

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

CLARA TATE SPENCER, in her own	:	CIVIL ACTION
right and as Administratrix of	:	
the estate of LAMONT TATE,	:	04-4974
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
GLENN ECKMAN, individually and in	:	
his capacities as an officer in	:	
the Police Department of	:	
Phoenixville, and Chief of the	:	
Lower Providence Community Center	:	
(improperly captioned as the Lower	:	
Providence Ambulance Company), and	:	
THE BOROUGH OF PHOENIXVILLE	:	
	:	
Defendants.	:	

MEMORANDUM AND ORDER

JOYNER, J.

March 28, 2005

Plaintiff brings this action on behalf of herself, and on behalf of the estate of her deceased son, Lamont Tate, for damages arising out of a motor vehicle accident between Decedent Tate and Defendant Glenn Eckman. Defendant Eckman, in his capacity as Chief of the Lower Providence Community Center, has moved to dismiss Plaintiff's Complaint. A joint motion to dismiss has also been filed by Defendants Eckman and the Borough of Phoenixville.¹ For the reasons that follow, Defendants'

¹ Plaintiff's responses to the instant motions have been stricken on the grounds that they were untimely filed. See Order dated March 28, 2005. This Court has discretion pursuant to Local Rule of Civil Procedure 7.1(c) to grant these motions as uncontested. However, because the bulk of Plaintiff's claims appear to be directed towards Defendant Eckman in his various capacities, and because this Court is reluctant to punish

motions shall be granted in part and denied in part.

Facts

On October 24, 2002, Decedent Lamont Tate was involved in a motor vehicle accident with Defendant Glenn Eckman. Defendant Eckman, a Phoenixville police officer and chief of the Lower Providence Community Center ambulance squad, was in his police uniform but off-duty at the time of the collision. Decedent had a history of epileptic-like seizures, and Plaintiff alleges that Decedent was having a seizure at the time that the accident occurred. Plaintiff also alleges that Defendant Eckman knew Decedent personally, and was aware of his medical condition as a result of having responded, on a previous occasion, to an emergency call involving Decedent.

After the collision, Defendant attempted to approach Decedent's vehicle, but Decedent erratically drove into a vacant field. Defendant called 911, and also placed a call to one of the emergency medical technicians on the ambulance squad. Defendant allegedly stated that he did not want to be involved because he had just been a party to the accident.

When police officers arrived on the scene and removed Decedent from his vehicle, Defendant Eckman informed the officers

Plaintiff for her counsel's negligence, we will consider the instant motions on their merits.

that he knew Decedent, and that Decedent should be considered armed and dangerous. Plaintiff alleges that Defendant Eckman instructed the ambulance team not to approach Decedent.

Decedent was then placed face down on the ground and searched for weapons. None were found. By the time Decedent was turned over, he was unconscious. Upon observing that he was unconscious, Defendant Eckman permitted the ambulance team to attend to Decedent's medical needs.

Decedent was transported by ambulance to Phoenixville Hospital, and died at some point proximate to his arrival at the hospital. Plaintiff alleges that Decedent's death was caused by Defendants' having placed Decedent in a face down position and failing to provide emergency medical attention in a timely fashion.

Discussion

Count I: 42 U.S.C. § 1983 Unreasonable Use of Force

To state a claim for excessive use of force under the Fourth Amendment, a plaintiff must show that a "seizure" occurred and that it was unreasonable. Abraham v. Raso, 183 F.3d 279, 288 (3rd Cir. 1999) (citing Brower v. County of Inyo, 489 U.S. 593, 599 (1989)). A seizure triggering the Fourth Amendment's protections occurs only when a government actor has, by means of physical force or show of authority, in some way restrained the

plaintiff's liberty. Graham v. Connor, 490 U.S. 386, 395 (1989) (citing Terry v. Ohio, 392 U.S. 1, 19, n. 16 (1968)).

Defendant Eckman, in his capacity as Chief of the Lower Providence Community Center ambulance team, moves to dismiss Count I of Plaintiff's Complaint on the grounds that Defendant was not a state actor at the time of the incident. Ambulance associations and their employees do not qualify as state actors for the purpose of § 1983 claims. McKinney v. W. End Voluntary Ambulance Ass'n, 821 F. Supp. 1013, 1019 (E.D. Pa. 1992); see also Mark v. Borough of Hatboro, 51 F.3d 1137, 1148 (3rd Cir. 1995) (citing Scrima v. Swissvale Area Emergency Serv., 599 A.2d 301, 303 (Pa. Commw. Ct. 1991)) (distinguishing volunteer fire companies, which are considered state actors in Pennsylvania, from volunteer ambulance associations, which are not). Thus, Count I of Plaintiff's Complaint fails to state a claim against Defendant Glenn Eckman in his individual capacity or in his capacity as ambulance chief.

Defendants Glenn Eckman and the Borough of Phoenixville likewise move to dismiss the unreasonable use of force claim in Count I of Plaintiff's Complaint. Defendants contend, first, that Fourth Amendment protection was not triggered because Decedent Tate was not "seized" by the officers. Furthermore, Defendants contend that even if such a seizure occurred, Defendants' use of force was reasonable under the circumstances.

We must deny Defendants' motion to dismiss this claim on the following grounds.

Viewing the facts of the Complaint in the light most favorable to Plaintiff, the Decedent's liberty was indeed restrained by a government actor's physical force or show of authority. Plaintiff alleges that Defendant Eckman, in his capacity as a police officer, directed the Lower Providence Police Force to remove the Decedent, who was in the midst of an epileptic seizure, from his automobile. Plaintiff further alleges that Defendant Eckman ordered that Decedent be placed face down on the ground to be handcuffed and searched. Such action is a sufficient show of authority and physical force to qualify as a seizure for Fourth Amendment purposes.

The facts of the Complaint likewise support a contention that the force used to restrain Decedent was unreasonable. In determining whether a particular seizure was reasonable under the Fourth Amendment, a court must carefully balance the nature and quality of the intrusion on the individual's interests against the countervailing governmental interests at stake. Graham, 490 U.S. at 396. Proper application of the reasonableness standard requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting

arrest or attempting to evade arrest by flight. Graham, 490 U.S. at 396. In this action, Decedent was suffering from an epileptic seizure at the time that he was restrained by Defendants, and would have posed no immediate threat to their safety even if he had been armed, which he was not. Thus, Plaintiff has made out a legitimate § 1983 claim for unreasonable use of force against the Borough of Phoenixville and Defendant Eckman in his capacity as a Phoenixville police officer.

Count II: Negligence and Negligent Supervision

Municipal entities and their employees generally enjoy absolute immunity from tort liability under the Political Subdivision Tort Claims Act. 42 Pa. C.S.A. 8541. However, tort recovery may be permitted for negligent acts falling within one of the eight enumerated categories in 42 Pa. C.S.A. 8542.² In Count II of this action, Plaintiff alleges general negligence in the acts of the Defendants towards Decedent Tate, and negligent failure to properly supervise the police and ambulance team in the handling of an individual with a severe medical condition. Plaintiff's allegations do not fall within any one of the eight categories. Furthermore, negligent supervision has been

² 42 Pa. C.S.A. 8542(b) permits tort recovery against a municipality, agency, or its employees where a negligent act relates to one of the following: vehicle liability; care, custody, or control of personal property; real property; trees, traffic controls, or street lighting; utility service facilities; streets; sidewalks; or care, custody, or control of animals. None of these are at issue in this case.

determined to be insufficient to impose liability under the exceptions to governmental immunity. See Sims v. Silver Springs-Martin Luther Sch., 625 A.2d 1297, 1301 (Pa. Commw. Ct., 1993); Hitchens v. County of Montgomery, No. 01-2564, 2002 U.S. Dist. LEXIS 2050 at 26-27 (E.D. Pa. 2002). Thus, Count II fails to state a valid cause of action against the Borough of Phoenixville or against Defendant Eckman in his capacity an officer in the Police Department of Phoenixville.³ However, inasmuch as Count II alleges negligence on the part of Defendant Eckman in his individual capacity or in his capacity as ambulance chief, the claim will not be dismissed.⁴

Counts V and VI: Intentional and Negligent Infliction of Emotional Distress

To establish a claim of intentional infliction of emotional distress, a plaintiff must establish that the defendant intentionally committed "outrageous conduct," and that the plaintiff was present at the time the conduct occurred.

³ For the same reasons, Count VI, alleging negligent infliction of emotional distress, fails to state a claim against the Borough of Phoenixville or against Defendant Eckman in his official capacity.

⁴ Defendant Eckman, in his capacity as ambulance chief, has moved to strike Count II of Plaintiff's Complaint as duplicative of Count IV. Defendant does not, however, contend that Plaintiff has failed to state a cause of action. As Federal Rule of Civil Procedure 8(a) expressly permits parties to plead in the alternative, Defendant's Motion must be denied with respect to Count II.

Copenhaver v. Borough of Bernville, No. 02-8398, 2003 U.S. Dist. LEXIS 1315, 21 (E.D. Pa. 2003) (citing Johnson v. Caparelli, 625 A.2d 668, 671 (Pa. Super. Ct. 1993)). To establish a claim of negligent infliction of emotional distress, a plaintiff must establish the elements of a negligence claim, and must further prove at least one of the following four elements: (1) that the defendant had a contractual or fiduciary duty toward him; (2) that plaintiff suffered a physical impact; (3) that plaintiff was in a "zone of danger" and at risk of an immediate physical injury; or (4) that plaintiff had a contemporaneous perception of tortious injury to a close relative. Atamian v. Assadzadeh, No. 00-3182, 2002 U.S. Dist. LEXIS 6269, 17-18 (E.D. Pa. 2002) (citing Doe v. Philadelphia Cmty. Health Alternatives AIDS Task Force, 745 A.2d 25, 27 (Pa. Super. Ct. 2000)).

Plaintiff Clara Tate Spencer, in her individual capacity, does not allege that she observed the outrageous conduct or within the zone of danger, nor does she allege that Defendant had a contractual or fiduciary duty toward her, or that she personally suffered physical impact or injury. Thus, Counts V and VI must be dismissed inasmuch as they are brought by Plaintiff in her individual capacity. However, pursuant to 42 Pa. C.S. § 8302, Plaintiff is permitted, as the administratrix of the estate of Lamont Tate, to bring a cause of action for negligent or intentional infliction of emotional distress on

behalf of the decedent.

Punitive Damages

Municipalities and other governmental entities are immune from punitive damages for violations of § 1983, and for tort law violations pursuant to the Tort Claims Act. See City of Newport v. Fact Concerts, Inc., 453 U.S. 247, 271 (1991); Toombs v. Manning, 835 F.2d 453, 463 (3rd Cir. 1987). However, punitive damages may be recoverable against an individual municipal employee where the individual's actions are the result of evil motive or intent, or involve reckless or callous indifference. Teed v. Hilltown Township, 2004 U.S. Dist. LEXIS 9477, 25-26 (E.D. Pa. 2004) (citing Smith v. Wade, 461 U.S. 30, 56 (1983)). Thus, Defendants' motion to dismiss the punitive damages claims against the Borough of Phoenixville only must be granted.

Defendant Eckman moves to dismiss Plaintiff's claims for punitive damages for failure to state a claim. However, viewing the Complaint in the light most favorable to Plaintiff, this Court cannot dismiss Plaintiff's punitive damages claims against Defendant Eckman. Plaintiff alleges that Defendant knew the decedent and harbored personal animus towards him. Plaintiff further alleges that Defendant knew from previous experience that the decedent had a medical condition causing epileptic-type seizures, and that Defendant observed decedent suffering from such a seizure at the scene of the accident. Finally, Plaintiff

alleges that Defendant falsely informed the emergency medical team that the decedent was armed and extremely dangerous and instructed them not to approach him, and that, as a result of this delay, decedent was unconscious by the time the team began to administer medical care. On the basis of these facts and Plaintiff's claims that Defendant's conduct was willful, wanton, and outrageous, we must deny Defendant Eckman's motions to dismiss the punitive damages claims against him. See Martin v. Goodyear Tire & Rubber Co., No. 99-80, 1999 U.S. Dist. LEXIS 1318, 2-4 (E.D. Pa. 1999) (denying motion to dismiss punitive damages claim where complaint characterized defendant's conduct, without more, as "wanton, reckless, and outrageous").

Declaratory and Injunctive Relief

Equitable remedies, including declaratory and injunctive relief, are appropriate only where a plaintiff has no adequate remedy at law and will suffer irreparable injury if the relief is denied. Barnes v. Am. Tobacco Co., 989 F. Supp. 661, 667 (E.D. Pa. 1997) (citing Morales v. Trans World Airlines, Inc., 504 U.S. 374, 381 (1992)); see also Nat'l Private Truck Council v. Oklahoma Tax Comm'n, 515 U.S. 582, 591 (1995). Plaintiff in this matter has failed to demonstrate that equitable relief is appropriate or that she will suffer irreparable injury if such relief is denied. Furthermore, it appears to this Court that Plaintiff has an adequate remedy at law. Thus, Defendants'

motions to dismiss the claims for declaratory and injunctive relief will be granted.

An appropriate Order follows.

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

CLARA TATE SPENCER, in her own	:	CIVIL ACTION
right and as Administratrix of	:	
the estate of LAMONT TATE,	:	04-4974
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
GLENN ECKMAN, individually and in	:	
his capacities as an officer in	:	
the Police Department of	:	
Phoenixville, and Chief of the	:	
Lower Providence Community Center	:	
(improperly captioned as the Lower	:	
Providence Ambulance Company), and	:	
THE BOROUGH OF PHOENIXVILLE	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 28th day of March, 2005, upon consideration of the uncontested Motion of Defendants Glenn Eckman and the Borough of Phoenixville to Dismiss Counts I, II, V, and VI of Plaintiff's Complaint (Doc. No. 18), and the uncontested Motion of Defendant Glenn Eckman, in his capacity as Chief of the Lower Providence Community Center (improperly captioned as the Lower Providence Ambulance Company), to Dismiss Plaintiff's Complaint (Doc. No. 20), it is hereby ORDERED that the Motions are GRANTED in part and DENIED in part, as follows:

(1) Count I of Plaintiff's Complaint, alleging a § 1983 claim for unreasonable use of force and failure to provide medical attention, is DISMISSED only with respect to Defendant

Eckman in his individual capacity and in his capacity as Chief of the Lower Providence Community Center;

(2) Count II, alleging negligence and negligent supervision, is DISMISSED only with respect to the Borough of Phoenixville and Defendant Eckman in his capacity an officer in the Police Department of Phoenixville;

(3) Counts V and VI, alleging intentional and negligent infliction of emotional distress, are DISMISSED only as brought by Plaintiff Clara Tate Spencer in her individual capacity;

(4) Count VI, alleging negligent infliction of emotional distress, is DISMISSED only with respect to the Borough of Phoenixville and Defendant Eckman in his capacity as an officer in the Police Department of Phoenixville;

(5) Plaintiff's claims for punitive damages are DISMISSED only with respect to the Borough of Phoenixville;

(6) Plaintiff's claims for declaratory or injunctive relief are DISMISSED.

With respect to all other claims, Defendants' Motions are DENIED.

BY THE COURT:

s/J. Curtis Joyner

J. CURTIS JOYNER, J.