

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

EDGAR TOWNSLEY, Administrator	:	
of the Estate of John H. Keylor,	:	
Deceased,	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	
WEST BRANDYWINE TOWNSHIP,	:	No. 06-758
	:	
Defendant.	:	

Baylson, J.

July 24, 2006

I. Introduction

This is the continuation of a case that arose from the tragic suicide of John H. Keylor (“Decedent”). Plaintiff Edgar Townsley (“Plaintiff”), the executor of Decedent’s estate, seeks to recover damages for alleged violations of Decedent’s constitutional rights as guaranteed by the Fourteenth Amendment. Presently before this Court is the Motion to Dismiss Plaintiff’s Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(6) (Doc. No. 9), filed by Defendant West Brandywine Township (“Defendant”). For the reasons set forth below, the Motion to Dismiss will be granted.

II. Factual Background

The Court discussed the factual background of this case in detail in its Memorandum and Order granting Defendant’s first Motion to Dismiss, dated April 26, 2006. This opinion

incorporates that discussion in its entirety; the Court will not reiterate it here. See April 26, 2006 Order at 1-2.

In the original Complaint, Plaintiff set forth five separate Counts. In the April 26, 2006 Order, the Court dismissed Counts II, III, IV, and V with prejudice. The Court also dismissed Count I – which asserted that Defendants violated 42 U.S.C. § 1983 by depriving Decedent of his rights guaranteed by the Fourteenth Amendment – without prejudice, and the Court granted Plaintiff the opportunity to correct his deficient pleading by amending the Complaint to plead additional, specific facts supporting (1) a specific policy or custom, (2) a direct causal link between the policy and Plaintiff's harm, and (3) the Defendants 'deliberate indifference' with regard to a failure to train (if Defendant could do so within the provisions of Rule 11). See April 26, 2006 Order at 6-8.

Plaintiff filed an Amended Complaint on May 15, 2006, again asserting the Section 1983 (Monell) claim against Defendant. Defendant filed its Motion to Dismiss Plaintiff's Amended Complaint on June 5, 2006. Plaintiff filed his response on June 13, 2006. Defendant filed its reply on June 23, 2006.

III. Jurisdiction and Legal Standard

A. Jurisdiction

This Court has federal question jurisdiction under 28 U.S.C. § 1331, as this action is brought pursuant to 42 U.S.C. § 1983 and Plaintiff alleges violations of Decedent's federal constitutional rights. This Court also has supplemental jurisdiction, pursuant to 28 U.S.C. § 1367, to consider Plaintiff's state law claims.

Venue is appropriate in this district, pursuant to 28 U.S.C. § 1391, because the claim arose in this judicial district.

B. Legal Standard

When deciding a Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6), the court may grant the motion only if, accepting all well-pleaded allegations in the complaint as true, and viewing them in the light most favorable to plaintiff, the plaintiff is not entitled to relief. Doug Grant, Inc. v. Great Bay Casino Corp., 232 F.3d 173, 183 (3d Cir. 2000). Accordingly, a federal court may dismiss a complaint for failure to state a claim only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations. Doe v. Delie, 257 F.3d 309, 313 (3d Cir. 2001).

IV. Parties' Contentions

Defendant argues that the Amended Complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6) because Plaintiff has still not established (and cannot establish) a cognizable claim pursuant to Section 1983. More specifically, Defendant contends that Plaintiff has (1) failed to state a claim of a deficient training policy and (2) failed to plead a causal link between the allegedly deficient policy or custom and the alleged constitutional violation.

In response, Plaintiff maintains that (1) he has satisfactorily established a claim based upon a failure to train theory and (2) a motion to dismiss is not appropriate because Plaintiff has not been allowed to conduct discovery to support a showing of reckless indifference in this matter.

V. Discussion

1. **Plaintiff fails to plead a causal link between the asserted policy or custom and the alleged constitutional deprivation.**

Plaintiff may only assert liability of a municipality for the actions of its police officers if “there is a direct causal link between a municipal policy or custom and the alleged constitutional deprivation.” Brown v. Muhlenberg Twp., 269 F.3d 205, 214-15 (3d Cir. 2001). Plaintiff may demonstrate this required link in one of two ways. First, West Brandywine Township may be liable if its Board of Supervisors have caused a constitutional violation through “a policy statement, ordinance, regulation, or decision officially adopted and promulgated by [the Board].” Id. Second, West Brandywine Township may be liable if Plaintiff establishes a causal link between a custom and the constitutional deprivation “even though such a custom has not received formal approval through the body’s official decisionmaking channels.” Id. Importantly, however, any such custom “must have the force of law by virtue of the persistent practices of [township] officials.” Id.

Applying these rules, the Court finds that Plaintiff fails to aver the necessary elements to survive a motion to dismiss. With regard to the first path to liability – an officially adopted policy – Plaintiff fails to aver that West Brandywine Township officially adopted any policy (or even a decision) that could have deprived Decedent of his substantive due process rights. With regard to the second path to liability – custom with the force of law – Plaintiff fails to aver the existence of anything that could be understood as “persistent practices” of township officials that have the force of law necessary to establish a custom .¹

¹ General allegations are insufficient because Plaintiff does not aver that Defendant’s acts or omissions concerning training were either an officially promulgated policy or a persistent

2. Plaintiff also fails to state a claim based on a deficient training policy.

Under Third Circuit precedent, proper pleading of a deficient training policy requires an averment of “both (1) contemporaneous knowledge of the offending incident or knowledge of a prior pattern of similar incidents, and (2) circumstances under which the supervisor’s inaction could be found to have communicated a message of approval to the offending subordinate.”²

Freedman v. City of Allentown, 853 F.2d 1111, 1116-17 (3d Cir. 1988) (emphasis added).

“Mere conclusory allegations . . . that the defendants deliberately elected not to train are not enough to support a constitutional claim.” Id.³ Freedman is good and controlling law.⁴

practice having the force of law. Moreover, many of Plaintiff’s new paragraphs focus on the action/inaction of the officers, not on the practices of town officials. See Amended Complaint at ¶¶ 14-19.

² As a general matter, to establish a violation of 42 U.S.C. § 1983 by a municipality, a plaintiff must show that the alleged misconduct was caused by an official government custom or policy. Monell v. Dep’t of Soc. Servs., 436 U.S. 658, 694 (1978). Municipal custom or policy can be demonstrated either by reference to express, codified policy or by evidence that a particular practice, although not authorized by law, is so permanent and well-settled that it constitutes law. Beck v. City of Pittsburgh, 89 F.3d 966, 971 (3d Cir. 1996). Further, Plaintiff must demonstrate causation, as “a municipality can be liable under § 1983 only where its policies are the moving force behind the constitutional violation.” City of Canton v. Harris, 489 U.S. 378, 389 (1989) (internal quotations omitted). Additionally, for liability to attach under a failure to train theory, Defendants’ failure to train its employees must “reflect a ‘deliberate’ or ‘conscious’ choice by [the] municipality” such that one could call it a policy or custom. Id. at 388-89; Grazier v. City of Philadelphia, 328 F.3d 120, 124 (3d Cir. 2003). This standard will not be satisfied by a mere allegation that a training program represents a policy for which the city is responsible, but rather, the focus must be on whether the program is adequate to the tasks the particular employees must perform. Harris, 489 U.S. at 389-90. Moreover, such liability arises “only where a municipality’s failure to train its employees in a relevant respect evidences a ‘deliberate indifference’ to the rights of its inhabitants.” Id.

³ Freedman also involved a suicide. In Freedman, the plaintiff brought suit under a Section 1983 failure-to-train theory after a suicidal inmate succeeded at suicide after being left unattended in his jail cell. The complaint averred that there was a municipal policy (1) not to appropriate the necessary funds for adequate police training in the handling of mentally-disturbed inmates and (2) not to train police officers. The District Court granted the defendants’ motion to dismiss

Applying this straightforward test, the Court finds that Plaintiff still fails to plead municipal officials' deliberate indifference in condoning an inadequate training policy. With regard to the first prong of the test, Plaintiff fails to aver that the townships' Board of Supervisors had any contemporaneous knowledge of a prior pattern of similar incidents (i.e., detention of mentally ill arrestees who subsequently attempt and/or commit suicide upon their release from the township's detention facility).⁵ That alone is fatal to Plaintiff's claim. However, Plaintiff also fails to aver that the Board of Supervisors (or the police administrator) took any action/inaction that could have communicated any message of approval of the police officer's conduct in the instant matter.⁶ As a matter of law, therefore, the facts as pled remain

because the plaintiff attempted to base liability on the municipality rather than on individual officers. The Third Circuit affirmed, citing plaintiff's failure to make anything more than conclusory allegations. See Freedman, 853 F.2d at 1112-18.

⁴ Plaintiff repeatedly argues that Freedman should not control and that, rather, the Court should apply the standards employed in detainee cases (such as Colburn v. Upper Darby Township (Colburn II), 946 F.2d 1017 (3d Cir. 1991) and Madden v. City of Meriden, 602 F. Supp. 1160 (D. Conn. 1985). Plaintiff is incorrect. This is fundamentally and obviously not a detainee case: Decedent committed suicide well after being released from custody. There is simply no cause to apply the standards from detainee cases (i.e., to consider the proposition that a municipality is liable for the death of a detainee when its police officers act with reckless indifference to a prisoner's known vulnerability to suicide). No matter how hard Plaintiff tries, he cannot morph this case into a detainee case.

⁵ Plaintiff refers to the fact that Decedent had previously attempted suicide while in custody, apparently in an attempt to establish knowledge by the Township of a pattern of similar incidents. Unfortunately, Plaintiff is suggesting knowledge of the police officers, not knowledge of the relevant policymaking officials. There is no averment that the Board of Supervisors knew of Decedent's prior suicide attempt. In any case, the relevant prior pattern of similar incidents here would not be suicide attempts in prison, but, rather, suicide attempts on private property following release from prison.

⁶ Plaintiff's new paragraph 23, for example and at a most generous reading, fails to set forth the required information – such as the who, what and how of West Brandywine Township becoming aware of Decedent's condition and action/inaction and/or decision-making by the Township that caused a suicide after Decedent's release. Paragraphs 25 and 26 similarly contain only general

insufficient to demonstrate the required knowledge, let alone the required deliberate indifference, on the part of the relevant policymaking officials.

3. Plaintiff's argument based on Kulp v. Veruette is not persuasive.

Plaintiff argues briefly, based on Kulp v. Veruette, 167 Fed. Appx. 911 (3d Cir. 2006), that the Court should not grant the motion to dismiss on the grounds that Plaintiff should be allowed to pursue additional discovery. The Court finds this argument unpersuasive. As a threshold matter, Kulp is a non-precedential opinion and, as such, it is, at best, merely persuasive authority.⁷ More importantly, Kulp is distinguishable. Kulp was a detainee case (i.e., the decedent was a prisoner). The plaintiff was subject to the different pleading requirements than the Plaintiff here (i.e., the Kulp plaintiff had to meet the three-part pleading requirement set forth by Colburn v. Upper Darby Township, 946 F.2d 1017 (3d Cir. 1991) and its progeny). A critical element of that pleading requirement was the need to aver that the officers acted with reckless indifference to the detainee's particular vulnerability. In the Complaint, the Kulp plaintiff sued ten individual officers. To satisfy the "reckless indifference" pleading requirement, the plaintiff alleged that the individual officers "knew or should have known that Kulp had a particular vulnerability to suicide and acted with deliberate indifference." The District Court found such language to be too conclusory to survive a Rule 12(b)(6) motion. The Third Circuit reversed, finding that, because "the Complaint in this case contains numerous facts [concerning the individual officers] which, when viewed in their totality, might support an inference of liability

allegations and lack the required averments.

⁷ Plaintiff failed to bring the non-precedential nature of this case to the Court's attention.

on the part of some or all, . . . it was premature to decide at this stage of the proceeding the full extent of each person's knowledge.”

Here, Plaintiff sues only the municipality. Plaintiff has specific and unique pleading requirements where a municipality is concerned. As discussed above, and nearly opposite to Kulp, the Amended Complaint here, even when read as most beneficial to the Plaintiff, is decidedly lacking in facts which, when viewed in their totality, might support an inference of liability on the part of West Brandywine Township. As explained supra, Plaintiff has fundamentally failed to make basic, necessary averments concerning the municipality. For example, and again unlike Kulp, here Plaintiff has failed to even claim that the Board of Supervisors had contemporaneous knowledge of the instant circumstances or that it had knowledge of a prior pattern of similar events. This is, therefore, not a case that cries out for additional discovery to clarify suggestions of liability.

VI. Conclusion

For the aforementioned reasons, the Court finds that Plaintiff has not alleged sufficient facts to state a viable Section 1983 claim against Defendant.

An appropriate Order follows.

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EDGAR TOWNSLEY, Administrator	:	
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Deceased,	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	
WEST BRANDYWINE TOWNSHIP and	:	No. 06-758
WEST BRANDYWINE TOWNSHIP	:	
POLICE DEPARTMENT,	:	
Defendants	:	

ORDER

AND NOW, this 24th day of July, 2006, upon consideration of the pleadings and briefs and based on the foregoing Memorandum, it is hereby ORDERED that Defendants' Motion to Dismiss the Amended Complaint (Doc. No. 9) is GRANTED with prejudice. The Clerk shall close this case.

BY THE COURT:

/s/ **MICHAEL M. BAYLSON** _____

MICHAEL M. BAYLSON, U.S.D.J.