

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

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<b>CHRISTOPHER TODD DEGRANGE,</b>	:	
	:	
<b>Plaintiff,</b>	:	
	:	
v.	:	<b>CIVIL ACTION</b>
	:	
<b>J.P. WEST,</b>	:	<b>NO. 03-5753</b>
	:	
<b>Defendant.</b>	:	
	:	

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**ORDER AND MEMORANDUM**

**ORDER**

**AND NOW**, this 26<sup>th</sup> day of May, 2005, upon consideration of Defendant J.P West's Motion for Summary Judgment (Doc. No. 24, filed November 17, 2004) and Plaintiff's Motion in Opposition to Defendant's Motion for Summary Judgment (Doc. No. 27, filed December 17, 2004), and for the reasons set forth in the attached Memorandum, **IT IS ORDERED** that Defendant's Motion for Summary Judgment is **GRANTED**, and judgment is **ENTERED** in **FAVOR** of defendant, J.P. West., and against plaintiff, Christopher Todd DeGrange. Plaintiff's Motion in Opposition to Defendant's Motion for Summary Judgment is **DENIED**.

**MEMORANDUM**

**I. INTRODUCTION**

*Pro se* plaintiff, Christopher Todd DeGrange, filed a Complaint pursuant to 42 U.S.C. §1983 in this Court on December 22, 2003.<sup>1</sup> The Complaint alleges constitutional violations

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<sup>1</sup> Plaintiff filed a Motion for Leave to Proceed *In Forma Pauperis* on October 16, 2003. On October 27, 2003, this Motion was denied without prejudice. Plaintiff then filed an Amended Motion for Leave to Proceed *In Forma Pauperis* on October 27, 2003, which did not include a complaint. He filed the *pro se* Complaint on December 22, 2003, at which time the Court

against defendant, J.P. West, former director of the Star Program at CareLink, Inc., a facility for treatment of mental illness associated with Norristown State Hospital, in her individual capacity. He requests only declaratory and injunctive relief.

Presently before the Court is Defendant's Motion for Summary Judgment. For the reasons set forth below, the Court concludes that *pro se* plaintiff's claims are moot, and grants the Motion for Summary Judgment on that ground.

## II. FACTS

*Pro se* plaintiff avers in the Complaint that he was "a prisoner of the state of Pennsylvania in the custody of the Montgomery County Court and [the Star Program] at CareLink Inc. for the treatment of alleged or convicted sexual offenders as a patient, having been transferred to that custody from the Norristown State Hospital." (Compl. at 1).<sup>2</sup> He further avers that "[t]his confinement and treatment continued for a period of about nine (9) years, beginning in 1993 until 2002 inclusive." (*Id.*). Defendant was the director of the Star Program at CareLink when *pro se* plaintiff arrived there, and remained director until November 9, 2001. She is no longer employed by CareLink.

According to the Complaint, during *pro se* plaintiff's residence at the Star Program, defendant "in a concerted and systematic effort with her agents and staff did deprive the plaintiff of constitutionally secured rights," including, *inter alia*, depriving him of assistance of counsel,

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granted his *In Forma Pauperis* Motion.

<sup>2</sup> According to a "Behavior Plan for Chris DeGrange" appended to defendant's Motion, Norristown State Hospital referred *pro se* plaintiff to CareLink's Star Program on June 30, 1994. (Mot., Ex. F). In his deposition, *pro se* plaintiff stated that he was voluntarily committed, "[i]n agreement with the mental health court," to Norristown State Hospital in 1991 and subsequently—and, according to plaintiff, voluntarily—moved to CareLink, a special facility on the grounds of the hospital "around 1994." (Pl. Dep. at 39-40).

depriving him of legal resources, forcing him to incriminate himself in therapy sessions, and engaging in cruel and unusual punishment. (Id. at 2). He requests only prospective relief—a declaratory judgment that the “defendants’ acts, policies and practices” were unconstitutional and an injunction prohibiting defendant from continuing these alleged violations, from retaliating against him or “from transferring plaintiff to any other program or institution, without plaintiff’s express consent.” (Id. at 3).

The *pro se* Complaint avers that “defendant J.P. West, et al. . . . with her agents and staff” violated plaintiff’s constitutional rights and requests declaratory judgment that “defendants’ acts, policies, and practices” were unconstitutional. (Compl. at 2-3). However, *pro se* plaintiff testified at his deposition that he only alleges claims against defendant and that all of the conduct for which he seeks relief occurred while defendant was employed at CareLink.<sup>3</sup> (Pl.

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<sup>3</sup> During his deposition, (Pl. Dep. at 59-61)(Mot., Ex. D), plaintiff testified as follows:

Q: Okay. So the allegations that are contained in the complaint are. . . for only the time [defendant] was your direct supervisor, correct?

A: Yes.

Q: Other than J.P. West, did you have any complaint with the CareLink Star Program?

A: No.

\* \* \*

Q: Are there names of people that you think were also mean to you or treated you poorly at CareLink [in] addition to J.P. West or was she the only one who did that?

A: Other people did it, but the complaint is about her.

\* \* \*

Q: . . . I need to know if you think other people helped her, I have to have their names.

A: J.P West only.

Q: Only J.P. West?

A: Yes.

Dep. at 59-61) (Mot., Ex. D). Thus, the only claims at issue in the case are those asserted against defendant, J.P. West, in her individual capacity.

In her Motion for Summary Judgment, defendant argues that (1) plaintiff's claims are barred under the applicable statute of limitations; (2) even if not time barred, plaintiff has failed to establish a genuine issue of material fact with regard to the merits of his claims; and (3) plaintiff's request for equitable relief should be denied because he no longer resides at CareLink and defendant no longer works there.

### **III. STANDARD OF REVIEW**

Summary judgment is appropriate under Federal Rule of Civil Procedure 56(c) where, "the pleadings, depositions, answers to interrogatories, and admissions on file, together with 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). "[T]his standard provides that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-248 (1986). Moreover, "a party resisting a [Rule 56(c)] motion cannot expect to rely merely upon bare assertions, conclusory allegations or suspicions." Gans v. Mundy, 762 F.2d 338, 341 (3d Cir. 1985) (internal citations omitted).

### **IV. DISCUSSION**

"It is axiomatic that the federal courts may not decide an issue unless it presents a live case or controversy. . . This limitation 'derives from the requirement of Art. III of the Constitution under which the exercise of judicial power depends upon the existence of a case or controversy.' " Abdul-Akbar v. Watson, 4 F.3d 195, 206 (3d Cir. 1993) (quoting DeFunis v.

Odegaard, 416 U.S. 312, 316 (1974)). “Past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief, however, if unaccompanied by any continuing, present adverse effects.” O’Shea v. Littleton, 414 U.S. 488, 495-496 (1974). “Abstract injury is not enough. . . [T]he injury or threat of injury must be both real and immediate, not conjectural or hypothetical.” City of Los Angeles v. Lyons, 461 U.S. 95, 101-102 (1983).

The Third Circuit has held that a prisoner’s claim for prospective relief from the conditions of his confinement under §1983 becomes moot once that prisoner is released or transferred from custody, absent a reasonable likelihood that the former prisoner will again be subject to the defendants’ conduct at issue. See Winsett v. McGinnes, 617 F.2d 996, 1003 (3d Cir. 1980); Abdul-Akbar v. Watson, 4 F.3d 195, 207 (3d Cir. 1993); Sutton v. Rasheed, 323 F.3d 236, 248 (3d Cir. 2003). See also, e.g., Wirsching v. Colorado, 360 F.3d 1191, 1196 (10<sup>th</sup> Cir. 2004). For example, in Abdul-Akbar, the Third Circuit held that a former prisoner’s request for injunctive relief against a prison was moot where he sought an order to remedy constitutionally inadequate legal resources provided to inmates. 4 F.3d at 197. In so ruling, the court relied upon the fact that the plaintiff was no longer an inmate at the prison and that there was no reasonable likelihood—beyond mere “conjecture”—that he would return. Id. A claim for prospective relief is also mooted when the defendant is no longer in a position to engage in the challenged conduct. Bey v. Pennsylvania Dept. of Corrections, 98 F. Supp. 2d 650, 658 (E.D. Pa. 2000) (Robreno, J.) (holding plaintiff’s request for injunction against prison official in his official capacity was moot where that official had since resigned).

The Third Circuit’s opinion in Abdul-Akbar, and related decisions on released prisoners, control the instant case. *Pro se* plaintiff requests declaratory judgment and an injunction based

on conduct which occurred while he was in custody of the Star Program at CareLink, and while defendant was director of that program. However, *pro se* plaintiff left the custody of the Star Program in 2002 and has not returned, and defendant left her employment at the Star Program and CareLink on November 9, 2001. In short, the case involves only “past exposure to illegal conduct,” which does not amount to “a present case or controversy regarding injunctive relief” because such past conduct is “unaccompanied by any continuing, present adverse effects.” O’Shea, 414 U.S. at 495-496.

Moreover, plaintiff fails to point to any facts, beyond the “conjectural” or “hypothetical,” establishing that he could be returned to the custody of defendant. At his deposition, plaintiff testified that “[w]hen [he] left CareLink [in 2002]. . . [defendant] tried to get [him] back in her new program that she’s at now.” (Pl. Dep. at 110). However, he admitted “that never happened because he fought it.” (Id.). He also stated that his social worker is currently seeking his placement in a facility associated with Drexel University, a facility at which defendant is not employed. (Id. at 115-16).

*Pro se* plaintiff has failed to establish that there is a reasonable likelihood he is “immediately in danger of sustaining some direct injury as the result of the challenged official conduct.” Lyons, 461 U.S. 95, 101-102. Prospective relief such as that requested by plaintiff is not warranted under such circumstances. Therefore plaintiff’s claims for injunctive and declaratory relief are moot.

**V. CONCLUSION**

For the reasons set forth above, the Court grants defendants' Motion for Summary Judgment, and enters judgment in favor of defendant, J.P. West, and against *pro se* plaintiff, Christopher Todd DeGrange.

**BY THE COURT:**

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**JAN E. DUBOIS, J.**