

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

| | | |
|--|---|---------------------|
| ANTHONY EVANS | : | CIVIL ACTION |
| | : | |
| v. | : | NO. 06-3392 |
| | : | |
| DELAWARE COUNTY PRISON, <u>et al.</u> | : | |
| | : | |

MEMORANDUM AND ORDER

Kauffman, J.

August 29, 2006

Plaintiff has filed a pro se 42 U.S.C. § 1983 civil rights lawsuit against the Delaware County Prison (“DCP”), GEO Group, Inc. (“GEO”), and KLN Steel Products, Inc. (“KLN”).¹ He alleges that, due to Defendants’ negligence, he was injured when he fell from the top of a bunk bed which did not have a stool or stepladder. He seeks \$150,000 in monetary damages.

With this action, plaintiff submitted a motion to proceed in forma pauperis. As it appears he is unable to pay the cost of commencing this action, leave to proceed in forma pauperis will be granted. However, for the reasons which follow, this action will be dismissed as legally frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i).

I. LEGAL STANDARD

In forma pauperis proceedings are governed by 28 U.S.C. § 1915. When presented with an in forma pauperis proceeding, “the court shall dismiss the case at any time if the court determines that ... the action or appeal ... is frivolous or malicious.” 28 U.S.C. §1915(e)(2)(B)(i).

¹ Plaintiff fails to state the statutory basis for his claims in the Complaint. However, he indicated on the Designation Form accompanying his Complaint that the matter is a “Civil Rights” action.

II. ANALYSIS

In order to bring a suit under 42 U.S.C. § 1983, Plaintiff must allege that a person acting under color of state law deprived him of his constitutional rights. See Kost v. Kozakiewicz, 1 F.3d 176, 184 (3d Cir. 1993) (listing the elements of a § 1983 claim). Section 1983 does not in itself create substantive rights. Gonzalez v. Young, 560 F.2d 160, 168 (3d Cir. 1977). “It merely provides a federal cause of action for the violation of federal rights that are independently established either in the Federal Constitution or in federal statutory law.” Nevada v. Hicks, 533 U.S. 353, 404 (2001).² Plaintiff has failed to satisfy this standard with respect to each of the three defendants. Accordingly, Plaintiff has advanced an “indisputably meritless legal theory” and the claims against all of the defendants will be dismissed as frivolous. Neitzke v. Williams, 490 U.S. 319, 327 (1989).

A. Claims Against DCP

Plaintiff complains about injuries to his back and to his right fifth finger that resulted from a fall from the top of a DCP bunk bed which did not have a stepladder or stool. He fails to name officials of DCP in his complaint, but rather names the prison as an entity. It is well-established that a prison does not constitute a “person” and may not be sued for civil rights

² 42 U.S.C. § 1983 provides in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....

violations under § 1983. Muhammad v. Hilbert, 906 F.Supp. 267, 269 n.2 (E.D. Pa. 1995); Gonzalez v. Lancaster County Prison, 1995 WL 46697 at *1 (E.D. Pa. Feb. 1, 1995).

Accordingly, Plaintiff has failed to state a cause of action under § 1983 with respect to DCP.

B. Claims Against GEO and KLN

If suit is brought against a private party, § 1983 liability turns on two questions: first, whether the claimed deprivation has resulted from the exercise of a right or privilege having its source in state authority, and second, whether the defendant may be appropriately characterized as a “state actor.” Lugar v. Edmondson Oil Co., Inc., 457 U.S. 922, 939 (1982). An exception has been fashioned in instances in which a private actor whose conduct would not otherwise qualify as state action may nonetheless be held liable by becoming “jointly engaged with state officials in the prohibited action.” Adickes v. S.H. Kress & Co., 398 U.S. 144, 151 (1970); Carver v. Plyer, 2004 WL 2295893, at *4 (3d Cir. Oct. 12, 2004). Under this exception, the plaintiff must allege facts that, if true, would demonstrate that a defendant acted in “willful concert” or conspired with officials acting under the color of state law. U.S. v. Price, 383 U.S. 787, 795 (1966); Harvey v. Plains Tp. Police Dept., 421 F.3d 185, 195 (3d Cir. 2005); Kost, 1 F.3d at 185 (a plaintiff may recover under § 1983 if he can show that a private actor reached an understanding with a state actor to deny plaintiff his rights).

Plaintiff alleges in his Complaint that KLN made the bunk bed from which he fell. He makes no allegations regarding GEO’s involvement in the alleged incident. Accepting as true the allegations of the Complaint, Plaintiff has failed to allege conduct on the part of KLN or GEO evidencing that either party acted in “willful concert” or conspired with officials acting under the

color of state law.³ Accordingly, Plaintiff has failed to state a cause of action under § 1983 with respect to KLN and GEO.

III. CONCLUSION

For the foregoing reasons, Plaintiff's § 1983 claims against DCP, GEO, and KLN will be dismissed. An appropriate Order follows.

³ Furthermore, negligent conduct which causes unintended injury to an inmate does not amount to a constitutional violation. See Davidson v. Cannon, 474 U.S. 344, 347 (1986); Daniels v. Williams, 474 U.S. 327, 328 (1986).

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ORDER

AND NOW, this 29th day of August, 2006, in accordance with the accompanying Memorandum, it is **ORDERED** that:

1. Plaintiff's Motion for Leave to Proceed In Forma Pauperis (docket no. 1) is **GRANTED**; and
2. This action is **DISMISSED** as legally frivolous pursuant to 28 U.S.C. § 1915 (e)(2)(B)(i).

BY THE COURT:

/s/ Bruce W. Kauffman
BRUCE W. KAUFFMAN, J.