

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

BRUCE WAPLES,)
)
Plaintiff,)
)
v.) Civil Action No.: 00-210-GMS
)
RICK KEARNEY and)
MEDICAL DEPARTMENT,)
)
Defendants.)

MEMORANDUM AND ORDER

In March of 2000, Bruce L. Waples (“Waples”) filed this *pro se* prisoner civil rights action against Rick Kearney (“Kearney”), in his capacity as warden, and Prison Health Services (“PHS”) (collectively, “the defendants”).¹ Waples is presently incarcerated at the Sussex Correctional Institute (“S.C.I.”) in Georgetown, Delaware. In his complaint, Waples alleges that the defendants deprived him of proper medical care in violation of the Eighth Amendment. *See* 42 U.S.C. §1983 (1994).² In support of his allegations, Waples claims that something “popped” in his back while he was a pretrial detainee. According to Waples, this injury makes it difficult for him to climb into the top bunk in his cell and is causing him constant problems and pain. Waples also claims that, as a result of his injury, he was forced to sleep on the floor for approximately two to three weeks. For these

¹Waples originally named the Medical Department as a defendant. In its motion, PHS noted that it was the correct defendant because it was the organization contracted with the State of Delaware to operate the medical department at S.C.I.

²42 U.S.C. § 1983 states: Every person who, under color of any statute, ordinance, regulation, custom, or usage, or any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

alleged wrongs, Waples is seeking monetary relief as well as proper medical attention.

Presently before the court are the defendant's separate motions to dismiss for failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6). Because Waples has failed to state a claim upon which relief can be granted, the court will grant the defendants' motions. The following sections discuss the basis for this decision more thoroughly.

I. STANDARD OF REVIEW

In ruling on a motion to dismiss, the factual allegations of the complaint must be accepted as true. *See Graves v. Lowery*, 117 F.3d 723, 726 (3d Cir. 1997); *Nami v. Fauver*, 82 F.3d 63, 65 (3d Cir. 1996). Moreover, a court must view all reasonable inferences that may be drawn from the complaint in the light most favorable to the non-moving party. *See Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969); *Schrob v. Catterson*, 948 F.2d 1402, 1405 (3d Cir. 1991). A court should dismiss a complaint "only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *See Graves*, 117 F.3d at 726; *Nami*, 82 F.3d at 65 (both citing *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). In addition, because Waples is *pro se*, the court must interpret his allegations liberally and must hold them to "less stringent standards than formal pleadings drafted by lawyers." *Estelle v. Gamble*, 429 U.S. 97, 106 (1976); *Zilch v. Lucht*, 981 F.2d 694 (3d Cir. 1992).

II. DISCUSSION

In order to recover against the defendants, Waples must show that he was deprived of a constitutional right by a person acting under the color of state law. *See, e.g., Groman v. Township of Manalpan*, 47 F.3d 628, 633 (3d Cir. 1995) (citing *Gomez v. Toledo*, 446 U.S. 635, 640 (1980)). In this case, it is clear that the defendants were acting under color of state law because, at the time

of the alleged incident, they were correctional officials or an agent at the institution where Waples was incarcerated. *See Cespedes v. Coughlin*, 956 F. Supp. 454, 465 (S.D.N.Y. 1997). Therefore, the court next turns to whether Waples has sufficiently alleged that any of the defendants deprived him of a constitutional right.

The State of Delaware has an obligation to provide “adequate medical care” to the individuals who are incarcerated in its prisons. *See Inmates of Allegheny County Jail v. Pierce*, 612 F.2d 754, 672 (3d Cir. 1979) (citations omitted). To recover for the denial of medical care, Waples must show that a prison official or employee was deliberately indifferent to his serious medical needs or acted with reckless disregard for his condition. *See Miller v. Correctional Medical Sys., Inc.*, 802 F. Supp. 1126, 1130 (D. Del. 1992).

Thus, in order to withstand a motion to dismiss, a claim that prison authorities provided inadequate medical care in violation of Eighth Amendment protections must include acts or omissions by a defendant that evidence deliberate indifference towards serious medical needs. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976); *Rouse v. Plantier*, 182 F.3d 192, 197 (3d Cir. 1999) (stating that to succeed on such claims, plaintiffs must demonstrate that: “(1) the defendants were deliberately indifferent to their medical needs and (2) that those needs were serious.”).

The deliberate indifference prong is met only if the prison official “knows and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could 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); *Rouse*, 182 F.3d at 197. The plaintiff must show a sufficiently culpable state of mind which demonstrates an unnecessary and wanton infliction of pain. *Wilson v. Seiter*, 501 U.S. 294 (1991); *Rouse*, 182 F.3d at 197. Mere allegations

of negligence do not meet the pleading standards for deliberate indifference. *See Estelle*, 429 U.S. at 105-106. Nor can the claim rest solely on the prisoner's dissatisfaction with the medical care he has received. *Id.* at 107.

An inmate's condition is "serious" when it is so obvious that an ordinary person would easily recognize the need for a doctor's attention or when a physician has concluded that treatment is required. *See Monmouth County Correctional Inst. Inmates v. Lanzaro*, 834 F.2d 326 (3d Cir.1987)). The "seriousness" prong is met also if the effect of denying or delaying care results in wanton infliction of pain or a life-long handicap or permanent loss. *Id.* In addition, the "condition must be such that a failure to treat can be expected to lead to substantial and unnecessary suffering, injury or death." *See Colburn v. Upper Darby Township*, 946 F.2d 1017, 1023 (3d Cir.1991).

With these standards in mind, the court turns to an analysis of Waples' claim that the defendants deprived him of proper medical care.

A. WARDEN KEARNEY

In order to hold Kearney liable, Waples must allege an act or omission by Kearney that demonstrates deliberate indifference to his serious medical needs. *See City of Canton v. Harris*, 489 U.S. 378 (1989); *Sample v. Diecks*, 885 F.2d 1099, 1118 (3d Cir. 1989). In his complaint, Waples does not contend that Kearney was personally involved in the medical care provided to him. Rather, Waples asserts "Kearny [sic] . . . he is the warden . . . he is responsible for his staff." Thus, the Waples' claim against Kearney is premised on the doctrine of *respondeat superior*. It is well established, however, that absent some sort of personal involvement in the allegedly unconstitutional conduct, a defendant cannot be held liable under a *respondeat superior* theory. *See Fagan v. City of Vineland*, 22 F.3d 1283, 1291 (3d Cir. 1994); *Gay v. Petsock*, 917 F.2d 768 (3d Cir. 1990).

Because Waples complaint fails to allege any act or omission of Kearney that demonstrates deliberate indifference to Waples serious medical needs, the claim against Kearney must be dismissed.

B. PHS

Waples alleges that the medical department knew of his medical history and that when he informed them several times that he was having trouble getting on the top bed, he was denied proper medical attention. These allegations fail to establish that PHS conduct constituted an “unnecessary and wanton infliction of pain” as proscribed by the Eighth Amendment.” *See Estelle v. Gamble*, 429 U.S. at 104. Although Waples may disagree with the medical experts on what he feels is proper medical attention, a mere difference of opinion regarding the need for treatment, the preferred course of treatment, the severity of the alleged injury, or other medical judgment does not constitute a showing of deliberate indifference. *See White v. Napoleon*, 897 F.2d 103, 110 (3rd Cir. 1990). Moreover, it is well settled that claims of negligence or medical malpractice, without some more culpable state of mind, do not constitute deliberate indifference. *See Estelle*, 429 U.S. at 105; *Rouse*, 182 F.3d at 196. Therefore, Waples’ allegations against PHS fail to satisfy the deliberate indifference prong of the *Estelle* test³.

In sum, the allegations of the complaint, even when construed in a light most favorable to plaintiff, do not support a Section 1983 claim against PHS⁴. Thus, Waples’ claim against Kearney and

³Because Waples has failed to satisfy the deliberate indifference prong, the court does not reach the question of whether Waples injuries were sufficiently serious.

⁴The complaint could have alternatively been dismissed for failing to exhaust the administrative remedies available to Waples prior to filing a §1983 action as required by the Prison Litigation Reform Act of 1996, 42 U.S.C. § 1997e(a). *Nyhuis v. Reno*, 204 F.3d 65, 67 (3d Cir. 2000).

PHS must be dismissed⁵.

For these reasons IT IS HEREBY ORDERED that:

1. Kearney's Motion to Dismiss (D.I. 16) is GRANTED pursuant to Fed. R. Civ. P. 12(b)(6).
2. PHS's Motion to Dismiss (D.I. 18) is GRANTED pursuant to Fed. R. Civ. P. 12(b)(6).
3. Waples' complaint (D.I. 2) is DISMISSED.

Dated: March 13, 2001

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE

⁵On October 20, 2000, defendant PHS filed a Motion to Stay Proceedings Pending Resolution of the motions to dismiss. By virtue of the court's disposition of the motions to dismiss, the motion to stay is rendered moot.