

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

TARA M.,	:	
By the Guardian of her Estate	:	
NANCY KANTER	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	NO. 97-1041
	:	
	:	
RICHARD WALKER and	:	
CITY OF PHILADELPHIA, et al.	:	
Defendants.	:	

MEMORANDUM-ORDER

GREEN, S.J.

August 6, 1998

Presently before the court is Defendant Walker's Motion for Summary Judgment, Plaintiff's Response, and Defendant's Reply. For the following reasons, Defendant Walker's Motion for Summary Judgment will be granted.

On February 11, 1997, the plaintiff, Tara M., by her child advocate, Nancy Kanter, Esquire, and through her counsel, brought this action against Defendant Walker asserting, inter alia, that defendant breached a duty of care and violated Tara's rights under 42 U.S.C. § 1983. (Compl. ¶¶ 1-5). Specifically, the plaintiff asserts two § 1983 claims and a civil state conspiracy claim. (Compl. ¶¶ 96-119 and 146-67; Pl.'s Resp. at 18, n. 3). As to Defendant Walker, in both his individual and official capacities, plaintiff seeks relief in the form of a declaratory judgment and compensatory and punitive damages. (Compl. ¶¶ 120-25; Def.'s Mem. Supp. Summ. J. at 2).

I. FACTUAL BACKGROUND

Tara M. was born on April 10, 1987 and immediately placed into the custody of the Philadelphia Department of Human Services ("DHS") along with her 18 year old mother who was herself in the custody of the child welfare system. The DHS is a city agency licensed by the

Pennsylvania Department of Public Welfare (“DPW”) to perform functions mandated by federal and state law, involving, inter alia, the protection and welfare of children within its jurisdiction. From April 15, 1987 to June 15, 1990, Tara and her mother were placed in foster homes. In November, 1990, Tara was separated from her mother and placed in a foster home after DHS officials determined that Tara's mother abused her and was unable to care for her.

In January, 1991, the Philadelphia Court of Common Pleas appointed Nancy Kanter, Esquire, to represent Tara as her child advocate. On June 30, 1995, under the supervision of Defendant A.P.M., Inc., Tara was moved from one foster home into another foster home in which it is alleged that she was sexually abused. The parental rights of Tara's mother were terminated by the Court of Common Pleas on July 5, 1995. Tara was subsequently placed by A.P.M., Inc. with Ana and Elman Gradiz.

In October, 1995, Defendant Richard Walker, a state DPW Program Representative, was assigned to and investigated allegations of child abuse in Tara's foster home placement. As a result of the investigation, Tara was referred to the Child Advocacy Center. It was ultimately determined that abuse involving a foster family, unrelated to the Gradizes, had occurred. On or about December 13, 1995, Tara, Ana Gradiz, and Defendant Maribel Garcia, an A.P.M., Inc. social worker, were interviewed in the presence of Defendant Walker. On or about February 28, 1996, it came to light that the Gradizes abused Tara which resulted in serious injuries. It is alleged that they inserted chili peppers, vinegar, and Vicks Vaporub into Tara's vagina; punctured her back with a knife; beat her in the face with an electric cord; and scalded her with burning water, causing second and third degree burns over sixty percent of her body. The Gradizes pled guilty to charges of aggravated assault, endangering the welfare of a child, and conspiracy, and

were sentenced to serve five to twenty years in prison.

Tara was treated for her burns at St. Christopher's hospital until March 26, 1996 and then placed at the Philadelphia Guidance Center. In or about May, 1996, Tara was placed into a residential placement facility by the DHS. Early in 1997, Tara was placed in a private foster home.

The plaintiff asserts in her Complaint that Defendant Walker took no steps to stop placement with the Gradizes or otherwise investigate the serious issues raised by the investigations which were conducted immediately before the abuse Tara sustained at the hands of the Gradizes. (Compl. ¶ 24). Plaintiff also alleges that Walker, in permitting and/or causing the injuries, violated his duty to protect and care for the plaintiff and his actions were taken, inter alia, for personal reasons including the protection of his career. (Compl. ¶ 121). Furthermore, the plaintiff alleges that Walker failed to exercise ordinary skill, care, knowledge and judgment in rendering care, protection and services to the plaintiff and that Walker deviated and departed from standards which govern professional supervision, practice and behavior in the care of and service to dependent minors in similar circumstances. (Compl. ¶¶ 122-23). Finally, the plaintiff alleges that Walker's actions were a contributing factor in bringing about the injuries, his actions were effected in wanton, wilful and reckless disregard of the rights of the plaintiff and his actions were outrageous under the circumstances. (Compl. ¶ 125).

In his Motion for Summary Judgment, Defendant Walker states by affidavit that his actions were governed by and complied with state statute and regulations and, therefore, were objectively reasonable. (See Walker Aff. ¶¶ 4 and 9). Defendant Walker also states that his role in investigating the abuse of the plaintiff was extremely limited and that he investigated reports

of child abuse against a foster home placement in which the plaintiff had resided, and unrelated to the Gradizes, which was found to have occurred. (See Walker Aff. ¶ 5). Walker states that he referred the plaintiff to the Child Advocacy Center and that the plaintiff was interviewed in his presence at the Child Advocacy Center. (See Walker Aff. ¶¶ 6-7). Defendant Walker also provides the affidavit of Anne Shenberger, the Regional Director for the Office of Children, Youth, and Families, Pennsylvania DPW, who states that at no time was Defendant Walker responsible for evaluations performed by the Child Advocacy Center. (See Shenberger Aff. ¶ 6.) She also states that Defendant Walker’s involvement with the plaintiff was limited to his role of investigating allegations of abuse involving foster families of the plaintiff, unrelated to the Gradizes. Id. ¶ 7. In addition, Shenberger states that at all times during Defendant Walker’s investigations of the allegations involving the plaintiff, his conduct was reasonable, he acted in good faith, and he complied with the applicable statutory provisions and regulations governing his functions. Id. ¶ 9.

II. DISCUSSION

Presently before this court is Defendant Walker’s Motion for Summary Judgment pursuant to Federal Rule of Civil Procedure 56. Summary judgment shall be awarded “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 judgment as a matter of law.” Fed. R. Civ. P. 56(c). A dispute regarding a material fact is 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). Once the moving party has carried the initial burden of showing that no genuine issue of material fact

exists, the non-moving party cannot rely on conclusory allegations in its pleadings or in memoranda and briefs to establish a genuine issue of material fact. Pastore v. Bell Telephone Co. of Pa., 24 F.3d 508, 511 (3d Cir. 1994). The nonmoving party, instead, must establish the existence of every element essential to his case, based on the affidavits or by the depositions and admissions on file. Id. (citing Harter v. GAF Corp., 967 F.2d 846, 852 (3d Cir. 1992)); see also Fed. R. Civ. P. 56(e). The evidence presented must be viewed in the light most favorable to the non-moving party. Lang v. New York Life Ins. Co., 721 F.2d 118, 119 (3d Cir. 1983).

In his Motion for Summary Judgment, Walker asserts that the claims against him are barred by the doctrine of qualified immunity. (Def.'s Mem. Supp. Summ. J. at 11). Under the doctrine of qualified immunity, "government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). Where a defendant asserts a qualified immunity defense in a motion for summary judgment, the plaintiff bears the initial burden of showing that the defendant's conduct violated some clearly established constitutional right. Sherwood v. Mulvihill, 113 F.3d 396, 399 (3d Cir. 1997). Only if the plaintiff carries this initial burden must the defendant then demonstrate that no genuine issue of material fact exists as to the objective reasonableness of the defendants' belief in the lawfulness of their actions. Id.

Walker submitted his affidavit and the affidavit of Anne Shenberger stating that he was acting appropriately and in good faith in his official capacity as a DPW Representative at all

relevant times.¹ (Def.'s Mem. Supp. Summ. J., Exs. "B"-“C”). Thus, Walker carried his burden in showing that there is no genuine issue as to any material fact concerning whether he violated the plaintiff's constitutional rights. As Defendant Walker has raised a qualified immunity defense, it is the burden of the plaintiff to show that Walker's conduct violated some established constitutional right. See Sherwood, 113 F.3d at 399. Although the plaintiff has stated that the established constitutional right in question is the right to be free from violations of her bodily integrity, she has not provided sufficient evidence to establish a genuine issue of material fact as to whether Defendant Walker violated that right. The plaintiff has failed to produce any evidence to substantiate the allegations set forth in her Complaint or to refute the facts presented in Defendant's Motion for Summary Judgment. Plaintiff's Answer to the pending motion merely recites the allegations in the Complaint. Plaintiff's Answer does not include any affidavits, depositions, admissions on file or any other evidence to support the assertions she makes regarding her § 1983 claims against Defendant Walker. Absent the proffer of any evidence to the contrary, the court accepts Defendant Walker's evidence that he had no role in the violation of the plaintiff's constitutional rights and that he acted properly in his individual and official capacities. Thus, the plaintiff has failed to establish that Defendant Walker violated any duty owed to her or was a part of a conspiracy in violating her constitutional right. Therefore, the plaintiff has failed to produce sufficient evidence for a reasonable jury to conclude that

¹ In her Response, the plaintiff concedes that Walker is not employed by the Philadelphia DHS as originally asserted in plaintiff's Complaint. (Pl.'s Resp. at 15; Compl. at ¶ 24). The plaintiff also concedes that there can be no claims against Walker in his official capacity because those claims would be duplicative of the claims alleged against another defendant, Feather O'Connor Houstoun, Secretary of the Department of Public Welfare, and would produce the same Eleventh Amendment considerations. (Pl.'s Resp. at 15).

Defendant Walker, in his individual or official capacities, violated the plaintiff's constitutional rights. Accordingly, Defendant Walker's Motion for Summary Judgment will be granted.

An appropriate Order follows.

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By the Guardian of her Estate	:	
NANCY KANTER	:	
Plaintiff,	:	CIVIL ACTION
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CITY OF PHILADELPHIA, et al.	:	
Defendants.	:	

ORDER

AND NOW, this 6th day of August, 1998, upon consideration of Defendant Walker's Motion for Summary Judgment, Plaintiff's Response, and Defendant's Reply, IT IS HEREBY ORDERED that Defendant Walker's Motion is GRANTED. Pursuant to Federal Rule of Civil Procedure 54(b), judgment will be entered in favor of Defendant Walker and against Plaintiff Tara M. when all of the claims in the above-captioned matter have been adjudicated.

BY THE COURT:

CLIFFORD SCOTT GREEN, S.J.