

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

STEVEN R. MILLER,)
)
 Plaintiff,)
)
 v.) Civil Action No. 01-156-SLR
)
 CITY OF WILMINGTON; WILMINGTON)
 POLICE DEPARTMENT; FRAY M. LYNCH,)
 Individually and as Agent for the)
 Wilmington Police Department; R.)
 COLMERY, Individually and as Agent)
 for the Wilmington Police)
 Department; OFFICERS JOHN DOE)
 #1-#4, Individually and as)
 Agents for the Wilmington Police)
 Department; THE MULTI-PURPOSE)
 CRIMINAL JUSTICE FACILITY;)
 DEPARTMENT OF CORRECTION and)
 PRISON HEALTH SERVICES,)
)
 Defendants.)

MEMORANDUM ORDER

I. INTRODUCTION

On March 8, 2001, plaintiff Steven R. Miller filed this action alleging assault, negligence, negligent training and supervision, intentional infliction of emotional distress, civil rights violations under 42 U.S.C. §§ 1981 and 1983 and violations of his First, Eighth and Fourteenth Amendment rights.¹ (D.I. 1 at ¶ 1)

¹Specifically, plaintiff alleges that he was deprived of the constitutional guarantees of due process of law, equal protection under the law, and the right to be free from cruel and unusual punishment. (D.I. 1 at ¶ 23)

Currently before the court is defendant Prison Health Services' ("PHS") motion to dismiss several counts of plaintiff's complaint for failure to state a claim. (D.I. 13) For the reasons stated, PHS's motion to dismiss is granted.

II. BACKGROUND

The following recitation of events is based upon the allegations set forth in plaintiff's complaint. Plaintiff was arrested on January 10, 2000 for attempted third-degree burglary and resisting arrest. (D.I. 1 at ¶ 15) Plaintiff alleges that while effectuating the arrest, six Wilmington Police Department officers subjected him to excessive force in that he was "held and beaten." (D.I. 1 at ¶ 19) During the incident, plaintiff was kicked in the face and ribs, resulting in a laceration of about one and one-quarter inch under his right eye and a broken rib which protrudes from his back. (Id. at ¶¶ 16, 17)

Plaintiff waited about one and one-half months to be examined by the physician at the Multi-Purpose Criminal Justice Facility, where he is currently incarcerated. (Id. at ¶ 18) The physician, an employee of PHS, took notice of the bone disfigurement in plaintiff's back, but did not conduct any x-rays because "there is nothing that can be done for a broken rib that has already healed." (Id.)

III. STANDARD OF REVIEW

In analyzing a motion to dismiss pursuant to Rule 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). The moving party has the burden of persuasion. See Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1409 (3d Cir. 1991).

IV. DISCUSSION

A. Plaintiff's Assault Claim

Plaintiff's complaint alleges assault without legal right or justification by all defendants. (D.I. 1 at ¶ 25) However, plaintiff asserts no facts from which a reasonable inference could be made that PHS was involved in any alleged assault on plaintiff. Thus, plaintiff's assault claim is dismissed as to PHS.

B. Plaintiff's Constitutional Claims

Plaintiff alleges that his constitutional rights were violated when, due to an unlawful assault, he was deprived of due process, equal protection under the laws, and the right to be free from cruel and unusual punishment, which includes the right to adequate medical care. (D.I. 1 at ¶ 23)

Reading plaintiff's complaint liberally, the only constitutional violation that could reasonably be attributed to PHS is the denial of adequate medical care. To state a violation of the Eighth Amendment right to adequate medical care, plaintiff "must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." Estelle v. Gamble, 429 U.S. 97, 106 (1976); accord White v. Napoleon, 897 F.2d 103, 109 (3d Cir. 1990). Plaintiff must demonstrate: (1) that he had a serious medical need, and (2) that the defendant was aware of this need and was deliberately indifferent to it. See West v. Keve, 571 F.2d 158, 161 (3d Cir. 1978); see also Boring v. Kozakiewicz, 833 F.2d 468, 473 (3d Cir. 1987).

The seriousness of a medical need may be demonstrated by showing that the need is "'one that has been diagnosed by a physician as requiring treatment or one that is so obvious that a lay person would easily recognize the necessity for a doctor's attention.'" Monmouth County Corr. Inst. Inmates v. Lanzaro, 834 F.2d 326, 347 (3d Cir. 1987) (quoting Pace v. Fauver, 479 F.

Supp. 456, 458 (D.N.J. 1979)). Moreover, "where denial or delay causes an inmate to suffer a life-long handicap or permanent loss, the medical need is considered serious." Id.

As to the second requirement, an official's denial of an inmate's reasonable requests for medical treatment constitutes deliberate indifference if such denial subjects the inmate to undue suffering or a threat of tangible residual injury. See id. at 346. Deliberate indifference may also be present if necessary medical treatment is delayed for non-medical reasons, or if an official bars access to a physician capable of evaluating a prisoner's need for medical treatment. See id. at 347. However, an official's conduct does not constitute deliberate indifference unless it is accompanied by the requisite mental state. Specifically, "the official [must] know . . . of and disregard . . . an excessive risk to inmate health and safety; the official must be both aware of facts from which the inference can be drawn that a substantial risk of serious harm exists, and he must also draw the inference." Farmer v. Brennan, 511 U.S. 825, 837 (1994). While a plaintiff must allege that the official was subjectively aware of the requisite risk, he may demonstrate that the official had knowledge of the risk through circumstantial evidence and "a fact finder may conclude that a[n] . . . official knew of a substantial risk from the very fact that the risk was obvious." Id. at 842.

Plaintiff's "bone disfigurement" and complaints of pain are sufficient to demonstrate that he suffered a "serious injury." However, plaintiff does not allege any facts to suggest that PHS acted with deliberate indifference to plaintiff's needs. As stated in his complaint, plaintiff waited one and one-half months after his injury before being examined, and was informed by a PHS physician that there was no treatment for a broken rib that has healed. (D.I. 1 at ¶ 18) Plaintiff fails to allege any constitutional violation by PHS, therefore, those claims are dismissed as to PHS.

C. Plaintiff's Civil Rights Claims

It is an established principle that, as a basis for liability under 42 U.S.C. § 1983, the doctrine of respondeat superior is not acceptable. See Monell v. Dept. of Social Servs., 436 U.S. 658 (1978). See also Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988); Hampton v. Holmesburg Prison Officials, 546 F.2d 1077, 1082 (3d Cir. 1976); Swan v. Daniels, 923 F. Supp. 626, 633 (1995) (applying the principle to liability of private corporations that provide medical services for the state); Heine v. Receiving Area Pers., 711 F. Supp. 178, 185 (D. Del. 1989). Personal involvement by a defendant is essential in a civil rights action.² See Rode, 845 F.2d at 1207.

²"Allegations of personal direction or of actual knowledge and acquiescence" are adequate to demonstrate personal involvement. Rode, 845 F.2d at 1207. Such allegations are

Plaintiff relies on Servino v. Med. Ctr., No. 94C-08-077-WTQ, 1997 Del. Super. LEXIS 18 (Del. Super. Ct. Feb. 11, 1997) to support his argument that while no respondeat superior liability applies under Section 1983, a defendant may be held liable if he participated in, or had any knowledge of and acquiesced in, an allegedly unconstitutional act. In Servino, a State Police officer was held liable for a constitutional violation that occurred during an arrest. While the officer claimed to have had no physical contact with the arrestee, he was found to be acting in a supervisory or controlling capacity. Id. at *13. However, "to demonstrate liability, a minimum of **personal, actual knowledge** is usually necessary." Id. at *13, n.4 (citing Rode, 845 F.2d at 1208) (emphasis in original). Plaintiff sets forth no facts that demonstrate personal or actual knowledge by PHS of any civil rights violations suffered by plaintiff at the hands of PHS employees. Thus, plaintiff's claims alleging civil rights violations under 42 U.S.C. §§ 1981 and 1983 are dismissed.³

D. Plaintiff's Negligent Supervision, Training and Maintenance of Personnel Claim

Plaintiff claims that PHS owed him a duty of reasonable care in the supervision, training and maintenance of its personnel.

(D.I. 1 at ¶ 57) The "inadequacy of . . . training may serve as

required to be "made with appropriate particularity." Id.

³Plaintiff agreed to voluntarily dismiss the Section 1981 claim against PHS. (D.I. 16 at ¶ 12)

the basis for Section 1983 liability only where the failure to train amounts to deliberate indifference to the rights of the persons with whom the [official] . . . come[s] into contact." City of Canton v. Harris, 489 U.S. 378, 388 (1989). "To establish a Section 1983 claim for failure to train and supervise employees, a plaintiff must (1) identify with particularity what the supervisory officials failed to do that demonstrates deliberate indifference and (2) demonstrate a close causal link between the alleged failure and the alleged injury." Daniels v. Delaware, 120 F. Supp.2d 411, 423 (D. Del. 2000) (citing Sample v. Diecks, 885 F.2d 1099, 1118 (3d Cir. 1989)).

Based on the allegations set forth in plaintiff's complaint, the court finds that plaintiff's claim of negligent supervision, training and maintenance by PHS is factually unsupported. Plaintiff makes no reference to any inadequate training or supervision of employees by PHS, deliberate indifference by PHS officials, nor a "close causal link" between a failure to train or supervise and plaintiff's alleged injury. Therefore, plaintiff's negligent supervision, training and maintenance of personnel claim is dismissed as to PHS.

E. Plaintiff's Intentional Infliction of Emotional Distress Claim

Plaintiff contends that PHS intentionally inflicted emotional distress by failing to timely treat his broken rib. (D.I. 16 at ¶ 13) A defendant is liable for intentional

infliction of emotional distress "where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." Mattern v. Hudson, 532 A.2d 85, 86 (Del. Super. 1987).

In his complaint, plaintiff alleges that he "waited approximately one and one-half months to be examined." (D.I. 1 at ¶ 18) The complaint does not allege any facts to suggest that PHS intentionally delayed his medical examination. In fact, there is no indication that the delay between the alleged assault and plaintiff's examination was caused by anyone but plaintiff. Furthermore, when plaintiff was examined, he was not denied potential treatment; he was informed that there was no treatment available to him. (D.I. 1 at ¶ 18) Clearly, according to plaintiff's complaint, PHS did not commit any extreme or outrageous conduct by delaying or denying plaintiff adequate medical care. Consequently, plaintiff's claim of intentional infliction of emotional distress is dismissed as to PHS.

V. CONCLUSION

Therefore, at Wilmington this 27th day of September, 2001;
IT IS ORDERED that defendant PHS's motion to dismiss (D.I. 13) is granted. PHS is dismissed as a defendant in this action.

IT IS FURTHER ORDERED that, because plaintiff has not stated any claims for which defendants Multi-Purpose Criminal Justice Facility and Delaware Department of Correction can be held liable, they are also dismissed as defendants.

United States District Judge