

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CHARLES M. ROBINSON,)
)
Plaintiff,)
)
v.)
)
ALLEN C. WEISS, M.D.; GORDON)
OSTRUM, SR., M.D., MEDICAL)
DIRECTOR, GANDER HILL PRISON; JOHN/)
JANE DOE, DIRECTOR OF PSYCHIATRIC)
SERVICES, STATE OF DELAWARE)
CORRECTIONAL SYSTEM; JOHN/JANE DOE,)
M.D., MEDICAL DIRECTOR, STATE OF)
DELAWARE CORRECTIONAL SYSTEM;)
PRISON HEALTH SERVICES, INC.;)
SHERESE BREWINGTON-CARR, WARDEN,) Civil Action No. 00-345-SLR
GANDER HILL PRISON; STANLEY TAYLOR,)
COMMISSIONER, DEPARTMENT OF)
CORRECTION, STATE OF DELAWARE;)
BRIAN FLICK, UNITED STATES DEPUTY)
MARSHAL; STEVEN CONBOY, DEPUTY)
SUPERVISOR UNITED STATES MARSHAL;)
and JOHN/JANE DOES, SUPERVISORS,)
UNITED STATES MARSHAL SERVICE,)
DISTRICT OF DELAWARE,)
)
Defendants.)

William L. Doerler, Esquire of Trzuskowski, Kipp, Kelleher & Pearce, Wilmington, Delaware. Counsel for plaintiff. Lek Domni, Esquire, Philadelphia, Pennsylvania. Of counsel for plaintiff.

Gilbert F. Shelsby, Jr., Esquire and Carrie I. Dayton, Esquire of Margan Shelsby & Leoni, Newark, Delaware. Counsel for Allen C. Weiss and Gordon Ostrum, Sr. Alan S. Gold, Esquire of Monaghan & Gold, P.C., Elkins Park, Pennsylvania. Of counsel for Allen C. Weiss and Gordon Ostrum, Sr.

John D. Balaguer, Esquire and Marc. S. Casarino, Esquire, Wilmington, Delaware. Counsel for Prison Health Services,

Inc.

Stuart B. Drowos, Deputy Attorney General, State of Delaware, Wilmington, Delaware. Counsel for Stanley Taylor and Sherese Brewington-Carr.

Richard Andrews, Acting United States Attorney and Judith M. Kinney, Assistant United States Attorney, United States Attorney's Office, Wilmington, Delaware. Counsel for Brian Flick and Steven Conboy.

MEMORANDUM OPINION

Dated: May 9, 2001
Wilmington, Delaware

ROBINSON, Chief Judge

I. INTRODUCTION

Plaintiff Charles M. Robinson, a former pretrial detainee housed in the Multi Purpose Criminal Justice Facility in Wilmington, Delaware ("Gander Hill"), brought this civil rights action against several defendants associated with Prison Health Services, Inc. ("PHS") and the United States Marshal Service. The named defendants include Allen C. Weiss, M.D. ("Weiss"); Gordon Ostrum, Sr., M.D. ("Ostrum"); PHS; Gander Hill Warden Sherese Brewington-Carr ("Brewington-Carr"); Department of Correction Commissioner Stanley Taylor ("Taylor");¹ United States Deputy Marshal Brian Flick ("Flick"); and Deputy Supervisor United States Marshal Steven Conboy ("Conboy").² Unnamed defendants include the Director of Psychiatric Services for the State of Delaware Correctional System ("Psychiatric Director"), the Medical Director for the State of Delaware Correctional System ("Medical Director"), and supervisors of the United States Marshal Service for the District of Delaware ("Marshal Supervisors").

¹Defendants Brewington-Carr and Taylor are hereinafter referred to as "the State defendants."

²Defendants Flick and Conboy are hereinafter referred to collectively as "the federal defendants."

Plaintiff's causes of action include (1) a § 1983³ action against defendants Weiss, Ostrum, Medical Director, Psychiatric Director, Brewington-Carr, and Taylor; (2) a Bivens⁴ action against Flick, Conboy, and Marshal Supervisors; (3) malpractice claims against Weiss and PHS; (4) a negligent infliction of emotional distress claim against Weiss and PHS; and (5) an intentional infliction of emotional distress claim against Weiss and PHS.

The court previously denied motions to dismiss filed by defendants PHS, Weiss and Ostrum, and the federal defendants. (D.I. 66-68) The court also denied the federal defendants' motion for summary judgment. (Id.) Currently before the court is the State defendants' motion for summary judgment.

II. BACKGROUND

Plaintiff's complaint⁵ alleges that while a pretrial detainee housed in Gander Hill on federal criminal charges, he was involuntarily administered an anti-psychotic drug, Prolixin Deconoate ("Prolixin"), pursuant to the orders of

³Section 1983 of the Civil Right Act, 42 U.S.C. § 1983 (1994).

⁴Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971). Plaintiff alleges violations of his Fifth and Eighth Amendment rights.

⁵All references to the "complaint" refer to plaintiff's third amended complaint. (D.I. 22)

Weiss on August 6, 1997. (D.I. 22, ¶ 15-16, 20, 27) The next day, detention and preliminary hearings were scheduled in the United States District Court for the District of Delaware before the Honorable Mary Pat Thyngne.⁶ Plaintiff, while under the custody of defendant United States Deputy Marshal Flick, appeared before Magistrate Judge Thyngne at which time plaintiff's criminal attorney, Assistant Federal Public Defender Christopher Koyste, informed the court that plaintiff was barely able to communicate with him, was drooling out of his mouth, and appeared to be in a catatonic state. (Id., ¶ 31) Because of her concern for plaintiff's health, Magistrate Judge Thyngne ordered defendant Flick to take plaintiff to St. Francis Hospital instead of Gander Hill. (Id., ¶ 32) Defendant Flick, with the knowledge and approval of defendant Deputy Supervisor Conboy and other Marshal Supervisors, returned the plaintiff to Gander Hill instead of St. Francis Hospital. (Id., ¶ 33) On August 11, 1997, plaintiff was transferred from Gander Hill and admitted to St. Francis Hospital's intensive care unit after an emergency room evaluation. At the time of his admission, plaintiff was unresponsive and dehydrated. He had high blood pressure, a

⁶At the time the complaint was filed, United States Magistrate Judge Mary Pat Thyngne's sir name was Trostle.

rapid heart rate, a fever of 105 degrees Fahrenheit, and a low level of oxygen in his blood. Plaintiff had pneumonia and was diagnosed with Neuroleptic Malignant Syndrome. (Id., ¶ 34)

Plaintiff remained at St. Francis Hospital until his return to Gander Hill on August 27, 1997. (Id., ¶ 37)

Plaintiff alleges that because of the defendants' actions, he suffered various injuries and conditions including permanent brain damage and severe emotional stress. (Id., ¶ 36) As to the specific defendants, plaintiff generally alleges that Ostrum, the Medical Director, and the Psychiatric Director failed to ensure that proper policies and procedures were implemented at Gander Hill to meet the psychiatric needs of inmates despite prior knowledge of deficiencies. Their failure to implement such policies and procedures, plaintiff alleges, constituted a deliberate indifference to plaintiff's serious medical and psychiatric needs and violated his constitutional rights. (Id., ¶ 38) Plaintiff alleges that the State defendants knew of deficiencies in the care given to inmates with psychiatric needs and failed to ensure that proper policies and procedures were implemented to meet those needs. (Id., ¶ 39)

Plaintiff's specific allegations against the State defendants are set forth in the complaint as follows:

10. Defendant Sherese Brewington-Carr, is an adult individual, resident of the State of Delaware who at all relevant times hereto was employed by the State of Delaware as the Warden of Gander Hill Prison, Wilmington, Delaware. She is sued in her individual capacity. At all times herein, defendant acted in the course and scope of her employment with the State of Delaware. At all times herein, defendant acted in the course and scope of her employment with PHS under color of state law.

11. Defendant Stanley Taylor, is an adult individual, who is a resident of the State of Delaware, who at all relevant times hereto was employed by the State of Delaware as the Commissioner for the Department of Correction[]. He is sued in his individual capacity. At all times herein, defendant acted in the course and scope of his employment with the State of Delaware. At all times herein, defendant acted in the course and scope of his employment with PHS under color of state law.

21. At the time that Dr. Weiss ordered the injection of Prolixin Deconoate, there were - or should have been - other anti-psychotic medications available at the prison infirmary, or at local neighboring hospitals and/or pharmacies in Wilmington, which were not in long-lasting form.

39. As of August 6, 1997 and prior thereto, [the State defendants] failed to ensure that proper policies and procedures were implemented to meet the serious psychiatric needs of inmates housed in Gander Hill Prison despite their prior notice of these deficiencies. Defendants' failure to implement such policies and procedures constituted deliberate indifference to plaintiff's serious medical/psychiatric needs and violated his constitutional rights.

40. Despite notice of the foregoing failures, deficiencies and inadequacies of psychiatric care at Gander Hill Prison, [the State defendants] failed to:

a. allocate funds to improve psychiatric care and address the failures, deficiencies and inadequacies of which it was on notice, including those aforementioned herein;

b. establish an effective emergency capability with appropriate trained staff and appropriate stocked pharmaceutical[s] and medications;

c. develop clinical protocols and policies for management of psychiatric emergencies;

d. maintain twenty-four (24) hour psychiatric coverage at Gander Hill sufficient to accommodate its prison population;

e. establish professional and competent pharmacy services; and

f. include psychiatric reviews as part of the utility assurance process.

(Id., ¶¶ 10-11, 12, 39-40)

III. STANDARD OF REVIEW

A court shall grant summary judgment only 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). The moving party bears the burden of proving that no genuine issue of material fact exists. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 n.10 (1986). "Facts that could alter the outcome are 'material,' and disputes are 'genuine' if

evidence exists from which a rational person could conclude that the position of the person with the burden of proof on the disputed issue is correct." Horowitz v. Federal Kemper Life Assurance Co., 57 F.3d 300, 302 n.1 (3d Cir. 1995) (internal citations omitted). If the moving party has demonstrated an absence of material fact, the nonmoving party then "must come forward with 'specific facts showing that there is a genuine issue for trial.'" Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e)). The court will "view the underlying facts and all reasonable inferences therefrom in the light most favorable to the party opposing the motion." Pennsylvania Coal Ass'n v. Babbitt, 63 F.3d 231, 236 (3d Cir. 1995). The mere existence of some evidence in support of the nonmoving party, however, will not be sufficient for denial of a motion for summary judgment; there must be enough evidence to enable a jury reasonably to find for the nonmoving party on that issue. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). If the nonmoving party fails to make a sufficient showing on an essential element of its case with respect to which it has the burden of proof, the moving party is entitled to judgment as a matter of law. See Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

IV. DISCUSSION

The State defendants seek summary judgment pursuant to the doctrine of qualified immunity.⁷ In Rouse v. Plantier, 182 F.3d 192 (3d Cir. 1999), the Third Circuit has addressed this issue in the context of inmates suing corrections officials for a deliberate indifference to the inmates' medical needs. Under this doctrine, "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). "The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." Anderson v. Creighton, 483 U.S. 635, 640 (1987); see also Acierno v. Cloutier, 40 F.3d 597, 616 (3d Cir. 1994) (en banc). In determining whether defendants are entitled to claim qualified immunity, the court engages in a three-part inquiry: (1) whether the plaintiff alleged a violation of his constitutional rights; (2) whether the right alleged to have

⁷The State defendants also argue that (1) plaintiff cannot maintain a suit against the State defendants in their official capacities; (2) the State defendants cannot be held liable based upon respondeat superior; and (3) negligence is not a cognizable cause of action under § 1983. Since plaintiff agrees with each of these propositions, the court will not discuss them.

been violated was clearly established in the existing law at the time of the violation; and (3) whether a reasonable official knew or should have known that the alleged action violated the plaintiff's rights.

The Eighth Amendment prohibits the imposition of "unnecessary and wanton infliction of pain contrary to contemporary standards of decency." See Helling v. McKinney, 509 U.S. 25, 32 (1993). In Estelle v. Gamble, 429 U.S. 97 (1976), the Supreme Court held that the Eighth Amendment's prohibition against cruel and unusual punishment requires prison officials to provide basic medical treatment to those whom it has incarcerated. The Court articulated the standard to be used:

In order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs. It is only such indifference that can offend "evolving standards of decency" in violation of the Eighth Amendment.

Id. at 106. Therefore, to succeed under these principles, plaintiff must demonstrate (1) that the State defendants were deliberately indifferent to his medical needs and (2) that those needs were serious. Id. The State defendants focus only on the issue of whether they were deliberately indifferent to plaintiff's medical needs. Thus, the court will assume for purposes of this motion that plaintiff's

medical needs were serious.

It is well-settled that claims of negligence or medical malpractice, without some more culpable state of mind, do not constitute "deliberate indifference." As the Estelle Court noted: "In the medical context, an inadvertent failure to provide adequate medical care cannot be said to constitute 'an unnecessary and wanton infliction of pain' or to be 'repugnant to the conscience of mankind.'" Id. at 105; see also Durmer v. O'Carroll, 991 F.2d 64, 67 (3d Cir. 1993) ("The law is clear that simple medical malpractice is insufficient to present a constitutional violation."); White v. Napoleon, 897 F.2d 103, 110 (3d Cir. 1990) (emphasis omitted) ("Certainly no claim is stated when a doctor disagrees with the professional judgment of another doctor. There may, for example, be several acceptable ways to treat an illness."). "Deliberate indifference," therefore, requires "obduracy and wantonness," Whitley v. Albers, 475 U.S. 312, 319 (1986), which has been likened to conduct that includes recklessness or a conscious disregard of a serious risk.

The Third Circuit has found "deliberate indifference" in a variety of circumstances, including where the prison official (1) knows of a prisoner's need for medical treatment but intentionally refuses to provide it; (2) delays necessary

medical treatment based on a non-medical reason; or (3) prevents a prisoner from receiving needed or recommended medical treatment. See Durmer, 991 F.2d at 68 (citing Monmouth County Corr. Inst. Inmates v. Lanzaro, 834 F.2d 326, 346-47 (3d Cir. 1987)). It also has found "deliberate indifference" to exist where the prison official persists in a particular course of treatment "in the face of resultant pain and risk of permanent injury." Napoleon, 897 F.2d at 109-11 (holding that allegations of several instances of flawed medical treatment state a claim under Eighth Amendment).

Here, plaintiff has alleged that the State defendants failed to ensure that proper policies and procedures were implemented to meet the serious psychiatric needs of inmates housed in Gander Hill despite their prior notice of these deficiencies. Plaintiff has stated a claim upon which relief can be granted. See Farmer v. Brennan, 511 U.S. 825, 842 (1994) (stating that "it is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm").

The State defendants contracted with PHS to care for the health and medical needs of the inmate population. The State defendants admit that once an inmate is taken to the medical department in the DOC facilities, there is little to no

involvement by the facilities' non-medical personnel in the care of inmates. The State defendants argue that once they turned plaintiff over to PHS for medical care, they cannot be said to have been deliberately indifferent to plaintiff's medical needs.

The court holds that the State defendants cannot shun their responsibility to provide medical care for inmates by simply contracting with a third party and then looking the other way. If, in fact, the State defendants knew of deficiencies in the policies and procedures designed to meet the medical needs of inmates at Gander Hill and failed to act upon these deficiencies, then plaintiff will be entitled to relief.⁸ Plaintiff shall be entitled to discovery on this issue.

V. CONCLUSION

The State defendants' motion for summary judgment is denied. The plaintiff shall be entitled to discovery. An appropriate order shall issue.

⁸In their reply brief, the State defendants attach an affidavit of the DOC's contract monitor for healthcare and substance abuse services showing that the DOC procedures were in compliance with all applicable National Commission on Correctional Health Care Standards. Furthermore, the DOC has a Medical Review Committee which meets monthly and reviews current policies and procedures, ongoing health care problems, and contract compliance. Because this evidence was not provided in the State defendants' opening brief and because there has been no discovery thus far, the court will not consider that evidence in making its decision.