEXIS 15988, at *28 n.11 (E.D. Pa. Aug. 9, 2004) (stating that "[w]illful misconduct, for the purpose of tort law, has been defined by our Supreme Court to mean conduct whereby the actor desired to bring about the result that followed or at least was aware that it was substantially certain to follow, so that such desire can be implied. In other words, the term 'willful misconduct' is synonymous with the term "intentional tort.'" Renk v. City of Pittsburgh, 641 A.2d 289, 293 (Pa. 1994) (quoting King v. Breach, 540 A.2d 976, 981 (Pa. Commw. Ct. 1988)).

judgment on this claim, a plaintiff must demonstrate that the conduct complained of is so "outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized society." Buczek v. First National Bank of Mifflintown, 531 A.2d 1122, 1125 (Pa. Super. 1987). To recover under this tort, a plaintiff must offer evidence of that distress. Specifically, medical evidence is required to establish a claim for intentional infliction of emotional distress. See Hoy v. Angelone, 720 A.2d 745, 754 n.10 (Pa. 1998) (citing Kazatsky v. King David Memorial Park, Inc., 527 A.2d 988, 989 (Pa. 1987).

Plaintiff's case law supporting the opposite conclusion is distinguishable because it focuses on another issue, namely whether expert testimony is required to prove damages in an intentional tort action where the injuries are direct, obvious, and foreseeable results of the conduct. See Montgomery v. Bazaz-Sehgal, 742 A.2d 1125, 1133 (Pa. Super. 1999). In this case, the issue is not whether expert testimony is required to establish a claim of intentional infliction of emotional distress, but rather whether *any* medical evidence is required to bring such a claim. In addition, Hoy is more on-point than Montgomery because Hoy specifically refers to an intentional tort of infliction of emotional distress, whereas Montgomery applies generally to non-

negligence cases, and has been applied primarily in battery cases. See Schall v. Vazquez, 322 F. Supp. 2d 594, 601 (E.D. Pa. 2004) (citing Montgomery for the proposition that there is no need to show actual injury if there is an unconsented, offensive touching).

There is no genuine issue for trial with respect to this claim because Plaintiff has not met its burden to present medical evidence beyond the pleadings. In addition, Plaintiff has not offered *any* evidence of the severity of the distress. Finally, the Court is not persuaded from the evidence submitted that Defendant Bahm's conduct, even as alleged, may be regarded as so extreme and outrageous as to permit recovery. See Cox. v. Keystone Carbon Co., 861 F.2d 390, 395 (3d Cir. 1988); Restatement (Second) of Torts § 46 cmt. h (noting that "[u]nder Pennsylvania law, it is for the court to determine in the first instance whether Defendant's conduct can be reasonably regarded as so extreme and outrageous to permit recovery"); Wise v. City of Philadelphia, No. 97-2651, 1998 U.S. Dist. LEXIS 12149, at *14 (E.D. Pa. July 31, 1998) (same).

IV. CONCLUSION

For the reasons above, judgment is entered in favor of Defendants and against Plaintiff on Counts II, III, and V of Plaintiff's Complaint. Consequently, Defendant Bahm remains the only defendant to this lawsuit.

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Plaintiff,	:	
v.	:	
PRINCIPAL JOSEPH J. BAUM, JR. AND SCHOOL DISTRICT OF PHILADELPHIA	:	
Defendants.	:	NO. 04-135

O R D E R

AND NOW, this 28th day of October, 2004, upon consideration of Defendants' Motion for Summary Judgment (Doc. 14), and Plaintiff's Response, it is hereby ORDERED that Defendants' Motion is GRANTED in part and DENIED in part. Summary Judgment is GRANTED as to Counts II, III, and V of Plaintiff's Complaint, and DENIED as to Counts I and IV of the Complaint. Judgment is hereby ENTERED in favor of Defendants and against Plaintiff on Counts II, III, and V.

AND IT IS SO ORDERED.

s/_____
Clarence C. Newcomer, S.J.