IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

RAPHUS ELEY, Plaintiff, v. RICK KEARNEY, MIKE DELOY, PHILLIP TOWNSON, SGT. JOHN DOE, LT. JOHN DOE, GOSNELL, C/O ANSON, CPL., CORRECTIONAL MEDICAL SERVICES, DR. IVENS, SUESANN RICHARDS, GEORGIA PERDUE, DR. BURNS, STATE OF DELAWARE, SCI, MEDICAL ADMINISTRATOR, Defendants.	)	Civ. No. 02-362-SLR

Raphus Eley, #144438, Plummer Work Release Center, 38 Todds Lane, Wilmington, Delaware. Pro se.

Richard W. Hubbard, Esquire of the State of Delaware Department of Justice, Wilmington, Delaware. Counsel for Defendants Rick Kearney, Mike Deloy, Phillip Townson, William Gosnell, and Carl Anson.

MEMORANDUM OPINION

Dated: April 25, 2005
Wilmington, Delaware

ROBINSON, Chief Judge

I. INTRODUCTION

On May 1, 2002, Raphus Eley, a pro se plaintiff proceeding in forma pauperis, filed the present action against defendants Rick Kearney, Mike Deloy, Carl Anson, William Gosnell, Philip Townsend, Suesane Richards, Georgia Perdue, Dr. Ivens, Dr. Burns, Correctional Medical Services, Sussex Correctional Institution, and the State of Delaware.[1] (D.I. 2) The events which gave rise to this action took place at Sussex Correctional Institution ("SCI"), where plaintiff was formerly an inmate. In his complaint, plaintiff alleges that, pursuant to 42 U.S.C. § 1983[2], defendants violated plaintiff's Eighth Amendment rights by: (1) "ignor[ing] a known hazard" which caused plaintiff to fall down a flight of stairs and injure his back; and (2) denying plaintiff medical care "on or about November 26, 1999." (D.I. 2) In his first amended complaint, plaintiff alleges, inter alia, that he was denied surgery to repair his back because he did not have

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[1] Defendants Kearney, Deloy, Anson, Gosnell, and Townsend will collectively be referred to as "the State defendants".

[2] Section 1983 states:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of 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 . . . .

enough time left on his sentence. (D.I. 6) The court has jurisdiction over the present matter pursuant to 28 U.S.C. § 1331. Presently before the court is the State defendants' motion to dismiss plaintiff's complaint and first amended complaint. (D.I. 68) For the reasons set forth below, the court grants the State defendants' motion to dismiss.

II. BACKGROUND

Plaintiff was an inmate at SCI at the time of his alleged injury. (D.I. 2) Plaintiff's cell at SCI was located in a housing unit that was under construction. (Id.; D.I. 69 at 4) On September 16, 1999, during a heavy rainfall, one of the newly constructed walls of plaintiff's housing unit began to leak. (D.I. 69 at 4, ex. A) The morning of September 16th, plaintiff exited his cell at SCI for morning recreation only to slip on rainwater that had accumulated at the top of a flight of stairs. (D.I. 2, ex. A) Plaintiff fell down the flight of stairs and injured his back. (Id.)

On October 8, 1999, plaintiff filed a general grievance with SCI's pre-trial unit, describing his fall and complaining of "severe back trauma due to this [m]ost tragic accident." (Id., ex. A) Plaintiff claimed that State defendant Gosnell witnessed plaintiff's injury. According to plaintiff's grievance, "This problem is on-going and should of been corrected[.] [S]houldn't of [sic] happen[ed] b/c of being brand new building." (Id.)

Plaintiff's grievance did not request that any action be taken. (Id.)

On November 27, 1999, plaintiff filed a medical grievance with SCI. (Id., ex. B) In this second grievance, plaintiff complained that "[o]n about November 26, 1999, I was call[ed] to sick call at about 12:30, when I entered the nurse[']s office she stated[,] [']hear [sic] you are again Mr. Eley complaining about your back pains again[.] [T]here's nothing we can do for you or give you to help you with your problem . . . .' [M]y point is this [n]urse . . . is very rude and disrespectful, I feel her only concern as a[] nurse [] is . . . care . . . of the sick." (Id.)

On March 20, 2001, plaintiff filed a third grievance, this time complaining that he was a "chronic client with severe back injury" and that "one of your nur[s]es charge[d] me . . . four dollar[]s for [an] initial visit . . . ." (Id.) This third grievance was addressed by SCI through an informal resolution. (Id.)

On May 1, 2002, plaintiff filed a complaint in this court alleging two "prongs." (D.I. 2) First, plaintiff alleged that the State defendants "ignored a known hazard that threatened life and limb . . . ." (Id.) Plaintiff claims that the State defendants knew about the accumulated rainwater at the top of the stairs but "did nothing to warn or give notice . . . ." (Id.)

According to plaintiff, the State defendants ignored the hazard with "malice and forethought" and the State defendants were negligent. (Id.) The second prong of plaintiff's complaint was that he was denied medical care on November 26, 1999, when he submitted a sick call request seeking an appointment for physical therapy. (Id.) Plaintiff claims that he "submitted repeated sick call request[s]." (Id.) Plaintiff also indicated that he had filed grievances and that, even after several months, he had still not received responses to these grievances. (Id.)

In addition to his complaint, plaintiff also filed a first amended complaint in which he alleged that, "[o]n about the year 2001 being incarcerated at, . . . SCI [plaintiff] was transported to [Beebe] Medical Center for [an] M.R.I[.] and X[-]Ray[]s on his spine which [indicated] . . . that he had [] sever[e] spine damage of the L3[,] L4[,] L5 and S1 lower lumber (sic). The doctor examine[d] and we talk[ed] about the opinion[.] [W]e decided, on surgery to correct the damage . . . ." (D.I. 6) Plaintiff also alleged, "[a]pprox[imately] around July or Augu[]st the medical doctor here at [SCI] approved of the surgery Dr. Burns and she deferr[ed] her approv[a]l with C.M.S[.] and Dr[.] Ivens . . . ." (Id.) "About 3 week[]s late[r] [plaintiff] was called to medical department to see Dr[.] Ivens and he [gave] me a spinal injection for the pain[.] [A]fter that he told me there was not going to be any surgery. I ask[ed] Dr[.] Ivens

why, and he stated[] that I didn[']t have enough time left on my sentence at this point." (Id.) Plaintiff claims in his amended complaint that upon his release from prison, he obtained insurance and had the surgery performed by a private doctor. (Id.) However, plaintiff missed three probation appointments after his surgery and was sent back to prison on November 15, 2002. (Id.) In his amended complaint, plaintiff alleged that his medical condition was very serious and, if not treated, would affect his everyday activities. (Id.) Plaintiff claimed that Dr. Ivens' and Dr. Burns' failure to provide physical therapy put him at risk of permanent disability, and violated plaintiff's Eighth Amendment rights. (Id.)

III. STANDARD OF REVIEW

Because the parties have referred to matters outside the pleadings, State defendants' motion to dismiss shall be treated as a motion for summary judgment. See Fed. R. Civ. P. 12(b)(6). 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. Fed. 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." Pa. 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 make five separate arguments for entry

of judgment: (1) plaintiff failed to exhaust available administrative remedies, as required by 42 U.S.C. § 1997e(a); (2) plaintiff's complaint is time-barred by the statute of limitations; (3) plaintiff has failed to state a claim upon which relief may be granted; (4) plaintiff's claims are barred by the Delaware State Tort Claims Act; and (5) plaintiff's claims are barred by the Eleventh Amendment. (D.I. 69 at 2-8)

A. Administrative Remedies

The State defendants argue in their motion that plaintiff did not exhaust available administrative remedies as required by the Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a). (D.I. 69 at 2) Before filing a civil action, a plaintiff-inmate must exhaust his administrative remedies, even if the ultimate relief sought is not available through the administrative process. See Booth v. Churner, 206 F.3d 289, 300 (3d Cir. 2000), aff'd, 532 U.S. 731 (2001); see also Ahmed v. Sromovski, 103 F. Supp. 2d 838, 843 (E.D. Pa. 2000) (quoting Nyhuis v. Reno, 204 F.3d 65, 73 (3d Cir. 2000) (stating that § 1997e(a) "specifically mandated that inmate-plaintiffs exhaust their available administrative remedies.")). In the case at bar, although the entire medical grievance procedure may not have been completed, plaintiff sufficiently pursued his administrative remedies by filing three grievance forms. (D.I. 2, ex. A, ex. B) Plaintiff provided evidence to suggest that SCI responded to one of these

three grievances. (D.I. 2, ex. B) The remaining two grievances were not addressed by SCI, at least as reflected by the record at bar. The court rejects the State defendants' motion for entry of judgment for failure to exhaust available administrative remedies.

B. Statute of Limitations

Courts apply the State statute of limitations for personal injury claims in order to determine the statute of limitations period for § 1983 claims. See Wilson v. Garcia, 471 U.S. 261, 275 (1985). In Delaware, § 1983 claims are subject to the two-year statute of limitations period defined in 10 Del. C. § 8119. See McDowell v. Delaware State Police, 88 F.3d 188, 190 (3d Cir. 1996); see also Gibbs v. Deckers, 234 F. Supp. 2d 458, 461 (D. Del. 2002). A § 1983 claim accrues "when a plaintiff knows or has reason to know of the injury that forms the basis of his or her cause of action." Johnson v. Cullen, 925 F. Supp. 244, 248 (D. Del. 1996). By September 19, 1999, plaintiff was aware that he suffered "severe back trauma" from his slip and fall. (D.I. 2, ex. A) Plaintiff did not file the present action until May 1, 2002. (D.I. 2) Consequently, more than two years elapsed between when plaintiff knew of his injury and when he filed suit against the State defendants. His complaint is barred by the statute of limitations.

C. Section 1983

In order to prevail on a claim under § 1983, plaintiff must establish: (1) a person, acting under color of State law; (2) deprived plaintiff of a federal right.[3] Groman v. Township of Manalapan, 47 F.3d 628, 633 (3d Cir. 1995).

1. State actor

Each of the State defendants is employed by the State of Delaware as officers at SCI. (D.I. 2, D.I. 69 at 1) Consequently, the State defendants are State actors for purposes of plaintiff's § 1983 claim.

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[3] To the extent that plaintiff's complaint can be construed as a tort claim under Delaware law, it is barred by the Delaware State Tort Claims Act, which provides that

> no claim or cause of action shall arise . . . against the State or any public officer or employee . . . where the following elements are present:
>
> (1) The act or omission complained of arose out of and in connection with the performance of an official duty requiring a determination of policy, the interpretation or enforcement of statutes, rules or regulations, the granting or withholding of publicly created or regulated entitlement or privilege or any other official duty involving the exercise of discretion on the part of the public officer, employee or member, or anyone over whom the public officer, employee or member shall have supervisory authority;
> (2) The act or omission complained of was done in good faith and in the belief that the public interest would best be served thereby; and
> (3) The act or omission complained of was done without gross or wanton negligence;
>
> . . . the plaintiff shall have the burden of proving the absence of 1 or more of the elements of immunity as set forth in this section.

10 Del. C. § 4001. Plaintiff has not shown the absence of any of the three factors listed in 10 Del. C. § 4001.

2. Denial of a federal right

The court begins its analysis by noting that plaintiff never once indicates, in either his complaint or his first amended complaint, exactly what each of the State defendants did to violate his Eighth Amendment rights. Plaintiff's complaint identifies several of the named State defendants and identifies the positions occupied by each of these defendants at SCI. (D.I. 2) Plaintiff's complaint also states that State defendant Gosnell observed plaintiff's fall down the stairs. However, the complaint fails to identify how any of the State defendants contributed to the alleged violation of plaintiff's Eighth Amendment rights.[4] Instead, the complaint states that plaintiff slipped on a slick residue that had accumulated at the top of a flight of stairs and that defendants ignored a known hazard. Without some indication of how each of the State defendants contributed to plaintiff's injury, plaintiff has not established a violation of his Eighth Amendment rights.

The court also notes that plaintiff fails to identify any action by the State defendants which contributed to plaintiff's medical claims. Plaintiff's complaint states that SCI denied plaintiff medical care on November 26, 1999. (D.I. 2)

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[4] The court notes, however, that the affidavit of State defendant Gosnell clearly establishes that Gosnell was in charge of cleaning up the slippery substance and ensuring prisoner safety in the area. (D.I. 69, ex. A)

Plaintiff's amended complaint states that defendants Dr. Ivens and Dr. Burns refused to perform surgery on plaintiff to address injuries from his original fall. (D.I. 6) Plaintiff's second grievance complained that, on one occasion, he visited a Nurse Deborah who was not helpful. (D.I. 1, ex. B) Finally, in plaintiff's third grievance, he complained that he had to pay four dollars for an initial visit. (Id.) None of these allegations by plaintiff state any link between the State defendants and the complained of activity. As a result, the court will not consider any of these allegations against the State defendants.

To establish a violation of the Eighth Amendment by a prison official, plaintiff "must meet two requirements: (1) 'the deprivation alleged must be, objectively, sufficiently serious;' and (2) the 'prison official must have a sufficiently culpable state of mind.'" Beers-Capitol v. Whetzel, 256 F.3d 120 (3d Cir. 2001) (citing and applying Farmer v. Brennan, 511 U.S. 825 (1994) to a § 1983 claim). "To be cruel and unusual punishment, conduct that does not purport to be punishment at all must involve more than ordinary lack of due care for the prisoner's interests or safety." Whitley v. Albers, 475 U.S. 312, 319 (1986) (examining whether prison officials engaged in cruel and unusual punishment while quelling a prison riot). "It is the obduracy and wantonness, not inadvertence or error in good faith, that

characterize the conduct prohibited by the Cruel and Unusual Punishments Clause, whether the conduct occurs in connection with establishing conditions of confinement, supplying medical needs, or restoring control over a tumultuous cellblock." Id. In prison-conditions cases the state of mind that a prison official must have "is one of 'deliberate indifference' to inmate . . . safety." Farmer v. Brennan, 511 U.S. 825, 834 (1994). "[A] prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of 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 harm exists and he must also draw the inference." Id. at 837.

Plaintiff has not established that the alleged deprivation, an accumulation of water at the top of a flight of stairs, constitutes an "objectively, sufficiently serious" deprivation. The court concludes that, to the extent an accumulated slippery substance can be classified as a deprivation, it is better classified as inadvertent or negligent rather than obdurate or wanton. Consequently, the court concludes that plaintiff has not established that the accumulated water was sufficiently serious to constitute a violation of plaintiff's Eighth Amendment rights.

Furthermore, the evidence presented by the State defendants shows that none of the State defendants displayed a deliberate

indifference to plaintiff's alleged deprivation. Contrary to plaintiff's claim, the evidence indicates that the State defendants did not ignore a known hazard. The affidavits of State defendants Gosnell and Anson indicate that the water plaintiff slipped on came from a leak in a newly constructed wall. (D.I. 69, exs. A, B) According to State defendant Anson, the wall was so new that it was still under warranty. (D.I. 69, ex. B) Plaintiff's first grievance also states that the water accumulation should not have occurred because the housing unit was brand new. These statements suggest that water accumulation at the top of the stairs was not a recurring hazard. Plaintiff failed to present evidence suggesting otherwise.

Upon learning of the water problem, State defendant Gosnell ordered two inmates to mop up the water and warned inmates to proceed with caution due to the wet conditions. (D.I. 69, ex. A) When plaintiff fell down the stairs, State defendant Gosnell immediately ordered a code #4 medical emergency. (Id.) Medical personnel placed plaintiff on a gurney and then transported him to medical. (Id.) Following plaintiff's fall, State defendant Gosnell cordoned off the area with yellow tape to warn personnel and inmates of the wet conditions. (Id.) State defendant Gosnell then filed a Work Order Request to inform the maintenance department of needed repairs. (Id., D.I. 69, ex. C) State defendant Anson, who was Maintenance Superintendant at SCI when

plaintiff slipped down the stairs, corroborated State defendant Gosnell's statement that he filled out a Work Order Request. (D.I. 69, exs. B, C) Plaintiff provides no evidence to contradict the State defendants' evidentiary offering. Consequently, the court concludes that the State defendants did not display a deliberate indifference to the slippery conditions that caused plaintiff's injury. Because plaintiff failed to establish that the slippery conditions were objectively sufficiently serious or that defendants were deliberately indifferent to plaintiff's safety, the court concludes that plaintiff has not established a § 1983 claim for violation of his Eighth Amendment rights.[5]

This conclusion is in accordance with the rulings of several other courts. See LeMaire v. Maass, 12 F.3d 1444, 1457 (9th Cir.

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[5] Even if plaintiff established claim for violation of his Eighth Amendment rights, his claim would still be barred against defendants in their official capacities. A suit against state officials in their official capacities is treated as a suit against the State. Hafer v. Melo, 502 U.S. 21, 25 (1991). The Eleventh Amendment bars suits against States unless the State has waived its immunity or Congress has exercised its power to override that immunity. Will v. Michigan Dept. of State Police, 491 U.S. 58, 66 (1989). Congress had no intention of disturbing the States' Eleventh Amendment immunity through its enactment of § 1983. Quern v. Jordan, 440 U.S. 332, 350 (1979). Furthermore, the State of Delaware has not waived its immunity in this case. Welch v. Texas Department of Highways and Public Transportation, 483 U. S. 468, 473 (1987) (holding that the Supreme Court will find waiver by the State only where the waiver is stated by the "most express language" or "by such overwhelming implications from the text as [will] leave no room for any other reasonable construction."). Consequently, plaintiff could not sue the State defendants in their official capacities.

1993) ("slippery prison floors . . . do not state even an arguable claim for cruel and unusual punishment.") (quoting Jackson v. Arizona, 885 F.3d 639 (9th Cir. 1989)); Denz v. Clearfield County, 712 F. Supp. 65, 66 (W.D. Pa. 1989) ("Dank, hot and humid cell conditions do not constitute cruel and unusual punishment; the occurrence of a slip and fall injury as a result does not transform this into the 'wanton infliction of unnecessary pain.'"); Tunstall v. Rowe, 478 F. Supp. 87, 89 (N.D. Ill. 1979) ("Unlike the duty to provide the basic necessities to prisoners, prison officials are not under a constitutional duty to assure that stairs in the prison are not greasy."); Snyder v. Blankenship, 473 F. Supp. 1208, 1212-13 (W.D. Va. 1979) (slip and fall on soapy prison kitchen did not amount to Eighth Amendment violation); Flandro v. Salt Lake County Jail, 2002 WL 31693478, *1 (10th Cir. 2002) ("Cases from other jurisdictions have held that slippery floors do not violate the Eighth Amendment.").

V. CONCLUSION

For the reasons set forth above, the State defendants' motion for summary judgment is granted. (D.I. 68) An appropriate order shall issue.

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O R D E R

At Wilmington this 25th day of April, 2005, consistent with the memorandum opinion issued this same date;

IT IS ORDERED that the State defendants' motion for summary judgment (D.I. 68) is granted.

United States District Judge