

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MELISSA WATERS,)
)
 Plaintiff,)
)
 v.) Civ. No. 02-587-SLR
)
 KEITH IVENS, PATRICK RYAN,)
 and STAN TAYLOR,)
)
 Defendants.)

MEMORANDUM ORDER

At Wilmington, this 29th day of January, 2004, having reviewed the motions to dismiss filed by defendants;

IT IS ORDERED that defendants' motions to dismiss the complaint (D.I. 14, 18) are granted for the reasons that follow:

1. Melissa Waters is a prisoner incarcerated at Baylor Women's Correctional Institution in New Castle, Delaware ("BWCI"). On June 26, 2002, she filed the present action alleging violations of 42 U.S.C. § 1983 on the basis of medical negligence occurring while Waters was incarcerated at BWCI. (D.I. 2) Defendants Patrick Ryan and Stan Taylor are the Warden and Commissioner of the Delaware Department of Correction, respectively. Defendant Keith Ivens was Waters' treating physician.

2. Waters alleges that she has been denied proper medical treatment while incarcerated at BWCI. These identical allegations were the subject of a suit by Waters filed on March

2, 2001, captioned Waters v. Evans, Ryan and Taylor, Civ. No. 01-145-SLR. (D.I. 14, ex. A) Ryan and Taylor were defendants in the previous litigation. The court on November 19, 2001, dismissed Waters' prior complaint for failure to state a claim upon which relief can be granted.

3. Ryan and Taylor contend that the principles of res judicata and collateral estoppel preclude Waters' present suit. (D.I. 14) Water did not file a response to defendant's motion. On December 4, 2003, the court ordered Water to file an answer brief on or before January 2, 2004. (D.I. 16) Water has failed to comply with the court's order.

4. Ivens contends that Waters' claims against him are barred by operation of the statute of limitations. (D.I. 18) Water has failed to file a timely response to Iven's motion.

5. In analyzing a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), the court must accept as true all material allegations of the complaint and it must construe the complaint in favor of the plaintiff. See Trump Hotels & Casino Resorts, Inc. v. Mirage Resorts, Inc., 140 F.3d 478, 483 (3d Cir. 1998). "A complaint should be dismissed only if, after accepting as true all of the facts alleged in the complaint, and drawing all reasonable inferences in the plaintiff's favor, no relief could be granted under any set of facts consistent with the allegations of the complaint." Id. Claims may be dismissed pursuant to a

Rule 12(b)(6) motion only if the plaintiff cannot demonstrate any set of facts that would entitle him to relief. See Conley v. Gibson, 355 U.S. 41, 45-46 (1957). Where the plaintiff is a pro se litigant, the court has an obligation to construe the complaint liberally. See Haines v. Kerner, 404 U.S. 519, 520-521 (1972); Gibbs v. Roman, 116 F.3d 83, 86 n.6 (3d Cir. 1997); Urrutia v. Harrisburg County Police Dep't., 91 F.3d 451, 456 (3d Cir. 1996). The moving party has the burden of persuasion. See Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1409 (3d Cir. 1991).

6. Claim preclusion requires: (1) a final judgment on the merits in a prior suit involving (2) the same parties or their privies; and (3) a subsequent suit based on the same cause of action. See Churchill v. Star Enterprises, 183 F.3d 184, 194 (3d Cir. 1999). In the present case, Water literally photocopied her previous complaint, substituted one defendant for another and re-filed the complaint. The court notes that on the face of the present complaint, Water falsely denied filing a lawsuit involving the same facts. The court's November 19, 2001 decision determined that Water had failed to state a claim upon which relief could be granted. Consequently, claim preclusion applies and Waters' claims against defendants Ryan and Taylor in the present case are barred as a matter of law.

7. Actions brought pursuant to 42 U.S.C. § 1983 alleging

constitutional violations based on personal injury are subject to a two year limitations period in Delaware. See 10 Del. C. § 8119. In the present case, Waters' complaint, filed June 26, 2002, alleges that the events giving rise to her claims occurred on February 26, 1999. (D.I. 2 at 4) Ivens further contends that he ceased providing medical care for the Delaware Department of Correction on June 30, 2000. As Waters has failed to respond to defendant's motion and has failed to provide any factual allegations which might suggest that her injuries occurred on or after June 26, 2000, the court concludes that her claims against Iven are barred by the statute of limitations. Consequently, the court grants Iven's motion to dismiss for failure to state a claim upon which relief can be granted. (D.I. 18)

8. The clerk is directed to enter judgment in favor of defendants Ivens, Ryan, and Taylor and against plaintiff Waters.

Sue L. Robinson
United States District Judge