

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

ERIC PAUL CLARK,
Plaintiff

v.

COMMONWEALTH OF PENNSYLVANIA,
ET AL.,
Defendants

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CIVIL NO. 3:CV-07-1263

(Judge Conaboy)

FILED
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AUG 19 2008

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DEPUTY CLERK

MEMORANDUM
Background

This *pro se* civil rights action pursuant to 42 U.S.C. § 1983 was filed by Eric Paul Clark, an inmate presently confined at the State Correctional Institution, Frackville, Pennsylvania (SCI-Frackville). Service of the Complaint was previously ordered.

Named as Defendants are the Commonwealth of Pennsylvania, SCI-Frackville Food Service Manager Lawrence Stritz; and Miguel Solomon, M.D. Plaintiff states that at the time he entered prison, he was "healthy as could be." Doc. 1, ¶ IV(1). However, his Complaint alleges that when SCI-Frackville started serving juice made from packets containing sodium saccharin¹, he developed a lump on his left hand. After requesting Doctor Solomon to order the taking of an ultrasound of the lump, an x-ray was taken instead which simply confirmed that Plaintiff's

¹ Clark describes saccharin as being a known carcinogen.

left hand was not fractured. See *id.* at (3).

Clark next claims that he also developed a lump on his right testicle. He acknowledges that Doctor Solomon ordered the taking of a urine sample and an ultrasound. Despite having made multiple requests as to the outcome of those tests, at the time his present Complaint was filed (approximately five weeks after the ultrasound was performed) Plaintiff asserts that he had still not been advised of those test results.²

Presently pending is a motion to dismiss filed by Defendants Commonwealth of Pennsylvania and Stritz.³ See Doc. 24. The motion is ripe for consideration.

Discussion

The moving Defendants argue that they are entitled to an entry of dismissal because: (1) the Eleventh Amendment bars any claim against the Commonwealth of Pennsylvania; and (2) the Complaint fails to set forth a viable claim of deliberate indifference against Food Service Manager Stritz.

Standard of Review

A court, in rendering a decision on a motion to dismiss,

² One day after his Complaint was filed, Clark submitted a letter to the Court stating that based upon the results of the ultrasound of his testicle he was diagnosed as having two epididymis cysts. See Doc. 3.

It is also noted that various letters subsequently filed by Plaintiff assert that he also suffers from seizures, cataracts, mental illness (which is controlled) and has metal in his right elbow.

³ Doctor Solomon is represented by separate counsel.

must accept the veracity of the plaintiff's allegations. See White v. Napoleon, 897 F.2d 103, 106 (3d Cir. 1990). In Nami v. Fauver, 82 F.3d 63, 65 (3d Cir. 1996), the Court of Appeals for the Third Circuit added that when considering a motion to dismiss based on a failure to state a claim argument, a court should "not inquire whether the plaintiffs will ultimately prevail, only whether they are entitled to offer evidence to support their claims." "[W]hen a complaint adequately states a claim, it may not be dismissed on a district court's assessment that the plaintiff will fail to find evidentiary support for his allegations or prove his claim to the satisfaction of the factfinder." Bell Atlantic v. Twombly, 127 S.Ct. 1955, 1969 (2007).

"The test in reviewing a motion to dismiss for failure to state a claim is whether, under any reasonable reading of the pleadings, plaintiff may be entitled to relief." Holder v. City of Allentown, 987 F.2d 188, 194 (3d Cir. 1993) (citation omitted). Additionally, a court must "accept as true the factual allegations in the complaint and all reasonable inferences that can be drawn from them." Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990); Independent Enters., Inc. v. Pittsburgh Water & Sewer Auth., 103 F.3d 1165, 1168 (3d Cir. 1997). Finally, it is additionally well-settled that pro se complaints should be liberally construed. See Haines v. Kerner, 404 U.S. 519, 520 (1972). This Court will now discuss

Defendants Stritz and Commonwealth of Pennsylvania's motion in light of the standards set forth above and Rule 12(b)(6) of the Federal Rules of Civil Procedure.

Commonwealth of Pennsylvania

The moving Defendants argue that the claims against the Commonwealth of Pennsylvania should be dismissed on the grounds that it is immune from suit under the Eleventh Amendment. In his response to the pending motion to dismiss, Plaintiff asks that perjury charges be filed against Defendant Stritz because Clark "never complained of having ever contracted cancer" and is only alleging that he **may** have some form of cancer because his two cysts have not been removed and biopsied. Doc. 29, p. 1 (emphasis added). His submission does not address the argument that the Commonwealth of Pennsylvania is not a properly named defendant.

The United States Supreme Court has ruled that a § 1983 action brought against a "State and its Board of Corrections is barred by the Eleventh Amendment unless [the State] has consented to the filing of such a suit." Alabama v. Pugh, 438 U.S. 781, 782 (1978). The Court of Appeals for the Third Circuit has similarly concluded that the Pennsylvania Board of Probation and Parole could not be sued because "it is not a 'person' within the meaning of Section 1983." Thompson v. Burke, 556 F.2d 231, 232 (3d Cir. 1977).

In Will v. Michigan Dep't of State Police, 491 U.S. 58 (1989), the Supreme Court reiterated its position that state agencies are not "persons" subject to liability in § 1983 actions brought in federal court. The Court noted that a § 1983 suit against a state official's office was "no different from a suit against the State itself." *Id.* at 71. "Will establishes that the State and arms of the State, which have traditionally enjoyed Eleventh Amendment immunity, are not subject to suit under § 1983 in either federal or state court." Howlett v. Rose, 496 U.S. 356, 365 (1990).

Pursuant to the above discussion, the Commonwealth of Pennsylvania is clearly not a properly named defendant in a § 1983 action and therefore is entitled to entry of dismissal.

Defendant Stritz

Moving Defendants next contend that the Complaint fails to allege facts sufficient to show deliberate indifference by Defendant Stritz. Defendants note that there is no contention by Clark that he has been diagnosed with cancer and he has failed to connect his two lumps with his consumption of juice at SCI-Frackville. As previously noted, in his response, Clark acknowledges that he has not been diagnosed with cancer and clarifies that he is only claiming that he might have cancer because his cysts have not been removed and biopsied.

A plaintiff, in order to state an actionable civil rights claim, must plead two essential elements: (1) that the conduct

complained of was committed by a person acting under color of law, and (2) that said conduct deprived the plaintiff of a right, privilege, or immunity secured by the Constitution or laws of the United States. Groman v. Township of Manalapan, 47 F.3d 628, 638 (3d Cir. 1995); Shaw by Strain v. Strackhouse, 920 F.2d 1135, 1141-42 (3d Cir. 1990).

The Supreme Court in Farmer v. Brennan, 511 U.S. 825, (1994), described the standard for determining deliberate indifference as follows:

[A] prison official cannot be found liable under the Eighth Amendment ... unless the official knows of and disregards an excessive risk to inmate health or safety; the official must 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.

Id. at 837. Thus, to succeed on such a claim, the prisoner must show: (1) that he was incarcerated under conditions posing a substantial risk of serious harm; (2) that the defendant was "aware of facts from which the inference could be drawn that a substantial risk of serious harm exists"; (3) that the defendant actually drew this inference; and (4) that the defendant deliberately disregarded the apparent risk. *Id.* at 837.

Under Farmer, deliberate indifference is a subjective standard in that the prison official must actually have known or been aware of the excessive risk to inmate safety. Beers-Capitol v. Whetzel, 256 F. 3d 120, 125 (3d Cir. 2001). This requirement of actual knowledge means that "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, 511 U.S. at 837. In Beers-Capitol it was also recognized that a defendant's knowledge of a risk can be proved indirectly by circumstantial evidence.

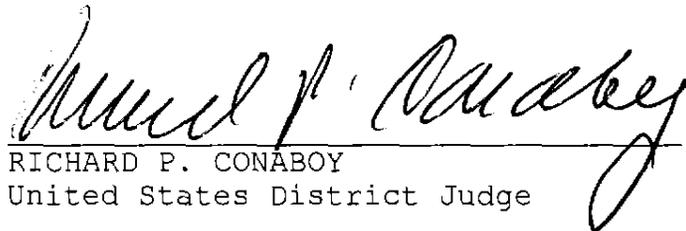
It is initially noted that while Stritz is named as a Defendant in the Complaint there are no averments set forth regarding that defendant. Given the liberal treatment afforded *pro se* litigants, the Complaint appears to be indicating that Stritz was somehow responsible or otherwise involved in the distribution of a juice beverage which allegedly contains saccharin to the SCI-Frackville inmate population.

However, Clark acknowledges that he has not been diagnosed with cancer. There are also no facts asserted that any SCI-Frackville inmate has developed cancer or any other health problem from drinking any beverage supplied by the prison's Food Services Department. The Complaint simply contains no facts which could support a claim that an unsafe beverage was served to SCI-Frackville prisoners. Based upon an application of Farmer, there is simply no viable, non-speculative claim that Stritz failed to protect Plaintiff's safety or otherwise engaged in any unconstitutional conduct.

It is also noted that the primary focus of Plaintiff's Complaint is on the purported failure to provide him with prompt and adequate treatment for his cysts. Clearly, there is no

indication that Defendant Stritz, a non-medical member of the prison staff, had any personal involvement in any medical care or health care decisions made with respect to Plaintiff.

Clark's vague assertion that Food Service Manager Stritz was responsible for cysts which he developed by allowing a juice beverage containing saccharin to be served is wholly speculative and cannot proceed. Stritz's request for dismissal will also be granted. An appropriate Order will enter.


RICHARD P. CONABOY
United States District Judge

DATED: AUGUST

12th, 2008

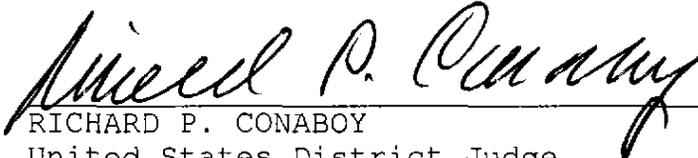
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	:	(Judge Conaboy)
COMMONWEALTH OF PENNSYLVANIA,	:	
ET AL.,	:	
Defendants	:	

ORDER

AND NOW, THIS 19th DAY OF AUGUST, 2008, in accordance with the accompanying Memorandum, IT IS HEREBY ORDERED THAT:

1. Defendants Commonwealth of Pennsylvania and Lawrence Stritz's motion to dismiss (Doc. 24) is granted.
2. Dismissal is entered in favor of Defendants Stritz and the Commonwealth of Pennsylvania


 RICHARD P. CONABOY
 United States District Judge