

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

HERBERT HANDY, :
 :
 Plaintiff, :
 :
 v. : Civil Action No. 99-310-JJF
 :
 RICHARD KEARNEY (WARDEN), :
 PRISON HEALTH SERVICES, INC., :
 SUSSEX CORRECTIONAL INST., :
 MEDICAL DEPARTMENT SCI, and :
 DR. ROBERTA BURNS, :
 :
 Defendants. :

Herbert Handy, Pro Se Plaintiff.

Anne L. Naczi, Esquire of TYBOUT, REDFEARN & PELL, Wilmington,
Delaware.
Attorney for Defendant, Roberta Burns, M.D.

MEMORANDUM OPINION

January 19, 2001

Wilmington, Delaware

Farnan, District Judge.

Pending before the Court is a Motion To Dismiss (D.I. 39) filed by Defendant Roberta Burns, M.D. Plaintiff, Herbert Handy, an inmate incarcerated at the Sussex Correctional Institute ("SCI") filed the instant action pursuant to 42 U.S.C. § 1983 alleging medical neglect and malpractice by Prison Health Services ("PHS"); Rick Kearney, the Warden at SCI; SCI; the staff and medical department of SCI; and Defendant Burns. By Memorandum Opinion and Order dated August 18, 2000 (D.I. 36, 37), the Court dismissed Plaintiff's claims against PHS, the staff and medical department of SCI, and Defendant Kearney. By her Motion, Defendant Burns requests dismissal for failure to prosecute, or in the alternative, under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief may be granted. To date, Plaintiff has failed to file any response to Defendant Burns' Motion. For the reasons set forth below, the Court will grant Defendant Burns' Motion To Dismiss.

BACKGROUND

The facts relevant to the instant action have been set forth fully by the Court in its previous Memorandum Opinion and Order (D.I. 36, 37). By way of additional factual background with respect to the allegations against Defendant Burns, the Court observes that Plaintiff's Amended Complaint names Defendant Burns

as a defendant, but fails to state any claims against her.¹ Plaintiff's statement of claim reads as follows: "Medical neglect on behalf of Sussex Correctional Inst. Medical Department Staff, and also malpractice, Prison Health Services, Inc. The Warden is in charge of this prison and Prison Health Services, Inc. is in charge of Medical Department." (D.I. 3 at 3). Defendant Burns filed an Answer to Plaintiff's claim, several requests for discovery, and a Motion To Compel Discovery (D.I. 26). To date, Plaintiff has failed to file any response to Defendant Burns request for discovery.

STANDARD OF REVIEW

When reviewing a Rule 12(b)(6) motion, the court must accept as true all allegations in the complaint and must draw all reasonable factual inferences in the light most favorable to the plaintiff. Neitzke v. Williams, 490 U.S. 319, 326 (1989); Piecknick v. Pennsylvania, 36 F.3d 1250, 1255 (3d Cir. 1994). However, the court is "not required to accept legal conclusions either alleged or inferred from the pleaded facts." Kost v. Kozakiewicz, 1 F.3d 176, 183 (3d Cir. 1993). Dismissal is only appropriate when "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claims which would entitle him to relief." Conley v. Gibson, 355 U.S. 41 (1957); In

¹ Plaintiff's Original Complaint (D.I. 2) did not name Defendant Burns as a Defendant and did not state any claims against her.

re Donald J. Trump Casino Sec. Litig., 7 F.3d 357, 368-69 (3d Cir. 1993), cert. denied, 114 S. Ct. 1219 (1994). Thus, the court may dismiss a complaint when the facts pleaded and the reasonable inferences drawn therefrom are legally insufficient to support the relief sought. See Pennsylvania ex rel. Zimmerman v. PepsiCo., Inc., 836 F.2d 173, 179 (3d Cir. 1988).

DISCUSSION

Plaintiff's Amended Complaint fails to recite any specific factual allegations against Defendant Burns, and Plaintiff has failed to respond to any of Defendant Burns discovery requests. To the extent that any allegation against Defendant Burns can be gleaned from the Amended Complaint, it appears to the Court that Plaintiff's claim is based on alleged medical neglect and malpractice.

To establish an Eighth Amendment Claim for the denial of medical treatment "a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." Estelle v. Gamble, 429 U.S. 97, 104 (1976). Deliberate indifference is demonstrated by "the deliberate deprivation of adequate medical care or the defendant's action or failure to act despite his or her knowledge of a substantial risk of serious harm." Pew v. Connie, 1997 WL 717046, *4 (E.D. Pa. Nov. 14, 1997). Mere negligence in diagnosing or treating a medical complaint does not state a claim

of deliberate indifference to a prisoner's medical needs. Id. (citations omitted). Rather, deliberate indifference requires a showing that the official acted willfully or with a subjective recklessness. Id. (citing Farmer v. Brennan, 511 U.S. 825, 842 (1994)).

In this case, the Court concludes that Plaintiff's Amended Complaint fails to support an allegation of "deliberate indifference." Plaintiff fails to make any factual allegations against Defendant Burns, and the extensive medical record in this case does not support Plaintiff's claim of deliberate indifference. See Handy v. Kearney, Civ. Act. No. 99-310 (D. Del. Aug. 18, 2000) (collecting cases for proposition that deliberate indifference cannot be established where record shows inmate received extensive treatment). Further, Plaintiff's claim of medical malpractice is insufficient to state a constitutional violation, as a matter of law. Durmer v. O'Carroll, 991 F.2d 64, 66 (3d Cir. 1993) (citing Estelle v. Gamble, 429 U.S. 92, 106 (1976)). Thus, to the extent Plaintiff's Amended Complaint can be construed as a claim of medical neglect or medical malpractice against Defendant Burns, the Court will dismiss Plaintiff's Amended Complaint pursuant to Rule 12(b)(6). Accordingly, Defendant Burns' Motion To Dismiss will be granted.²

² In light of the Court's disposition of this matter, Defendant Burns' Motion To Compel Discovery (D.I. 26) will be denied as moot.

CONCLUSION

For the reasons discussed, the Motion To Dismiss filed by Defendant Roberta Burns, M.D. will be granted.

An appropriate Order will be entered.