

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

MARK SCOTT CIRIELLO, :  
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 Plaintiff, :  
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 v. : Civil Action No. 02-1396-JJF  
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 U.S. SUPREME COURT, et. al, :  
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 Defendants. :  
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Mark Scott Ciriello, Pro Se Plaintiff.

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Attorney for Defendant Waterbury Hospital.

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Attorney for Defendant American Medical Response.

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**MEMORANDUM OPINION**

August 12, 2003

Wilmington, Delaware

**Farnan, District Judge.**

Pending before the Court is a Motion To Dismiss filed by Defendant American Medical Response (D.I. 13) seeking to dismiss the Complaint filed by Plaintiff, Mark Scott Ciriello pursuant to Federal Rules of Civil Procedure 8 and 12. For the reasons discussed, the Motions To Dismiss will be granted.

**BACKGROUND**

Plaintiff's Complaint is characterized as a "medical malpractice" action. Although Plaintiff's allegations are mostly unintelligible, it appears to the Court that Plaintiff is alleging that he was stalked and attacked by his father, Michael P. Ciriello, Sr., and his brother, Michael P. Ciriello, Jr. According to Plaintiff, these attacks forced Plaintiff to undergo emergency medical treatment. Apparently, Plaintiff was transported for treatment by Defendant in connection with some of the alleged attacks, particularly those occurring from 1992 through 1998, and again on March 17, 2001. Plaintiff alleges that Defendant ". . . tried to destroy [] the plaintiff's life [] by rendering emergency services, in a plot, by prefabricating one attack after another." (D.I. 1 at 6(g)). It further appears that Plaintiff originally filed a similar lawsuit in the Waterbury Superior Court in Connecticut, and his case was dismissed.

In lieu of answering the Complaint, Defendant filed the

instant Motion To Dismiss, requesting dismissal pursuant to Federal Rules of Civil Procedure 8 and 12. Plaintiff did not respond to the Motion, and the Court subsequently ordered Plaintiff to file an Answering Brief within twenty days of the Court's order. By the Order, the Court further advised Plaintiff that the matter would be decided on the record before it if no Answering Brief was filed. To date, Plaintiff has failed to file a response to the pending Motions To Dismiss. Accordingly, the Court will proceed to resolve this matter on the record before it.

#### **DISCUSSION**

By its Motion, Defendant American Medical Response contends that Plaintiff's Complaints should be dismissed for (1) failure to comply with Rule 8(a); (2) failure to establish subject matter jurisdiction pursuant to Rule 12(b)(1); and (3) improper venue pursuant to Rule 12(b)(3). After reviewing Plaintiff's Complaint in light of the arguments raised by Defendant, the Court concludes that dismissal is appropriate for failure to establish subject matter jurisdiction and improper venue.

Pursuant to Rule 12(b)(1), the court may dismiss a lawsuit for failure to establish subject matter jurisdiction. Where, as here, the defendants have not filed an answer to the complaint, the attack on subject matter jurisdiction is considered a facial attack. Lexington Insurance Co. v. Forrest, 2003 WL 21087014, \*6

(E.D. Pa. May 6, 2003). When considering a facial attack under Rule 12(b)(1), the court must accept the allegations of the complaint as true and draw all reasonable inferences in favor of the plaintiff. Id.

By its Motion, Defendant contends that the Court lacks subject matter jurisdiction, because Plaintiff lacks standing to assert his claims. The doctrine of standing consists of two parts: (1) the case or controversy requirement stemming from Article III, Section 2 of the Constitution, and (2) a subconstitutional prudential element. Forrest, 2003 WL at \*6. Defendant challenges the constitutional aspect of standing and contends that Plaintiff cannot establish a justiciable case or controversy.

To establish constitutional standing, the plaintiff must show that (1) he suffered an "injury-in-fact", i.e. an injury which is concrete and particularized, and actual and imminent, not conjectural or hypothetical; (2) a causal connection exists between the injury and the challenged action of the defendant; and (3) the injury will be redressed by a favorable decision. See Lujan v. Defenders of Wildlife, 504 U.S. 555, 561 (1992) (citations omitted); Pryor v. Nat'l Collegiate Athletic Ass'n, 288 F.3d 548, 561 (3d Cir. 2002). The burden of establishing standing rests with the plaintiff. Lujan, 504 U.S. at 561 (citations omitted).

In this case, the Court concludes that Plaintiff has failed to establish the standing requirements. Specifically, Plaintiff fails to allege a concrete injury or a causal connection between his claims and the conduct of Defendants. Because Plaintiff has failed to establish that he has standing to pursue these actions, the Court concludes that dismissal of these actions is appropriate under Rule 12(b)(1).

Pursuant to Rule 12(b)(3), the court may also dismiss a lawsuit for improper venue. To the extent that jurisdiction for Plaintiff's claim is premised on diversity jurisdiction, Plaintiff must establish venue pursuant to 28 U.S.C. § 1391(a). In diversity cases, suit may be brought in "a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated." Cottman Transmission Systems, Inc. v. Martino, 36 F.3d 291, 293 (3d Cir. 1994). "The test for determining venue is not the defendant's 'contacts' with a particular district, but rather the location of those 'events or omissions giving rise to the claim . . .'" Id. at 294 (citations omitted).

In this case, it appears to the Court that Plaintiff's claims relate to events occurring in Connecticut. Plaintiff has not asserted any allegations related to the State of Delaware. Accordingly, the Court concludes that dismissal for improper

venue is appropriate. Id. at 295 (concluding that venue was improper where significant events related to the claim occurred in Michigan and action was filed in the Eastern District of Pennsylvania).

#### **CONCLUSION**

For the reasons discussed, the Motion To Dismiss filed by Defendant American Medical Response will be granted.

An appropriate Order will be entered.

