

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

HALEEM CLARK, OMARI CLARK, )  
ERNEST MUHAMMAD (GUARDIAN) )  
 )  
Plaintiffs, )  
 )  
v. ) C.A. No. 02-432-SLR  
 )  
WAYMAN KANE, SHIRLEY KANE, )  
WILMINGTON HOUSING AUTHORITY, )  
FRED PURNELL, WILMINGTON POLICE )  
DEPARTMENT CHIEF OF POLICE SZCERBA, )  
STATE OF DELAWARE POLICE SUPT. )  
COL. CHAFFIN, WILMINGTON DEPARTMENT )  
OF PUBLIC SAFETY JAMES MOSLEY, and )  
STATE OF DELAWARE DEPARTMENT OF )  
PUBLIC SAFETY SECRETARY JAMES L. )  
FORD, )  
 )  
Defendants. )

**MEMORANDUM ORDER**

At Wilmington this 20th day of May, 2003, having reviewed the various pending motions filed by defendants;

IT IS ORDERED that said motions to dismiss (D.I. 12, 13, 15) are granted for the reasons that follow:

1. **Background.** Plaintiffs Haleem Clark and Ernest Muhammad (as guardian for Omari Clark) filed suit on May 16, 2002 against multiple defendants for injuries arising out of an incident that allegedly occurred on May 16, 2000. As described in full in plaintiff's amended complaint:

On May 16, 2000 on a lot unsecured by Defendant Kane Wayman & Shirley, adjacent to Defendant Wilmington Housing Authority's unsecured Eastlake

and Riverside housing property, in a long standing crime and organized crime area well known to Defendant Wilmington Housing Authority, as such. Defendants K.W.S. and W.H.A., Wilmington and Delaware State Public Safety Departments and W.P.D. and D.S.P. acting under color of law conducted a systematic deprivation of interest by governmental agencies and or law enforcement, by willfully or recklessly, or negligently denying or depriving Plaintiffs federal right to liberty and, equal protection under the law. The Defendants constitutionally inadequate process caused the denial of deprivation of security and equal protection for Plaintiffs including, the absence of security, or any consistent law presence, or stable police activity in the organized crime area. As a result of Defendants deprivation of interest in Plaintiffs federal right to liberty, property and due process as guaranteed by the U.S. constitution, Plaintiffs were brutally attacked and beaten by organized group, and thugs, known to frequent the area or "turf", of Riverside and Eastlake housing developments; and one Plaintiff had his jaw fractured in three places, with nerve damage and was otherwise injured, prevented from attending school and working, while both plaintiffs suffered great pain of body and of extreme mental suffering, along with their guardians, and incurred expenses for medial attention and hospitalization in the sum of 10,000.00 dollars.

(D.I. 3 , ¶ 2) According to plaintiffs, jurisdiction is based on 28 U.S.C. § 1331. (D.I. 3, ¶ 1)

2. **Analysis.** Defendant Wilmington Housing Authority<sup>1</sup> moves to dismiss the action on the ground that it is barred by the United States Supreme Court decision of DeShaney v. Winnebago County Dept. of Social Services, 489 U.S. 189 (1989). Plaintiffs in that case had sued various local governmental agencies on the

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<sup>1</sup>The individual defendant Fred Purnell is included within the scope of this motion.

theory that said defendants, despite notice of the risk of harm, failed to protect the minor plaintiff from an abusive father. The Supreme Court held that the defendants had no constitutional duty to protect the child, explaining that

nothing in the language of the Due Process Clause itself requires the State to protect the life, liberty, and property of its citizens against invasion by private actors. The Clause is phrased as a limitation of the State's power to act, not as a guarantee of certain minimal levels of safety and security. It forbids the State itself to deprive individuals of life, liberty, or property without "due process of law," but its language cannot fairly be extended to impose an affirmative obligation on the State to ensure that those interests do not come to harm through other means. . . . If the Due Process Clause does not require the State to provide its citizens with particular protective services, it follows that the State cannot be held liable under the Clause for injuries that could have been averted had it chosen to provide them. As a general matter, then, we conclude that a State's failure to protect an individual against private violence simply does not constitute a violation of the Due Process Clause.

Id. at 195, 196-97.

3. The facts presented in the case at bar fall squarely within the scope of the DeShaney bar. Plaintiffs allege that defendant failed to protect them from an "organized group, and thugs, known to frequent the area or 'turf.'" (D.I. 3) Defendant, an adjacent landowner, cannot be held responsible for protecting plaintiffs and, therefore, cannot be held liable for plaintiffs' injuries.

4. Defendants The Division of State Police and the

Department of Public Safety<sup>2</sup> move to dismiss based on DeShaney, as well as other grounds. The DeShaney analysis is equally applicable to these defendants and, therefore, their motion shall be granted. Alternately, state agencies are not "persons" pursuant to 42 U.S.C. § 1983 capable of suit and the Eleventh Amendment bars suit against these state agencies for money damages in a federal lawsuit. Edelman v. Jordan, 415 U.S. 651, 668 (1974); Will v. Mich. Dep't of State Police, 491 U.S. 58, 71 (1989).

5. Defendants Wilmington Police Department and Wilmington Department of Public Safety<sup>3</sup> move to dismiss the action under the DeShaney analysis. That motion, too, is granted for the reasons stated above.

IT IS FURTHER ORDERED that, on or before **June 18, 2003**, plaintiffs shall show cause why the remainder of their cause of action against defendant Kane, Wayman & Shirley, the landowner, should not be dismissed for failure to prosecute, pursuant to D.Del. L.R. 41.1.<sup>4</sup>

Sue L. Robinson  
United States District Judge

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<sup>2</sup>Individual defendants Supt. Col. Chaffin and Secretary James L. Ford are included within the scope of this motion.

<sup>3</sup>Individual defendants Szczerba and Mosley are included within the scope of this motion.

<sup>4</sup>The court notes that this defendant is not a State actor and cannot be sued under 42 U.S.C. § 1983.