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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JUSTIN M. CORLISS,
Plaintiff,

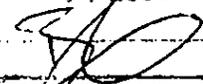
v.

MARTIN HORN, et al.,
Defendants

:
: CIVIL NO. 3:CV-01-0229
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: (JUDGE CAPUTO)
:
:

FILED
SCRANTON

JUN 7 2001

PER 
DEPUTY CLERK

MEMORANDUM

Plaintiff, Justin Corliss, is an inmate confined at the State Correctional Institution at Frackville, Pennsylvania, ("SCI-Frackville"). Plaintiff filed this civil rights action with the Commonwealth Court of Pennsylvania. Named defendants are Martin F. Horn, Secretary of the Pennsylvania Department of Corrections and the Pennsylvania Department of Corrections (DOC). Defendants properly removed the matter from the Commonwealth Court of Pennsylvania to this court pursuant to 28 U.S.C. § 1441(a) and (b) on the basis that Corliss' claims are raised pursuant to 42 U.S.C. § 1983. (Doc. 1, Petition for Removal).

Plaintiff alleges that the defendants have violated his due process and equal protection rights by denying him contact visitation privileges with minor children. (Doc. 1, Exhibit A). Plaintiff further contends that this denial constitutes double jeopardy and cruel and unusual punishment. (Id.). Corliss seeks declaratory and injunctive relief, as well as filing fees. (Id.).

Pending before the court is defendant's motion to dismiss (Doc. 3) and plaintiff's "motion to strike respondent's motion to dismiss" (Doc. 6). Plaintiff has also filed a supplemental motion to strike respondent's motion to dismiss (Doc. 8) in response to

defendants' brief in support of their motion to dismiss (Doc. 7). Therefore, the motion to dismiss has been briefed and is now ripe for consideration. Because plaintiff has failed to state a claim upon which relief may be granted, the motion will be granted.

DISCUSSION

A. Legal Standard

A court, in rendering a decision on a motion to dismiss, must accept the veracity of the plaintiff's allegations. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974); 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." "[A] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

"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. Haines v. Kerner, 404 U.S. 519, 520 (1972).

The defendants argue that they are entitled to an entry of dismissal on the basis that: (1) the plaintiff failed to state a claim against defendant Horn in his individual capacity under 42 U.S.C. §1983; and (2) that plaintiff has failed to state a claim against the DOC or Horn under 42 U.S.C. § 1983. This court will now discuss defendants' motion in light of the standards set forth above and Rule 12(b)(6) of the Federal Rules of Civil Procedure.

B. Respondeat Superior

An individual office holder may be sued in his individual capacity for wrongdoing. Scheuer v. Rhodes, 416 U.S. 232, 238 (1974). Pursuant to § 1983, the plaintiff must prove the individual was "personally" involved in the alleged constitutional violation. Rizzo v. Goode, 423 U.S. 362, 376 (1976). Relief cannot be granted against a defendant in a civil rights action based solely on a theory of respondeat superior or the fact that the defendant was the supervisor or superior of the person whose conduct actually deprived the plaintiff of one of his federally protected rights under color of state law. Hampton v. Holmesburg Prison Officials, 546 F.2d 1077, (3d Cir. 1976). To demonstrate personal involvement, allegations of participation or actual knowledge and acquiescence must be made with appropriate particularity. Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988).

Plaintiff has failed to make a single averment regarding Horn's involvement in the denial of visitation privileges to plaintiff. In fact, plaintiff does not even contend that he personally has actually been denied visitation privileges with any minors. Thus to the extent that plaintiff is attempting to hold defendant Horn liable on a theory of respondeat superior, the defendants'

motion to dismiss will be granted.

C. Eleventh Amendment Immunity

A plaintiff, in order to state a viable § 1983 claim, must plead two essential elements: (1) that the conduct complained of was committed by a person acting under color of state 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). With respect to the DOC, this defendant is an entity that is not a "person" subject to suit under § 1983.

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). Recently, the Supreme Court has reiterated its position that state agencies are not subject to liability in § 1983 actions brought in federal court. See Howlett v. Rose, 446 U.S. 356, 376 (1990). The Supreme Court also ruled that "a State is not a person within the meaning of § 1983." Will v. Michigan Dept. of State Police, 491 U.S. 58, 64 (1989). In Will, 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; see also Fisher v. Cahill, 474 F.2d 991, 992 (3d Cir. 1973). Therefore, the motion to dismiss will be granted as to any claims against the DOC.

D. Eighth Amendment

Initially, in order to establish a prison official's violation of the Eighth Amendment, it

must be shown that an inmate is incarcerated under conditions posing a substantial risk of serious harm. Farmer v. Brennan, 511 U.S. 825, 834 (1994). Furthermore, the inmate must show the alleged deprivation was, objectively, sufficiently serious and, subjectively, that the prison official acted with a sufficiently culpable state of mind. Id. Plaintiff alleges no facts that suggest any risk of harm whatsoever to plaintiff as a result of being denied contact visits with minor children. Accordingly, the defendants' motion to dismiss is granted as to any claims alleging a violation of the Eighth Amendment.

E. Due Process Rights

In determining whether a deprivation amounts to a violation of due process, courts must make a two-part inquiry: (1) whether the plaintiff was deprived of a protected interest; and (2) if so, what process was due. Logan v. Zimmerman Brush Co., 455 U.S. 422, 428 (1982). Neither convicted prisoners nor their family members have an inherent constitutional right to visitation. See Thorne v. Jones, 765 F.2d 1270 (5th Cir. 1985); Flanagan v. Shively, 783 F. Supp. 922, 934 (M.D. Pa.), aff'd, 980 F.2d 722 (3d Cir. 1992), cert. denied, 114 S. Ct. 95 (1993); Doe v. Sparks, 733 F. Supp. 227, 230 & n.3 (W.D. Pa. 1990).

The only constitutionally protected interest which generally may be created by a prison regulation is one to be free from a condition which results in "atypical and significant hardship" in relation to the unusual incidents of imprisonment. See Sandin v. Conner, 515 U.S. 472 (1995). An inability to receive visitors is not atypical and unusually harsh compared to the ordinary circumstances contemplated by a prison sentence. Parke v.

Lancaster County Prison, Civil No. 95-6425, slip op. at 5 (E.D. Pa. Oct. 24, 1995) (DuBois, J.). Indeed, one's removal from society is a fundamental incident of imprisonment and where visitation is permitted, it is often narrowly circumscribed. See Kentucky Dep't of Corrections v. Thompson, 490 U.S. 454, 461 (1989) (denying prison visitation with mother characterized as well within ordinarily contemplated terms of imprisonment).

Furthermore, courts have repeatedly held that prisoners do not have a constitutionally protected right in contact visits. See Thorne v. Jones, 765 F.2d 1270, 1273-74 (5th Cir. 1985); Bellamy v. Bradley, 729 F.2d 416, 420 (6th Cir. 1984); Mayo v. Lane, 867 F.2d 374, 375-76 (7th Cir. 1989); Young v. Vaughn, 2000 WL 1056444 (E.D.Pa. 2000). In the instant case, plaintiff is contesting the prison's ability to restrict contact visits between minor children and those who have been incarcerated for physically or sexually abusing minors. Prison officials have a legitimate governmental interest in restricting such visits. The protection of minor children has been held to be a legitimate penological interest in banning visiting privileges. See Ford v. Beister, 657 F.Supp. 607 (M.D. Pa. 1986) (denial of visitation between minor children and inmates not violative of the constitution when "responsible, experienced administrators have determined, in their sound discretion, that such visits will jeopardize the security of the facility.") Accordingly, defendants' motion to dismiss as to claims pertaining to the violation of plaintiff's due process rights is granted.

F. Equal Protection Clause

The equal protection clause requires all persons similarly situated to be given equal

treatment. City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 439 (1985). Plaintiff alleges that the denial of contact visits with minor children violates his right to equal protection. To establish a violation under the clause in the absence of a suspect classification, plaintiff must show that there could be no rational basis for being treated differently from other similarly situated individuals. Because the underlying claim relates to Corliss' classification as a sex offender, the policy in question is evaluated under the "rational basis" test.

In the prison context, the disparate treatment is valid if it is "reasonably related to legitimate penological interests." Turner v. Safely, 482 U.S. 78, 89 (1987). The DOC clearly has a significant interest in protecting the public, especially minor children, who visit the institutions. The prison is only restricting contact visits; the inmates are still allowed non-contact visits, telephone conversations and mail with minor children. Because the policy applies to prisoners who have sexually or physically abused minor children, it is reasonably related to a legitimate penological interest to protect visitors and ensure safety in the institutions. Therefore, defendants' motion to dismiss as to any equal protection claims is granted.

G. Conclusion

Because neither the DOC or defendant Horn are properly named defendants in the instant complaint, defendants' motion to dismiss is granted. Even if defendants were properly named, defendants' motion to dismiss would be granted because plaintiff fails to

state a claim for which relief may be granted. On the basis of the foregoing, an appropriate order is attached.


A. RICHARD CAPUTO
United States District Judge

Dated: July 7, 2001

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JUSTIN M. CORLISS,
Plaintiff,

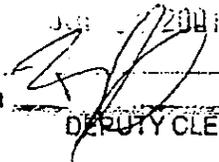
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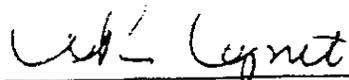
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ORDER

NOW, THEREFORE, THIS ^{7th} DAY OF JULY, 2001, for the reasons set forth in the foregoing Memorandum, IT IS HEREBY ORDERED THAT:

1. Defendants' motion to dismiss, (Doc. No. 3), is granted.
2. For clerical purposes, plaintiff's motion to strike respondents' motion to dismiss (Doc. No. 6) is denied.
3. The Clerk of Court shall close this case.
4. Any appeal taken from this order will be deemed frivolous, without probable cause, and not taken in good faith.


A. RICHARD CAPUTO
United States District Judge