

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

JACK WILLIAM WOLF, *Pro Se*, )  
 )  
 Plaintiff, )  
 )  
 v. ) C.A. No. 04-1385 (GMS)  
 )  
 THOMAS CARROLL, C/O WAYNE )  
 PUSEY, C/O CARTER, LT. SEACORD, )  
 DELAWARE CORRECTIONAL )  
 CENTER MEDICAL DEPARTMENT, )  
 AND COMMUNITY MEDICAL )  
 SERVICES, )  
 )  
 Defendants. )

**MEMORANDUM**

**I. INTRODUCTION**

Plaintiff Jack William Wolf filed this *pro se* civil rights action on October 25, 2004, pursuant to 42 U.S.C.A. § 1983 (2003). The complaint alleges that Carroll, Pusey, Carter, Seacord (collectively, the “State Defendants”), and Community Medical Services (“CMS”)<sup>1</sup> mistreated Wolf and failed to provide him with adequate medical care. Presently before the court are two motions to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). For the following reasons, the court will grant the motions of Carroll and CMS, but deny the motions of the remaining defendants.

**II. DISCUSSION**

Pursuant to the motion of a party, a court may dismiss a complaint for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). In making this determination, the court

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<sup>1</sup> Wolf named the Delaware Correctional Center Medical Department as a defendant in this matter. However, Community Medical Services is the proper party. (D.I. 20.)

must accept as true all allegations in the complaint, and must draw all reasonable factual inferences in the light most favorable to the plaintiff. *Trump Hotels & Casino Resorts, Inc. v. Mirage Resorts, Inc.*, 140 F.3d 478, 483 (3d Cir. 1998). The defendant must show “beyond doubt” that the plaintiff can prove no set of facts which would entitle him to relief. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). Even a *pro se* litigant must plead sufficient facts to support a claim, but the court will construe such a complaint liberally. *Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (supporting *Conley*’s “beyond doubt” standard).

#### **A. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

Under the Prisoner Litigation Reform Act, a prisoner must exhaust all available administrative remedies before filing a lawsuit under § 1983. 42 U.S.C.A. § 1997e(a) (2003). To comply with the Inmate Grievance Procedure established by the State of Delaware Bureau of Prisons in its Procedure Manual, Procedure Number 4.4 (revised May 15, 1998), a prisoner must first submit an initial grievance form, which the prison attempts to resolve informally. If that fails, the grievance proceeds to a formal resolution hearing, the result of which may be appealed to the Bureau Grievance Officer and the Bureau Chief of Prisons. The result of that appeal constitutes a final decision. If the prisoner is not satisfied with that decision, he may then file a § 1983 action in federal district court. If the prison itself is interfering with the grievance process, the exhaustion requirement will be met so long as the inmate attempted to use the process. *See Lane v. Doan*, 287 F. Supp. 2d 210, 213 (W.D.N.Y. 2003) (holding that when an inmate makes a reasonable attempt to file a grievance, but his effort is ignored by the prison system, the exhaustion requirement has been satisfied).

In his pleadings, Wolf recites a host of injuries allegedly attributable to the defendants,

including a back injury resulting from falls from his bunk ladder, physical and verbal abuse by the prison guards, and poor medical care. Wolf has submitted a number of grievances regarding these issues, but he has provided little evidence of what, if anything, the prison system has done in response. The only grievance for which Wolf appears to have received a final answer was his complaint about the expense of his medication. However, with that grievance, Wolf also included a general statement accusing the prison of causing the injuries that required the medication. In the spirit of reading a *pro se* litigant's complaint liberally, the court will assume that Wolf expected a final answer to these general allegations along with a response to his medication grievance, and that the passage of several years since this grievance was appealed constitutes an effective final answer from the prison system.

#### **B. CLAIM FOR INADEQUATE MEDICAL CARE**

In order to state an inadequate medical treatment claim under the Eighth Amendment, an inmate must allege deliberate indifference to serious medical needs constituting “unnecessary and wanton infliction of pain.” *Estelle*, 429 U.S. at 104. However, when a plaintiff relies on the theory of *respondeat superior* to hold a corporation liable, he must allege a policy or custom that demonstrates such deliberate indifference. *Miller v. Correctional Medical Services, Inc.*, 802 F. Supp. 1126, 1132 (D. Del. 1992). Here, Wolf has made no such allegation. Thus, CMS cannot be held liable and therefore must be dismissed as a defendant.

#### **C. CLAIM FOR EXCESSIVE FORCE**

To state a claim for excessive force under the Eighth Amendment, a prisoner must allege that the guard applied force maliciously or sadistically to cause harm. *Whitley v. Albers*, 475 U.S. 312, 320-21 (1986). Wolf claims that defendants Pusey, Seacord, and Carter unnecessarily “slammed” him down with knowledge of his medical ailments. Such “slamming” could certainly have been

more than was merited by the situation, and therefore, it may be inferred that the guards acted maliciously or sadistically to cause harm. Accordingly, as to Pusey, Seacord, and Carter, Wolf has adequately alleged an Eighth Amendment violation. However, as to Warden Carroll, the Eighth Amendment claim must be dismissed because Wolf has not even alleged that Carroll knew about, participated in, or should have exercised supervisory control to prevent the grievances described in his filings. *See Rode v. Dellarciprete*, 845 F.2d 1195, 1207 (3d Cir. 1988) (holding that *respondeat superior* alone is not a valid theory for liability in civil rights actions).

#### **D. QUALIFIED IMMUNITY**

The state defendants argue that the Eleventh Amendment proscribes suit against them, as they were acting in their official capacity as state prison employees. “Qualified immunity insulates government officials performing discretionary functions from suit insofar as their actions could reasonably have been thought consistent with the rights they are alleged to have violated.” *McKee v. Hart*, 436 F.3d 165, 169 (3d Cir. 2006) (internal quotations omitted). *McKee* sets out a two-part test to determine whether an official has lost his qualified immunity: first, whether a constitutional right would have been violated on the facts alleged; second, whether the right was clearly established. If the answer to both questions is “yes,” the official has no qualified immunity. *Id.* Clearly, disputed issues of material fact exist regarding the constitutional violations alleged by Wolf. Wolf has alleged unwarranted deliberate infliction of pain; the defendants deny any such treatment. Thus, the answer to the first question depends on the resolution of this dispute, which the court is unable to do on the present record.

Assuming for purposes of argument that the answer turns out to be “yes,” the court must inquire whether those rights were clearly established. To evaluate whether a right was “clearly established,” the court must ask if the contours of the right are sufficiently clear that a reasonable

official would understand that what he is doing violates that right. *Id.* at 170. For example, in *Amaro v. Taylor*, this court held that an inmate who was allegedly punched, kicked, and slammed into a wall had adequately stated an Eighth Amendment claim for excessive force. 170 F. Supp. 2d 460, 465 (D. Del. 2001). Likewise here, Wolf has alleged that he was slammed onto a laundry cart by Pusey, Seacord, and Carter without justification. Assuming Wolf's allegations to be true, a reasonable official would know that such actions would violate constitutionally protected rights. Thus, the answer to the second question would be "yes." Logic dictates then that until the disputed issues of fact are resolved, the court can not conclude that the remaining defendants are entitled to qualified immunity.

### **III. CONCLUSION**

For the foregoing reasons, the motions of defendant Carroll and CMS will be granted, and the motions of defendants Carter, Pusey, and Seacord will be denied.

Dated: July 27, 2006

/s/ Gregory M. Sleet  
UNITED STATES DISTRICT JUDGE

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 THOMAS CARROLL, *et al.*, )  
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 Defendants. )

**ORDER**

For the reasons stated in the court's Memorandum of this same date, IT IS HEREBY

ORDERED that:

1. The State Defendants' Motion to Dismiss for Failure to State a Claim (D.I. 21) be GRANTED as to Carroll, and DENIED as to the remaining State Defendants; and
2. Correctional Medical Services' Motion to Dismiss for Failure to State a Claim (D.I. 26) be GRANTED.

Dated: July 27, 2006

/s/ Gregory M. Sleet  
UNITED STATES DISTRICT JUDGE