

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

ESTATE OF BRIAN SULLIVAN,	:	
DECEASED, by PAUL SULLIVAN,	:	
Administrator, PAUL SULLIVAN,	:	
in his own right, and MAUREEN	:	
SULLIVAN, in her own right,	:	
	:	
Plaintiffs,	:	CIVIL ACTION
	:	
v.	:	No. 05-5354
	:	
THE GEO GROUP, INC., DELAWARE	:	
COUNTY BOARD OF PRISON	:	
INSPECTORS, WARDEN ROBERT	:	
NARDOLILLO, and COUNTY OF	:	
DELAWARE,	:	
	:	
Defendants.	:	

MEMORANDUM

ROBERT F. KELLY, Sr. J.

DECEMBER 15, 2005

On April 15, 2005, Brian Paul Sullivan died from a heroin overdose while he was an inmate at the George W. Hill Correctional Facility. The above-captioned Plaintiffs filed a civil action complaint against, inter alia, Defendants Delaware County Board of Prison Inspectors (“DCBPI”) and County of Delaware (collectively, “State Defendants”) alleging federal law claims under 42 U.S.C. § 1983 (Counts II and III) and state law claims for Wrongful Death and Survival pursuant to 42 Pa.C.S.A. §§ 8301, 8302 (Counts IV and V). Presently before me is a “Motion to Dismiss Plaintiffs’ Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6)” filed by the State Defendants. For the following reasons, State Defendants’ Motion will be granted as to the state law claims (Counts IV and V), but denied in all other respects.

I. Jurisdiction and Legal Standard

Federal question jurisdiction exists under 28 U.S.C. § 1331, as this action is brought pursuant to 42 U.S.C. § 1983 and Plaintiffs allege violations of federal constitutional rights. We also have supplemental jurisdiction, pursuant to 28 U.S.C. § 1367, to consider Plaintiffs' state law tort claims.

When deciding whether to grant a Rule 12(b)(6) Motion to Dismiss, we must accept as true all well-pleaded allegations in the complaint and view them in a light most favorable to the Plaintiffs. Doe v. Delie, 257 F.3d 309, 313 (3d Cir. 2001). Therefore, State Defendants' Motion will be granted only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations. Id.

II. Discussion

Because we find that the allegations of the Complaint, setting forth federal claims, are sufficient to support federal causes of action the Defendants' Motion with respect to them will be denied. However, Plaintiffs' state law claims against State Defendants must be dismissed. Under the Pennsylvania Political Subdivision Tort Claims Act, 42 Pa.C.S.A. § 8541, et. seq., local agencies, such as the State Defendants, are generally immune from tort liability. The Act states, in pertinent part:

Except as otherwise provided in the subchapter, no local agency shall be liable for any damages on account of any injury to a person or property caused by any act of the local agency or an employee thereof or any other person.

42 Pa.C.S.A. § 8541.

The Act provides that a local government entity may only be liable for injury to a person

due to negligent acts that fall within one of the eight enumerated exceptions to immunity.¹

Plaintiffs' Complaint, however, does not allege any facts that state a claim under any exception that would allow Plaintiffs to pursue Counts IV and V against the State Defendants. Therefore, the State Defendants are entitled to immunity under the Torts Claims Act and their Motion to Dismiss Counts IV and V against them will be granted.²

An appropriate order follows.

¹ Under 42 Pa.C.S.A. § 8542, acts that may impose liability upon a local agency include:

- (1) Vehicle liability;
- (2) Care, custody or control of personal property;
- (3) Care, custody or control of real property;
- (4) Trees, traffic controls and street lighting;
- (5) Utility service facilities;
- (6) Streets;
- (7) Sidewalks; and
- (8) Care, custody or control of animals.

42 Pa.C.S.A. § 8542(b).

² The immunity conferred by the Tort Claims Act does not protect the State Entity Defendants against Plaintiffs' federal claims. See Wade v. City of Pittsburgh, 765 F.2d 405, 407 (3d Cir. 1985).

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NARDOLILLO, and COUNTY OF	:	
DELAWARE,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 15th day of December, 2005, having considered the Motion to Dismiss Plaintiffs' Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6) filed by Defendants Delaware County Board of Prison Inspectors ("DCBPI") and County of Delaware (collectively, "State Defendants"), and Plaintiffs' response thereto, it is hereby **ORDERED** that:

1. the State Defendants' Motion to Dismiss with prejudice (Doc. No. 10) is **GRANTED** as to Counts IV and V of Plaintiffs' Complaint; and
2. **DENIED** in all other respects.

BY THE COURT:

/s/ Robert F. Kelly
ROBERT F. KELLY, Sr. J.