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

CLARA TATE SPENCER	:	CIVIL ACTION
	:	
v.	:	04-4974
	:	
GLENN ECKMAN, ET AL.	:	

MEMORANDUM AND ORDER

JOYNER, J. **July 13, 2006**

Via the motion now pending before this court, Defendants, Glenn Eckman and the Borough of Phoenixville ("Defendants"), move for summary judgment. For the reasons outlined below, the motion shall be granted.

Background

Plaintiff, Clara Tate Spencer ("Plaintiff"), instituted this action against Defendants[1] seeking recovery on her own behalf and as Administratrix of the Estate of Lamont Tate based on alleged violations of 42 U.S.C. § 1983 and state law claims for negligence, negligent supervision, intentional infliction of emotional distress, and wrongful death. This case stems from an automobile accident on October 24, 2002 involving Lamont Tate ("Tate") and Glenn Eckman ("Eckman"). (Pl.'s Compl. at 21.) Eckman was a police officer employed by the Borough of Phoenixville (the "Borough"). (Pl.'s Compl. at 4.) After finishing his shift, Eckman, driving his private vehicle, was

[1]Plaintiff's Complaint also included claims against additional defendants that were dismissed pursuant to earlier orders of this Court.

rear-ended by a white car on Pawlings Road in Lower Providence Township. (Eckman Dep. at 190-92.) After the collision, Eckman pulled to the side of the road. (Id. at 193.) Eckman observed the white car that had struck his vehicle drifting across the lanes and onto the shoulder and then the grass on the side of the road. (Id. at 205.) After pulling his vehicle into the driveway of a nearby school, Eckman observed that, after drifting onto the grass and stopping briefly, the white car accelerated in reverse and began making circles or 'donuts' in the grassy field adjacent to the road. (Id. at 210-213.)

Eckman used his cell phone to call the Lower Providence Police Department to report that he had been in an accident and that the other vehicle involved was driving erratically in a field. (Eckman Dep. at 212, 214.) Eckman then left his vehicle and walked towards the car. (Id. at 223.) Before reaching the car, Eckman spoke with John Farren ("Farren"), another motorist who had stopped, and the two proceeded across the field towards the white car. (Id. at 223-24.) By the time Eckman and Farren got close to the car, it had come to a stop, but the engine was racing or revving. (Id. at 227-28.) Eckman approached the vehicle and attempted to get the driver's attention, and attempted to open the passenger door. (Id. at 231.) Eckman observed that the driver was hunched or slumped over, with his head facing down towards the shifting mechanism. (Id. at 231-32.) Eckman observed that the driver was trembling or shaking

mildly, and that he appeared to have some saliva on his coat. (Id. at 233.) Eckman suspected that the driver was having a seizure. (Id.)

Farren used his cell phone to call 911. (Eckman Dep. at 235.) While Farren was on the phone with the 911 operator, Eckman, who was a volunteer emergency medical technician ("EMT") with the Lower Providence Community Center (designated incorrectly in this action as the Lower Providence Ambulance Company ("LPCC")), told him to make sure an ambulance was sent. (Id.) Eckman assumed that an LPCC ambulance would be sent, and called fellow LPCC EMT Harold "Ted" Baird ("Baird") via Nextel two-way radio to advice Baird that an ambulance was needed. (Id.)

Sergeant David Wayne Matthews ("Matthews") of the Lower Providence Police Department arrived on the scene and proceeded onto the field. (Eckman Dep. at 234-35.) Eckman summarized the accident and told Matthews that the driver appeared to be having a seizure. (Id. at 236.) Eckman moved away from the vehicle , and Matthews attempted to open its doors, but found that they were locked. (Id.) At that point, Corporal Mark Deussing ("Deussing") and Officer Thomas Momme ("Momme"), also of the Lower Providence Police Department, arrived and attempted to get into the vehicle, but were also unsuccessful. (Matthews Dep. at 9.) Matthews observed that the driver was seizing, and appeared to be foaming at the mouth. (Id.) Momme tried to break the

driver's side window with a small fire extinguisher, and also attempted to open the driver's side door with a 'slim jim,' but neither was successful. (Momme Dep. at 6-7.) Momme observed that while he was attempting to open the door using the 'slim jim,' it appeared that Tate was doing everything possible to keep the car doors locked, including trying to keep his hands on the electric lock switch. (Id. at 8.) Deussing observed similar behavior. (Deussing Dep. at 11.; Cont'd Deussing Dep. at 24.)

Matthews used a large fire extinguisher to break the passenger side window. (Cont'd Matthews Dep. at 35.) He climbed through the passenger window, and attempted to remove the key from the ignition. (Matthews Dep. at 15; Momme Dep. at 8.) Matthews noticed that Tate appeared to reach into his jacket pocket. (Id. at 16.) While Matthews was still leaning into the car through the passenger window, the car suddenly moved forward towards the school. (Cont'd Momme Dep. at 55.) Momme worried that the car might reach the school and harm a student or teacher, or that it could get back onto the road. (Momme Dep. at 9-10.) Deussing recalled that, at some point during the officers' attempts to enter and control the vehicle, Eckman stated that he was familiar with the driver, and that Tate might be armed and dangerous. (Deussing Dep. at 12.)

Matthews eventually was able to turn the car off and put it into park. (Momme Dep. at 16.) At that point, Tate was shaking and twitching in what appeared to be a seizure. (Cont'd Matthews

Dep. at 40.) Farren, after consulting with Matthews, used a hammer to break the rear driver's side window. (Id. at 45.) Momme opened the rear door, and noted that the driver was attempting to engage the electric locks. (Cont'd Momme Dep. at 59.)

Momme and Matthews attempted to remove Tate from the vehicle, but he resisted that effort by moving his body and arms back and forth and pulling himself back into the car. (Cont'd Momme Dep. at 63-64; Matthews Dep. at 18-19.) They eventually extracted Tate from the vehicle, and placed him on the ground belly-down. (Cont'd Matthews Dep. at 49-50.) Momme and Matthews recall that, after Tate was removed from the car, Eckman advised them that he recognized Tate from Phoenixville, and that they should watch Tate carefully, as he might be dangerous.[2] (Cont'd

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[2]Eckman previously interacted with Tate in the course of Eckman's patrol duties as a police for the Borough of Phoenixville. Eckman was advised by colleagues that Tate frequented high drug activity areas in Phoenixville. (Eckman Dep. at 72-73.) Tate, along with his common law wife, Rhonda Dorsheimer ("Dorsheimer"), was convicted on drug charges. (Dorsheimer Dep. at 52-53, 55.) On one occasion, Dorsheimer was stopped by Eckman for driving with a suspended license. (Id. at 61.)

Plaintiff believes that Eckman harassed her son while on patrol, but could not provide any specific examples of any such incidents. (Spencer Dep. at 36-37.) Plaintiff does not believe that her son was ever arrested by Eckman. (Id. at 37.)

Dorsheimer claims that Eckman drove by Tate's grandmother's home while Tate was outside, and advised Tate to move on. (Dorsheimer Dep. at 65-66.) Dorsheimer also recalls that Eckman may have been among a number of officers that responded when Tate had a seizure in a barbershop in Phoenixville that left him unconscious and unresponsive. (Id. at 67-70.)

Eckman recalls that, during a traffic stop involving other individuals, a man (later revealed to be Tate) approached with the hood of his sweatshirt obscuring his face, and his hands in his pockets. (Eckman Dep. at 74-75.) When the man refused to take his hands out of his pockets, Eckman drew his weapon, and the man stopped.

Momme Dep. at 25; Cont'd Matthews Dep. at 57.)

While the three police officers were on the ground next to Tate, he flailed his arms and kicked his legs. (Eckman Dep. at 259, 264; Cont'd Matthews Dep. at 57; Matthews Dep. at 19.) Momme was near Tate's head, Matthews was near his mid-section, and Deussing was near Tate's feet. (Matthews Dep. at 19.) Momme held Tate down by his knee or leg, but checked to be sure that Tate was breathing. (Cont'd Momme Dep. at 35.) The officers attempted to handcuff Tate, but he resisted putting his hands behind his back, and his jacket sleeves made it more difficult to get the cuffs onto his wrists. (Cont'd Deussing Dep. at 28-29; Cont'd Matthews Dep. at 57-58.) Deussing was able to cuff one of Tate's wrists, but could not cuff the other hand, so Eckman came over and assisted in holding the uncuffed arm so that Deussing could apply the other cuff. (Eckman Dep. at 265-67.)

Because Tate continued to kick his feet, Matthews retrieved and applied a set of flex cuffs to restrain Tate's legs. (Cont'd Matthews Dep. at 59-63.) Eckman assisted in fastening the flex cuffs. (Id. at 64-65; Eckman Dep. at 300-01.) Matthews believed that it was necessary to restrain Tate for the safety of the officers, others in the area, and Tate himself. (Matthews Dep.

(Id. at 75.) Eckman did not know that the man was Tate until Phoenixville Police Officer Pacifico ("Pacifico") arrived, and Tate removed his hood. (Id. at 76-77, 80.) Eckman continued handling the traffic stop, while Pacifico handcuffed Tate. (Id. at 82.) Tate was charged with disorderly conduct, and was later found guilty of that charge. (Id. at 79.)

at 20-21.) Momme confirmed that Tate would not calm down, continued to resist and evade the officers, and would not respond to instructions. (Momme Dep. at 12.) Deussing agreed that restraining Tate was necessary for safety reasons, and was a step he would have taken even if Eckman had not suggested that Tate might be armed or dangerous. (Cont'd Deussing Dep. at 45-46.)

Before Tate was handcuffed, Paramedic Rebecca Smith ("Smith") and Baird arrived, but were instructed to stand back until the officers were able to safely restrain Tate. (Smith Dep. at 15-20; Momme Dep. at 13.) This was standard procedure. (Smith Dep. at 23.) After Tate was handcuffed, Matthews had Momme and Deussing search Tate, but they found nothing. (Cont'd Matthews Dep. at 65-66.) The police officers then called the medical personnel over to assist Tate. (Momme Dep. at 16.) Smith inquired about removing Tate's handcuffs, but Matthews declined due to Tate's behavior and resistance. (Cont'd Matthews Dep. at 70-71.) Smith indicated that Tate could be transported with handcuffs as long as his airway was open, and after checking to confirm that this was the case, agreed to transport Tate with his hands cuffed behind his back. (Id. at 71.)

When Smith first examined Tate, he appeared to be unconscious with snoring respirations. (Smith Dep. at 28.) At that point, Tate was under Smith's medical care, and no one assisted with her assessment of his condition. (Id.) Smith roused Tate to consciousness, and he was moved into the

ambulance. (Id. at 27.) Smith observed that Tate's breathing returned to normal and the snoring respirations ceased as soon as he regained consciousness. (Id. at 29.) Smith asked that Tate's coat be removed in case she needed to reach his arms for treatment. (Id. at 32.) If necessary, the same treatment could have been administered with the jacket on. (Id. at 32-33.) Smith did not believe that Tate's coat restricted his breathing. (Cont'd Smith Dep. at 110.) Smith did not observe Tate having a seizure, but did notice that he continued to resist the restraints. (Id. at 35; see also Baird Dep. at 60.) Nor did Smith observe any breathing difficulties or obstructions to Tate's airway during the trip to the hospital. (Smith Dep. 28-29; Cont'd Smith Dep. at 154.) Smith recalled that someone at the scene advised her that Tate had a history of drug use and seizures, but that this information did not change her approach to providing medical treatment for Tate. (Smith Dep. at 30, 38.)

Tate continued to struggle, yell, and thrash about throughout the transport. (Smith Dep. at 43-44; Baird Dep. at 23, 24, 27.) Baird used a pulse-ox meter to check Tate's oxygen saturation, and Smith placed Tate on 15 liters of oxygen using a non-rebreather mask. (Smith Dep. at 45-46.) Tate was provided oxygen during the entire transport. (Cont'd Smith Dep. at 97-98.) Smith did not communicate with medical command at the hospital regarding Tate's condition because she did not see a need to get additional instruction. (Id. at 105.)

Upon arriving at the hospital, Baird wheeled Tate into the hospital. (Baird Dep. at 71-74.) Sergeant Stanley Turtle ("Turtle"), another Lower Providence police , followed the ambulance to Phoenixville Hospital and accompanied Smith, Baird, and Tate through the emergency entrance and into an examination room. (Turtle Dep. at 48-49.) Turtle heard Baird encourage Tate to "say something" to him, to which Tate replied "F*ck you." (Id.) When Tate was transferred to the hospital bed, he ceased struggling, and abruptly stopped breathing. (Baird Dep. at 72.) Baird and the emergency room personnel immediately started CPR and rescue breathing. (Id. at 72-73.) The emergency room staff took over the resuscitation efforts, and Baird left the examination room. (Id. at 6.) Tate later expired.

The autopsy report by Dr. Ian C. Hood, forensic pathologist, concluded that Tate died as a result of a seizure disorder, and that he had used marijuana shortly before his death.[3] (Chester County Coroner Report of Dr. Ian Hood.)

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[3]Dorsheimer recalled that Tate began experiencing seizures in 1998. (Dorsheimer Dep. at 39.) During his seizures, Tate would be unusually strong and violent, and would flail. (Id. at 43-46.) Tate had previously injured himself during a seizure. (Dorsheimer Dep. Ex. 1.) Under doctor's orders, Tate was not supposed to drive, and his license was suspended at the time of the accident. (Dorsheimer Dep. at 51.) In May 2002, Tate was in a car accident that, according to Dorsheimer and Plaintiff, significantly increased the frequency and severity of the seizures. (Dorsheimer Dep. Ex. 1; Spencer Dep. at 23-25; Spencer Dep. Ex. 1.)

Legal Standard for Summary Judgment

In deciding a motion for summary judgment under Fed. R. Civ. P. 56(c), a court must determine "whether there is a genuine issue of material fact and, if not, whether the moving party is entitled to judgment as a matter of law." Medical Protective Co. v. Watkins, 198 F.3d 100, 103 (3d Cir. 1999) (internal citation omitted). Rule 56(c) provides that summary judgment is properly rendered:

> . . . 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.

Thus, summary judgment is appropriate only when it is demonstrated that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 322-32 (1986). An issue of material fact is said to be genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

A party seeking summary judgment bears the initial burden of identifying portions of the record that demonstrate the absence of issues of material fact. Celotex, 477 U.S. at 323. The party opposing a motion for summary judgment cannot rely upon the allegations of the pleadings, but instead must set forth specific

facts showing the existence of a genuine issue for trial. Id. at 324; Fed. R. Civ. P. 56(e).

Where, as here, a non-moving party fails to timely oppose a motion for summary judgment, the motion cannot simply be granted as uncontested.[4] See Loc. R. Civ. P. 7.1(c). An unopposed motion for summary judgment may only be granted where the Court determines that summary judgment "appropriate" pursuant to Rule 56. Anchorage Assoc. v. Virgin Islands Bd. of Tax Review, 922 F.2d 168, 175 (3d Cir. 1990); Fed. R. Civ. P. 56(e). Summary judgment is "appropriate" where the movant has "shown itself to be entitled to judgment as a matter of law." Anchorage, 922 F.2d at 175. The Third Circuit has explained that the analysis of whether summary judgment is "appropriate" absent opposition depends on which party bears the burden of proof. Id.

> Where the moving party has the burden of proof on the relevant issues, this means that the district court must determine that the facts specified in or in connection with the motion entitle the moving party to judgment as a matter of law. Where the moving party does not have the burden of proof on the relevant issues, this means that the district court must determine that the deficiencies in the opponent's evidence designated in or in connection with the motion entitle the moving party to judgment as a matter of law.

Id. Thus, the court concluded, a local rule cannot provide that a motion for summary judgment be automatically granted upon a failure to respond. Id.

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[4]Defendant's motion was filed on February 13, 2006. A response was due no later than March 2, 2006. Plaintiff has never filed any response.

The Third Circuit instead interpreted the local rule, which allowed motions not opposed to be deemed conceded, as giving the failure to respond to a motion for summary judgment the effect of a waiver of the right to controvert the facts asserted by the movant. Anchorage, 922 F.2d at 175-76. The Third Circuit expressed reluctance to limit this waiver to only those facts adequately supported by the record. Id. at 176. The court noted that a local rule "could provide, or be construed to mean, that all of the uncontroverted facts stated in or in connection with the motion may be accepted as true by the court whether or not so evidenced." Id. The court, however, declined to decide that issue because the facts alleged in the motion before it were supported by previous filings of the non-movant or within the personal knowledge of counsel.[5] Id.

Discussion

Defendants assert that summary judgment is appropriate on all claims because Plaintiff has failed to present any expert medical evidence on causation.[6] Whether summary judgment is

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[5]Unlike the Virgin Islands local rule considered in Anchorage, however, Local Rule 7.1(c) does allow summary judgment motions to be granted as uncontested in the absence of a timely response. See Loc. R. Civ. P. 7.1(c). Rather, this Court must apply Rule 56 and its attendant decisional law, and can therefore credit only those factual assertions supported by the record. See Fed. R. Civ. P. 56; Matsushita, supra.

[6]By the Order issued May 11, 2006, this Court granted Defendants' uncontested motion to preclude expert testimony. Plaintiff's failure to submit the disclosures required for expert witnesses under Federal Rule of Civil Procedure 26(a), which prompted Defendant's motion, is in keeping with the pattern of dilatory behavior that has marked this litigation. This Court also granted as uncontested Defendants'

request to preclude Plaintiff's use of any exhibits due to Plaintiff's failure to provide copies of such exhibits as per the Scheduling Order. We are satisfied that, because Plaintiff failed to respond to the instant motion, the result here would be the same even if we had not already precluded future use of expert testimony.

We recognize, however, that such exclusion might be seen as tantamount to a sanction of dismissal. Thus, we consider (1) the extent of the Plaintiff's personal responsibility; (2) the prejudice to Defendants caused by Plaintiff's delays; (3) Plaintiff's history of dilatoriness; (4) whether the conduct of the Plaintiff or Plaintiff's counsel was willful or in bad faith; (5) the effectiveness of sanctions other than dismissal; and (6) the meritoriousness of Plaintiff's claims. See Poulis v. State Farm Fire & Casualty Co., 747 F.2d 863, 868 (3d Cir. 1984).

While there is no indication that Plaintiff is personally responsible for the repeated delays and failures to respond, "a client cannot always avoid the consequences of the acts or omissions of its counsel." Poulis, 747 F.2d at 868 (citing Link v. Wabash R.R., 370 U.S. 626, 633 (1962)). Defendants are prejudiced by Plaintiff's failure to make the disclosures required under Rule 26(a). Without this information, Defendant cannot adequately respond to expert evidence or challenge proffered exhibits.

As discussed above, the progress of this litigation has been hindered by a pattern of dilatoriness on Plaintiff's behalf. In addition to written warnings, Plaintiff's counsel was warned verbally on numerous occasions that further delays and uncooperativeness would result in sanctions that could include dismissal. (See Order of Mar. 28, 2005 Granting Def. Glenn Eckman's Mot. to Strike as Untimely Pl.'s Resp. to Def.'s Mot. to Dismiss; Mem. and Order of Mar. 28, 2005 Granting in Part the Uncontested Mots. to Dismiss of Defs. Glenn Eckman and the Borough of Phoenixville.)

The actions and inactions of Plaintiff's counsel, John P. Karoly, Jr., Esquire, in causing delays and failing to make required disclosures and responses are, at the very least, willful. As we found in our previous memorandum, despite Plaintiff's counsel's many years of practice in this district and presumed familiarity with both the Federal Rules of Civil Procedure and this district's Local Rules, counsel has repeatedly ignored the deadlines set by both the rules and the orders of this Court. The only excuse proffered for the continued delays and unresponsiveness has been Karoly's allegedly busy work schedule. Karoly's dedication to the representation of other clients, however, is not a viable excuse for his failure to act on Plaintiff's behalf in this case. Such a consistent pattern of arrogant disregard for both the applicable rules and his client's interests can hardly be less than willful, and certainly suggests bad faith.

This Court has already attempted to address the pattern of dilatoriness and obstruction in this case by threatening sanctions, dismissing claims against a number of defendants, striking responses, and imposing costs for depositions. None of these actions have brought about a change in Plaintiff's counsel's approach. If anything, Plaintiff's counsel has cooperated and responded less with

appropriate based on the absence of expert medical evidence depends on whether Plaintiff's claims require such evidence to establish that the alleged action caused the injuries claimed. Defendants argue that, because Pennsylvania law requires expert medical evidence in support of causation in any personal injury case, all of Plaintiff's claims must fail as a matter of law. We examine Plaintiff's claims to determine whether, to go forward, expert medical evidence is required.

42 U.S.C. § 1983

Count I of Plaintiff's Complaint seeks recovery for alleged violations of 42 U.S.C. § 1983. Plaintiff's allegations focus on the force used in restraining Tate, and the type and timing of medical care provided. Defendants argue that because Plaintiff cannot present any expert medical evidence, she cannot show that any of the alleged actions or inactions were the cause of Tate's injuries. In the absence of such a causal connection between Defendants' acts and Tate's death, Defendants argue, summary judgement is appropriate.

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each attempt by this Court to require his participation on his client's behalf. Having exhausted other appropriate responses, we find that the exclusion of Plaintiff's expert testimony and exhibits, although tantamount to dismissal, is the only sufficient sanction.

As discussed above, we are satisfied that Plaintiff's failure to respond to the motion for summary judgment would make summary judgment appropriate even if Plaintiff had made the required disclosures or if the later use of the relevant information had not been precluded by our orders. Thus, despite the fact that Plaintiff appears to hold little personal responsibility for her attorney's attempts to manipulate the court system, the bulk of the Poulis factors support a sanction tantamount to dismissal. Plaintiff is free to seek to hold counsel accountable for his actions as appropriate.

Defendants assert that, because Pennsylvania law requires expert medical evidence of causation in a personal injury case, the absence of medical evidence here is fatal to Plaintiff's § 1983 claims. Courts employ state tort law in interpreting the requirements of a § 1983 suit. See, e.g., Buenrostro v. Collazo, 973 F.3d 39, 45 (1st Cir. 1992) (noting that the "Supreme Court has made it crystal clear that principals of causation borrowed from tort law are relevant to civil rights actions brought under section 1983"). To maintain an action under § 1983, a plaintiff must show that the defendant's actions or policies proximately caused the injury alleged. See, e.g., Smith v. Rosenbaum, 333 F. Supp. 35, 38 (E.D. Pa. 1971). Where a plaintiff claims that the defendant's actions or policies resulted in death, "expert testimony as to the cause of death is usually necessary to prove causation." Estate of Aptekman v. City of Philadelphia, 127 Fed. Appx. 619, 622 (3d Cir. 2005) (citing Mitzelfelt v. Kamrin, 526 Pa. 54, 62 (1995)) (finding summary judgment appropriate where plaintiff failed to present expert testimony that "any of the defendants' actions caused, increased the likelihood of, or hastened [decedent's] demise . . .").

The Third Circuit has declined, however, to apply a requirement of expert testimony to § 1983 claims where the alleged injury is emotional distress. Bolden v. Southeastern Pa. Trans. Auth., 21 F.3d 29, 36 (3d Cir. 1994). In such cases, lay testimony as to the emotional and behavioral effects observed

subsequent to the alleged action is generally sufficient.[7] See id. at 32.

Here, Plaintiff has not, and cannot, present any medical expert evidence that any of the Defendants, through their actions or inactions, caused Tate's death. Thus, Plaintiff has raised no genuine issue of material fact as to the cause of death, making summary judgment on the § 1983 claim – at least to the extent it claims that Defendants caused physical harm – appropriate. While expert testimony is not required to recover for emotional distress in a § 1983 case, Plaintiff must still present some competent evidence of the alleged emotional distress. See, e.g., Carey v. Piphus, 435 U.S. 247 (1978). Plaintiff has failed to present any evidence to support an emotional distress claim for alleged distress suffered by either Plaintiff or Tate. Thus, Plaintiff has not raised any genuine issue of material fact as to the cause of any emotional distress experienced as a result of the alleged actions by Defendants, making summary judgment on the remaining portion of Plaintiff's § 1983 claim appropriate.

State Law Claims

In light of our determination that summary judgment is appropriate on Plaintiff's federal law claim pursuant to § 1983, we decline to exercise supplemental jurisdiction over Plaintiff's state law claims – brought on her own behalf and as part of the

[7]A plaintiff's own testimony may also be sufficient, but such testimony is not available where, as here, the alleged victim is deceased.

survival action – for negligence, negligent supervision, intentional infliction of emotional distress, and wrongful death. 28 U.S.C. § 1367(c)(3).

Conclusion

For the reasons set forth above, Defendants' motion for summary judgment shall be GRANTED pursuant to the attached order.

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

CLARA TATE SPENCER	:	CIVIL ACTION
	:	
v.	:	04-4974
	:	
GLENN ECKMAN, ET AL.	:	

ORDER

AND NOW, this 13th day of July, 2006, upon consideration of Defendants' Motion for Summary Judgment, it is hereby ORDERED that the motion is GRANTED for the reasons set forth in the attached memorandum opinion.

BY THE COURT:

s/J. Curtis Joyner
J. CURTIS JOYNER, J.