

LB's
Case

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

FILED
HARRISBURG, PA
MAR 15 2000

CHARLES ISELEY,
Plaintiff

MARY E. D'ANDREA, CLERK
Deputy Clerk

v.

:
:
: CIVIL NO. 3:CV-98-0743
:
: (Judge Kane)
:
:

MARTIN HORN, ET AL.,
Defendants

MEMORANDUM

Background

Charles Iseley, an inmate presently confined at the Correctional Institution (SCI-Mahanoy), Frackville, Pennsylvania, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 on May 6, 1998.¹ He proceeds pro se and in forma pauperis. On that same date he filed a combined motion for preliminary injunction and supporting brief (Doc. 6). Thereafter, on July 9, 1998, Iseley filed a motion to file a supplemental complaint together with a brief in support (Doc. 10) as well as the proposed supplemental complaint.

By order dated December 4, 1998 (Doc. 17), the motion to file a supplemental complaint (Doc. 10) and the accompanying proposed supplemental complaint were construed as a motion to file an amended complaint and a proposed amended complaint. That order also granted the motion to file an amended complaint and accepted the

1. At the time he filed this action, Iseley was confined at SCI-Rockview. On December 17, 1998, he filed a notice of change of address (Doc. 21) indicating that he had been transferred to SCI-Mahanoy.

accompanying amended complaint (Doc. 18) as filed as of July 9, 1998. Further, that order directed the U.S. Marshal to serve the amended complaint together with the combined motion for preliminary injunction and supporting brief on the Defendants named therein and directed Defendants to file a brief in opposition to the motion for preliminary injunction within fifteen days of the date of service thereof. On December 22, 1998, defendants Horn, Bitner, Meyers, Whitman, Mazzotta, Lidgett, Witherite and Gaertner filed a brief (Doc. 22) and documents (Doc. 23) in opposition to the motion for preliminary injunction. Iseley filed a reply brief (Doc. 25) and affidavit (Doc. 26) in support of his motion for preliminary injunctive relief on January 4, 1999.

The defendants identified in the amended complaint are Pennsylvania Department of Corrections (DOC) officials (1) Martin Horn, Commissioner, and (2) Robert Bitner, Chief Hearing Examiner; SCI-Rockview personnel (3) Robert Meyers, Warden, (4) Terry Whitman, Deputy Warden, (5) Greogory Gaertner, Deputy Warden, (6) Sam Mazzotta, Grievance Coordinator, (7) Dr. Everhart, physician, (8) Alerre, Medical Director, (9) Lidgett, Health Care Administrator, (10) Dr. Lambert, physician, and (11) Witherite, employed in the accounting office; and (12) TCI, identified as the cable television service provider at SCI-Rockview. (Doc. 18, Amd. Compl., ¶¶ 3-14.) The amended complaint is a fourteen page hand-written document which sets forth the statement of claim in fifty-one numbered paragraphs and alleges as follows. In November, 1997, with the approval of prison officials, Iseley's parents purchased a t.v. set for him. (Id. ¶ 19.) When the t.v. set arrived at SCI-Rockview, Iseley states that he was "informed" by Witheirte that pursuant to DOC policy he must sign a cable television service agreement or the set would be returned or

destroyed. (Id. ¶ 20.) Iseley purportedly replied that he only wanted an antenna because he had no money and could not afford cable service but was told that the costs would be deducted from his account whether he had money or not. (Id. ¶ 21.) Based on that information he states he signed the cable agreement form. (Id. ¶ 22.)

According to Iseley, this information was "intentionally false and fraudulent" because there is no DOC policy requiring him to pay for cable in order to possess a t.v. (Id. ¶ 23.) Further, he states that the service agreement is not for cable but for the outlet and that prisoners are required to pay for cable every month if they want to have a t.v. but prisoners without a t.v. and non-prisoners are not required by TCI to pay for the cable outlet every month. (Id. ¶¶ 24-25.) He also states that no other prison in Pennsylvania forces a prisoner to have or pay for cable or a cable outlet in order to have a t.v. (Id. ¶ 26.) Iseley contends that he told Meyers of the "... alleged cable/tv 'policy' but was notified by him that antennas are strictly forbidden (plaintiff's antenna was confiscated when his tv arrived) and that plaintiff must have cable even if he is indigent." (Id. ¶ 27.) Iseley contends that "... DOC policy specifically permits plaintiff to possess a tv and antenna and all other prisons permit them and cable is not required." (Id. ¶ 28.)

Iseley states that on March 3, 1998, he was notified that "because he had a negative balance on his prison account his tv must be destroyed unless he has a positive balance within sixty (60) days, without a hearing." (Id. ¶ 29.) He filed a grievance that same day with defendant Mazzotta, who is alleged to have responded that "... plaintiff is required to pay for cable because tv reception with an antenna is sub par." (Id. ¶ 31.) He then appealed to defendant Meyers and received a response from defendant Whitman, who

stated that "... it is defendant TCI's fault and not the prison's." (Id. ¶ 32.) Iseley asserts that "... TCI has denied that plaintiff has paid for the cable outlet, even though he did, and has conspired with the relevant defendants in order to extort money from plaintiff for cable that he does not want." (Id. ¶ 33.) Further, Iseley states that TCI is charging him every month for installation of the cable outlet but only charge non-prisoners once. (Id. ¶ 35.) He indicates that he filed an appeal to Bitner and Horn, who denied the appeals. (Id. ¶ 36.) On May 25, 1998, his t.v. was purportedly confiscated without a reason being given. (Id. ¶ 37.) Iseley filed a grievance concerning the confiscation with defendant Mazzotta, who told him that "... according to defendants Meyers and Whitman his t.v. must be destroyed pursuant to policy." (Id. ¶ 38.) He states that there is no such policy and Defendants have conspired to make him pay money to TCI and that according to defendant Gaertner the t.v. policy is based on an agreement between prison officials and TCI. (Id. ¶¶ 39-40.) Iseley states that he filed an appeal with Meyers, Bitner and Horn, who denied his appeals. (Id. ¶¶ 42-43.)

Next Iseley contends that while he was confined at SCI-Greene, he was "medically evaluated for his shoulder and neck injury by a physician and was prescribed, inter alia, painkillers, muscle relaxers, physical therapy, and ultrasound treatment. Approximately one month later he was transferred to Rockview prison." (Id. ¶ 45.) He states that on July 7, 1997, he was seen by defendant Alerre who purportedly told him that he would not receive physical therapy or ultrasound treatment because Rockview prohibits such treatment because of its cost. (Id. ¶ 46.) Defendant Lambert purportedly also told him that he could not receive those treatments because they were not allowed at Rockview when

she saw him on July 15, 1997 and is alleged to have written in his chart that such treatment was not medically necessary in order to deny it. (Id. ¶¶ 47-48.) He filed a grievance concerning the purported denial of medical care and received a response on July 28, 1997 from defendant Mazzotta stating that "... according to medical staff, 'there is no indication for physical therapy at this time.'" (Id. ¶ 50.) Iseley appealed to Meyers and Horn, Meyers denied the appeal and Horn purportedly failed to respond. (Id. ¶¶ 51-52.) On October 6, 1997, Iseley states that he was seen by defendant Everhart, who also purportedly told him that physical therapy and ultrasound treatment was not allowed at Rockview due to cost. (Id. ¶ 53.) Everhart also prescribed Motrin (800 mg.) three times a day for six months and wrote in his medical report that there was nothing wrong with Iseley without an examination for purposes of denying him his prescribed medical care. (Id.) A grievance was filed regarding this with Mazzotta, Meyers and Bitner, who all denied his appeals. (Id. ¶¶ 55-57.)

Finally, Iseley alleges that on January 30, 1998, he was seen by the "eye line" department to request that his broken prescription eyeglasses be repaired as he was experiencing migraine headaches, severe eyestrain, and nausea. (Id. ¶ 59.) He alleges that he was informed that his glasses would not be repaired because he had no money. (Id.) On February 8, 1998, he filed a grievance regarding this matter and thereafter spoke to defendant Lidgett, who he alleges refused to tell him the proper procedure for getting his glasses repaired. (Id. ¶ 60.) According to Iseley, on February 24, 1998, defendant Mazzotta admitted that there was a procedure for having glasses repaired but refused to tell Iseley what it was. (Id. ¶ 61.) He states that he appealed this to Meyers and Bitner, both of whom denied his appeals. (Id. ¶¶ 62-63.)

Iseley contends that the purported wrongful conduct of Defendants set forth in the amended complaint states a claim for violation of his First Amendment right to free speech because he was forced to pay for cable service; Fourth Amendment rights against unreasonable searches and seizures since his t.v. and money were wrongfully taken; his Eighth Amendment right against cruel and unusual punishment because he was denied adequate medical care; his Fourteenth Amendment right to equal protection because he is indigent; and a litany of state law claims. (Id. ¶¶ 69-75.) As relief, he seeks a declaratory and injunctive relief as well as compensatory and punitive damages and the costs of this action. (Id. ¶ XIV.)

Discussion

Preliminary injunctive relief is extraordinary in nature and should issue only in limited circumstances. See American Tel. and Tel. Co. v. Winback and Conserve Program, Inc., 42 F.3d 1421, 1426-27 (3d Cir. 1994), cert. denied, 514 U.S. 1103 (1995). Moreover, issuance of such relief is at the discretion of the trial judge. See Skehan v. Board of Trustees of Bloomsburg State College, 353 F. Supp. 542 (M.D. Pa. 1973).

In determining whether to grant a motion seeking preliminary injunctive relief, the Third Circuit has delineated the following four factors: (1) the likelihood that the applicant will prevail on the merits; (2) the extent to which the movant is being irreparably harmed by the conduct complained of; (3) the extent to which the non-moving party will suffer irreparable harm if the preliminary injunction is issued; and (4) whether granting preliminary injunctive relief will be in the public interest. See S & R Corp. v. Jiffy Lube Intern., Inc., 968 F.2d 371, 374 (3d Cir. 1992) (citing Hoxworth v. Blinder, Robinson & Co., Inc., 903 F.2d

186, 197-98 (3d Cir. 1990)); Instant Air Freight v. C.F. Air Freight, Inc., 882 F.2d 797, 800 (3d Cir. 1989). It is the moving party that bears the burden of demonstrating these factors. See Dorfman v. Moorhous, No. Civ. A. 93-6120, 1993 WL 483166 at *1 (E.D. Pa., Nov. 24, 1993).

Perhaps the most important prerequisite for the issuance of a preliminary injunction is a demonstration that if it is not granted, the applicant is likely to suffer irreparable harm before a decision on the merits can be rendered. See Continental Group, Inc. v. Amoco Chems. Corp., 614 F.2d 351, 356 (3d Cir. 1980); Wright & Miller, Federal Practice and Procedure: Civil Sec. 2948 at 431 (1973). The Third Circuit Court of Appeals has defined irreparable injury as "potential harm which cannot be redressed by a legal or an equitable remedy following a trial." Instant Air Freight, 882 F.2d at 801. A court may not grant preliminary injunctive relief unless "[t]he preliminary injunction [is] the only way of protecting the plaintiff from harm." Id.

"Speculative injury does not constitute a showing of irreparable harm." Public Serv. Co. v. West Newbury, 835 F.2d 380, 383 (1st Cir. 1987); see also Continental, 614 F.2d at 359. "The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm." Instant Air Freight, 882 F.2d at 801 (quoting Sampson v. Murray, 415 U.S. 61, 90 (1964)).

Based on the present record, the court is unable to conclude that Iseley will suffer immediate and irreparable injury or that he has a likelihood of success on the merits of his claim justifying issuance of a preliminary injunction as requested. Without unnecessary

elaboration, the court is of the view that Iseley cannot demonstrate irreparable harm in this case since he has an adequate remedy at law to compensate him for any injury.

Specifically, he has the prison grievance review system and, as the instant action demonstrates, he can assert claims for monetary relief under both federal and state law.

More significantly, based on the present record, the court is of the view that Iseley cannot state any claim upon which relief can be granted, warranting the dismissal of his complaint in its entirety,² and, therefore, clearly cannot demonstrate a likelihood of success

2.¹ In view of the court's conclusion, based upon a careful review of the present record, that Iseley fails to state a claim as discussed in detail in this Memorandum, pursuant to its own authority under 28 U.S.C. § 1915(e)(2)(B), the complaint will be dismissed in its entirety. Section 1915(e)(2)(B) provides as follows:

Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that - (A) the allegation of poverty is untrue; or (B) the action or appeal (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief. (emphasis added)

The language of § 1915(e)(2)(B)(ii) tracks that of Federal Rule Civil Procedure 12(b)(6). Thus, several courts of appeal have construed § 1915(e)(2)(B)(ii) as involving the same inquiry undertaken by a court addressing a motion to dismiss under Rule 12(b)(6). See, e.g., Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998), cert. denied 525 U.S. 1154 (1999); Black v. Warren, 134 F.3d 732, 733-34 (5th Cir. 1998); Mitchell v. Farcass, 112 F.3d 1483, 1489-90 (11th Cir. 1997); McGore v. Wigglesworth, 114 F.3d 601, 604 (6th Cir. 1997); Atkinson v. Bohn, 91 F.3d 1127, 1128 (8th Cir. 1996) (per curiam). In an analysis under Rule 12(b)(6), the court must accept the veracity of a plaintiff's factual allegations. White v. Napoleon, 897 F.2d 103, 106 (3d Cir. 1990). Dismissal under the Rule is proper only when "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, 45-6 (1957). "The test . . . is whether under any reasonable reading of the pleadings, plaintiff may be entitled to relief." Simon v. Cebrick, 53 F.3d 17, 19 (3d Cir. 1995). Moreover, in view of this disposition, the court will dismiss the remaining pending motions in this case as moot.

on the merits on any of his claims. Liberally construed, the crux of Iseley's amended complaint can be said to consist of three essential claims. First, he asserts a Fourteenth Amendment due process claim with respect to the deduction of monies from his prison trust fund account to pay for cable television and the confiscation of his television set. Second he asserts an Eighth Amendment claim for the purported denial of adequate medical care in the form of physical therapy and ultrasound treatments for his neck and shoulder injury. Third, he asserts an Eighth Amendment denial of adequate medical care claim based on the alleged refusal to repair his prescription eyeglasses.³

3. Additionally, Iseley contends that the factual allegations of his amended complaint give rise to claims for violation of his First Amendment rights to freedom of speech and his Fourth Amendment right to be free of unreasonable searches and seizures. However, the court is unable to conclude based on the factual allegations that his First or Fourth Amendment rights have been violated by the alleged conduct of the Defendants, even if true. Iseley fails to enlighten the court as to how requiring him to pay for cable services violates his First Amendment right to freedom of speech and the court is unable to discern any such violation.

Further, to the extent Iseley asserts a violation of his constitutional right to access to the courts because his funds were diverted to pay for cable television when they should have been paid into court, he fails to state a viable claim since he alleges no injury. It is well established that an inmate has a constitutional right of access to the courts. Lewis v. Casey, 518 U.S. 343, 349-56 (1996); Bounds v. Smith, 430 U.S. 817, 817, 821, 828 (1977); Abdul-Akbar v. Watson, 4 F.3d 195, 202-03, 205 (3d Cir. 1993). However, the Supreme Court in Lewis has emphasized that a plaintiff alleging denial of access to the courts must show "actual injury"--such as dismissal of a suit or inability to file a complaint--as a result of the purported unlawful acts in order to proceed with his suit. Lewis, 518 U.S. at 349-57; see also Reynolds v. Wagner, 128 F.3d 166, 182-83 (3d Cir. 1997) (finding that prisoner plaintiffs' claims that they were charged for medical services which required them to make a choice between paying for medical care or legal expenses failed to state a claim for denial of access to the courts in violation of their First Amendment rights because they failed to point to any direct injury); Oliver v. Fauver, 118 F.3d 175, 177-78 (3d Cir. 1997) (concluding that in order for an inmate to state a claim for interference with his legal mail, he must demonstrate that he has suffered actual injury.);

Finally, the court is of the view that the amended complaint fails to state any claim for a violation of Iseley's Fourth Amendment rights against illegal search and seizure based on

In order to assert an actionable civil rights claim, he must allege that some person has deprived him of a federal right, and that the person who caused the deprivation acted under color of state law. West v. Atkins, 487 U.S. 42, 48 (1988). Furthermore, "[a] defendant in a civil rights action must have personal involvement in the alleged wrongs . . . Personal involvement may be shown through allegations of personal direction or actual

the taking of his t.v. set and money. This is a legal principle with which Iseley is acquainted since it was addressed in an earlier action filed by him in the United States District Court for the Eastern District of Pennsylvania containing remarkably similar claims to some of those asserted in the instant action. See Iseley v. Horn, Civ. No. 95-5389, 1996 WL 510090, at *4-5 (E.D. Pa. September 3, 1996):

The Fourth Amendment does prohibit unreasonable searches and seizures where persons have a reasonable expectation of privacy in the places searched or the things seized. Katz v. United States, 389 U.S. 347, 360-61 (1967) (Harlan, J., concurring). However, in Hudson v. Palmer, 468 U.S. 517 (1984), the Supreme Court recognized that the Fourth provides no protection for inmates against searches and seizures from their cells. Id. at 526, 528 n.8. ... see also id. at 539 (O'Connor, J., concurring) (stating that 'the exigencies of prison life authorize officials indefinitely to dispossess inmates of their possessions without specific reason'). As one court noted, the Fifth and Fourteenth Amendments, not the Fourth Amendment, protect inmates from the seizure, destruction, and conversion of their property. Taylor v. Knapp, 871 F.2d 803, 806 (9th Cir.), cert. denied, 493 U.S. 868 (1989).

In his complaint, Iseley alleges that defendants violated the Fourth Amendment when they confiscated and denied him of his computer manual and television. Compl. ¶¶ 60-61. Because the Fourth Amendment does not provide Iseley with a basis for addressing these alleged wrongs, the court will grant Defendants' Motion for Summary Judgment

knowledge and acquiescence." Rode v. Dellarciprete, 845 F.2d 1195, 1207-08 (3d Cir. 1988). Such allegations, however, must be made with appropriate particularity. See id. Further, liability may not be imposed under § 1983 on the traditional standards of respondeat superior. Rode, 845 F.2d at 1207-08. Moreover, "... supervisory personnel are only liable for the § 1983 violations of their subordinates if they knew of, participated in or acquiesced in such conduct." Capone v. Marinelli, 868 F.2d 102, 106 n.7 (3d Cir. 1989) (citing Hampton v. Holmesburg Prison Officials, 546 F.2d 1077, 1082 (3d Cir. 1976)).

As an initial matter, the court is of the view that Iseley fails to state any claims based on his purported right to a television or to the unrestricted use of a television. See Glasshofer v. Jeffers, Civ. No. 87-478, 1989 WL 95360, at *2 (E.D. Pa. August 10, 1989) ("At the outset, I note that it is doubtful whether there can be any federally protected right to the use of television by inmates. No court has recognized a federal constitutional right to the usage of radio and televisions by inmates. ... Without such a right, it follows, a fortiori, that any restriction placed on use of the television cannot deprive inmates of a constitutionally protected right." (internal citations omitted)), aff'd, 897 F.2d 521 (3d Cir. 1990) (Table) ; see also More v. Farrier, 984 F.2d 269, 271 (8th Cir.) ("Despite television's importance in modern society, appellees have no fundamental right to in-cell cable television..."), cert. denied 510 U.S. 819 (1993). Moreover, the court is of the view that Iseley fails to state a claim against TCI, he cannot allege any state action by this Defendant 1983.⁴ Murphy v. McMonigle, Civ. No. 90-

4. Iseley's attempts to overcome the constitutional deficiencies of his claims against TCI by alleging that TCI conspired with prison officials to violate his constitutional rights are

7554, 1990 WL 204234, at *1 (E.D. Pa. December 10, 1990) ("It is axiomatic that to sustain a § 1983 claim a plaintiff must allege and prove that he was deprived of a federally secured constitutional or statutory right by someone acting under color of state law. ... In offering and providing cable television service to residents of Montgomery County, including inmates at [SCI-] Graterford , the defendants clearly are acting in a private capacity.")

Further, Iseley fails to state an actionable Fourteenth Amendment due process claim regarding his purported loss of property. The Supreme Court has held that a prisoner cannot bring a § 1983 action to vindicate his right to property when the deprivation occurs as a result of a tortious and unauthorized act of a state actor and where an adequate remedy exists to compensate those who have suffered tortious loss at the hands of the state. Parratt v. Taylor, 451 U.S. 527, 543-44 (1981), overruled in part on other grounds by Daniels v. Williams, 474 U.S. 327, 328 (1986). Subsequently the Court extended Parratt to intentional deprivations of property, similarly holding that where a prisoner has an adequate post-deprivation remedy under state law for any loss of property suffered by him, an action under § 1983 is not available. Hudson v. Palmer, 468 U.S. 517, 532-533 (1984).

Thereafter, while generally adhering to the conclusion reached in Parratt, the Court added

unavailing. Although a private actor who conspires with a state actor can be found liable under § 1983, see Smith v. Wambaugh, 29 F. Supp.2d 222, 227 (M.D. Pa. 1998), aff'd., 189 F.3d 464 (3d Cir. 1999) (Table), the court finds no merit in Iseley's claims. As noted previously, a cable company does not become a state actor simply by having an agreement for providing cable service with the prison. Further, there are no allegations by Iseley that state a constitutional right which was violated by his signing the anle service agreement. Contrary to his contention, Iseley could have elected not to sign the agreement and the failure to do so would have resulted i his being unable to have a television set in his cell, something to which he has no constitutional right in any event.

that "the Due Process Clause is simply not implicated by a negligent act of an official causing unintentional loss of or injury to life, liberty or property." Daniels, 474 U.S. at 328. Consequently, regardless of whether Iseley's purported loss of property was the result of intentional or negligent conduct, he has adequate remedies available under Pennsylvania state law.⁵ See Iseley, 1996 WL 510090, at *6 ("Importantly, an inmate grievance procedure can suffice as an adequate postdeprivation remedy.")

Furthermore, it is well established that inmates have a property interest in funds held in their prison accounts. Reynolds v. Wagner, 128 F.3d 166, 179 (3d Cir. 1997); Mahers v. Halford, 76 F.3d 951, 954 (8th Cir. 1996), cert. denied 519 U.S. 1061 (1997); Campbell v. Miller, 787 F.2d 217, 222 (7th Cir. 1986), cert. denied 479 U.S. 1019 (1986); Quick v. Jones, 754 F.2d 1521, 1523 (9th Cir. 1985). Accordingly, inmates are entitled to due process with respect to any deprivation of their money. Id. The extent of the process which is due is determined in reference to the particular rights and interests at stake in a given case. Id.; see also Morrissey v. Brewer, 408 U.S. 471, 481 (1972) ("Due process is flexible and calls for such procedural protection as the particular situation demands."); Mahers, 76 F.3d at 954-55 (finding that need for procedural due process safeguards is somewhat reduced where the deduction of money from inmates' account goes substantially to benefit the inmates' interests). With respect to deductions from inmate accounts, it has been held that all that due process requires is notice and a post-deprivation grievance procedure. See

5. In any event, the court notes that Iseley's t.v. set and antenna have not been destroyed since they both appear on the "Inmate Personal Property Inventory" signed by Iseley upon his arrival at SCI-Mahanoy in December 1998. (See Doc. 23, Moving Defendants' Documents in Supp., Attach. C. Inmate Property Inventory Sheet #030589.)

Parke v. Guarini, Civ. No. 95-4341, 1997 WL 129015, at *2 (E.D. Pa. March 19, 1997)

("Yet, a pre-deprivation hearing is not necessary if a meaningful manner of assessing the propriety of the state's action after the taking is available. As numerous analogous cases establish, plaintiff was afforded all of the process to which he was due; he was given proper notice ... and a grievance procedure was available to him."); Gardner v. Wilson, 959 F. Supp. 1224, 1229 (C.D. Cal. 1997) ("Due process requires no more than notice and the post-deprivation grievance process.'). The record shows that Iseley had notice of the deductions by signing the cable service agreement, (see Doc. 18, Am. Compl., ¶¶ 20 - 22), and sixty days notice that his t.v. set would be taken, absent a change, due to a negative trust fund account balance, and that he had a post-deprivation grievance procedure available to him which he utilized .⁶

Eighth Amendment Claims

6. The Pennsylvania Department of Corrections has a Consolidated Inmate Grievance Review System. DC-ADM 804 (effective October 20, 1994). With certain exceptions not applicable here, DC-ADM 804, Section VI ("Procedures") provides that, after attempted informal resolution of the problem, a written grievance may be submitted to the Grievance Coordinator; an appeal from the Coordinator's decision may be made in writing to the Facility Manager or Community Corrections Regional Director; and a final written appeal may be presented to the Chief Hearing Examiner.

Effective May 1, 1998, the Department of Corrections amended DC-ADM 804 to provide that a prisoner, in seeking review through the grievance system, may include requests for "any claims concerning violations of Department of Corrections directives, regulations, court orders, or other law. The Grievant may also include a request for compensation or other legal relief normally available from a court." DC-ADM 804-4, issued April 29, 1998. Further, the amendment requires that the [g]rievances must be submitted for initial review to the Facility/Regional Grievance Coordinator within fifteen (15) days after the events upon which the claims are based," but allows for extensions of time for good cause, which "will normally be granted if the events complained of would state a claim of a violation of a federal right." Id.

Pursuant to the Supreme Court's decision in Estelle v. Gamble, 429 U.S. 97 (1976), an inmate plaintiff must demonstrate that prison officials have breached the standard of medical treatment to which he was entitled. The government has an "obligation to provide medical care for those whom it is punishing by incarceration." Id. at 103. However, a constitutional violation does not arise unless there is "deliberate indifference to serious medical needs of prisoners" which constitutes "unnecessary and wanton infliction of pain." Id. at 104 (citation omitted). The Court of Appeals for the Third Circuit has held that not every injury or illness enjoys constitutional protection; only serious medical needs are actionable. Colburn v. Upper Darby Township, 946 F.2d 1017, 1023 (3d Cir. 1991); West v. Keve, 571 F.2d 158, 161 (3d Cir. 1978).

A later decision by the Supreme Court addressed the issue of what standard should be applied in determining deliberate indifference in Eighth Amendment cases. The Court established that the proper analysis is whether a prison official "acted or failed to act despite his knowledge of a substantial risk of serious harm." Farmer v. Brennan, 511 U.S. 825, 841 (1994). Furthermore, a complaint that a physician or a medical department "has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment [as] medical malpractice does not become a constitutional violation merely because the victim is a prisoner." Estelle, 429 U.S. at 106.

Where a prisoner has actually been provided with medical treatment, one cannot always conclude that, if such treatment was inadequate, it was no more than mere negligence. See Durmer v. O'Carroll, 991 F.2d 64, 69 (3d Cir. 1993). It is true that if

inadequate treatment results simply from an error in medical judgment, there is no constitutional violation. See id. The Court of Appeals for the Third Circuit in Durmer added that a non-physician defendant can not be considered deliberately indifferent for failing to respond to an inmate's medical complaints when he is already receiving treatment by the prison's medical staff. However, where a failure or delay in providing prescribed treatment is deliberate and motivated by non-medical factors, a constitutional claim may be presented. See id. Because only flagrantly egregious acts or omissions can violate this standard, mere medical or dental malpractice cannot result in an Eighth Amendment violation, nor can disagreements over the professional judgment of a health care provider. White v. Napoleon, 897 F.2d 103, 108-10 (3d Cir. 1990). Furthermore, a complaint that a physician "has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment. . . ." Estelle, 429 U.S. at 106.

Assuming without deciding that Iseley's medical need, based on his pre-existing shoulder and neck injury, was serious, his allegations do not permit an inference that any of the SCI-Rockview medical Defendants named in his amended complaint were deliberately indifferent to those needs. Iseley's medical records include a "Inter-Institutional Transfer Reception Screening" report form dated July 2, 1997 and signed by Iseley, which indicates that at his medical screening on that date following his transfer to SCI-Rockview, he did not complain of any recurring neck and shoulder pain or that he was receiving any physical therapy or ultrasound treatments. (See Doc. 23, Moving Defendants' Documents in Supp., Attach. A., Lidgett Decl., ¶ 15 & Ex. A at 1-2.) Further, while these records also indicate

that previously on June 27, 1997, he was seen by physician's assistant Telega and complained of intermittent right shoulder and neck pain, the physician's assistant determined that physical therapy was not medically necessary. (Id. Lidgett Decl., ¶ 17 & Ex. A at 4.) Furthermore the records indicate that when Iseley complained of shoulder and neck pain, his complaints were responded to by medical personnel. ((Id. Lidgett Decl., ¶¶ 15, 17, 19-20, 31, & Ex. A at 4-8.) His medical records further reveal that despite his purported shoulder and neck problems he applied for a medical clearance to participate in boxing which was deemed not warranted in view of another medical condition. (Id. Lidgett Decl., ¶ 37 & Ex. A at 17.)

The fact that Iseley is of the view that his medical condition warranted physical therapy and ultrasound treatments or the fact that other medical personnel at another institution were of the medical opinion that such treatment was warranted does not, in the court's view, render the differing medical opinion reached by the medical professionals at SCI-Rockview on the basis of their independent examination constitutionally deficient. The court is of the view that Iseley's allegations state no more than his disagreement with the medical evaluation and course of treatment by the medical staff at SCI-Rockview and, as such, do not state a viable Eighth Amendment claim for denial of medical treatment. White, 897 F.2d at 109-10 (stating neither a prisoner's disagreement over the course of medical treatment nor one doctor's disagreement with the medical judgment of another doctor states an actionable Eighth Amendment claim.) Moreover, to the extent the allegations can be construed as alleging negligence in that course of treatment, they still fail to state an actionable § 1983 claim. Simple negligence cannot serve as a predicate to liability under §

1983. Hudson v. Palmer, 468 U.S. 517 (1984); Estelle, 429 U.S. at 106. See White, 897 F.2d at 108-10. Furthermore, since Iseley was being treated by medical personnel with regard to his shoulder and neck complaints, the non-medical Defendants named in his complaint cannot be said to have been deliberately indifferent to any serious medical need in violation of Iseley's Eighth Amendment rights. See Durmer v. O'Carroll, 991 F.2d 64, 69 (3d Cir. 1993) (holding that non-physician prison administrators cannot be considered deliberately indifferent because they failed to respond directly to medical complaints of an inmate who was being treated by prison doctors); Wilson v. Dragvoich, No. Civ.A. 96-2635, 1997 WL 799431, at *3 (E.D. Pa. Dec. 31, 1997) ("Prison officials cannot be considered deliberately indifferent to a prisoner's serious medical needs merely for refusing to question the judgment of a prison doctor. . . .").

Lastly, the court is of the view that Iseley also fails to establish the deliberate indifference of any Defendant with regard to his allegations of failure to repair his eyeglasses because he has no money. The DOC has a policy pursuant to which indigent inmates can have their eyeglasses replaced if the medical department determines that an inmate's visual health would be impaired and payments will be deducted from their prison trust fund account. (Id. Lidgett Decl., ¶ 34 & Ex. F, DC-ADM 31.2.12 "Corrective Eyewear".) The policy was explained to Iseley, at the least via the grievance procedure since the record indicates that Iseley appealed this issue through the grievance review process and the response to Grievance No. ROC0097-98 from defendant Mazzatto dated February 24, 1998 clearly outlines the procedure. (Id. Lidgett Decl., ¶¶ 33-36 & Ex. E Grievance No. ROC-0097-98 and related appeals.) Moreover, the medical records show

that Iseley received two pair of eyeglasses on July 23, 1996 while confined at SCI-Greene, indicating that although he had one pair of eyeglasses in need of repair, he possessed a second pair.⁷ (Id. Lidgett Decl., ¶ 36 & Ex. A at 3). Further, the record shows that upon arrival at SCI-Mahanoy in December 1998, Iseley was wearing a pair of functioning eyeglasses with which he was able to read.⁸ (Id. Attach. A, Notarized Statement of John Eichenberg, Exercise Sergeant at SCI-Mahanoy.)

Conclusion

Based upon the foregoing, Iseley fails to state any claim upon which relief can be granted and, accordingly, fails to establish the requisite irreparable harm or likelihood of success on the merits which would warrant the issuance of a preliminary injunction in this case. Accordingly, the motion for preliminary injunctive relief will be denied. Additionally, based on the present record, for the reasons discussed herein, the court is of the view that

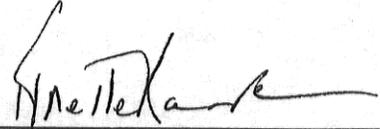
7. In his reply brief, Iseley states that he tried to have two pairs of eyeglasses repaired at SCI-Rockview, a fact not previously mentioned or indicated in his grievances on this issue. (Doc. 25, Reply Br. at 4; Doc. 26, Iseley Decl., ¶¶ 15-18.) Further, in that same document he confirm that he had a working pair since he states that he was able to repair a pair himself. (Id.) He also states that he in fact had a third pair all the time, which he only found after his transfer. (Id.)

8. The body of Eichenberg's notarized statement, reads as follows:

Upon reception to SCI Mahanoy's L-5 Unit, I observed that Inmate Charles Iseley, AM9320, was wearing a pair of eyeglasses with some damage to the right lens when I conducted a strip search. There is a notice on the wall stating that the search was being recorded. The inmate was able to read the notice and read it back to me.

the complaint can be dismissed in its entirety pursuant to the court's own authority under 28 U.S.C. § 1918(e)(2)(B)(ii) for failure to state a claim.⁹ Finally, in view of the disposition made herein, the court will deny all pending motions as moot.

An appropriate order is attached.



Yvette Kane
United States District Judge

Date: March 14, 2000

YK:mcs

9. Furthermore, to the extent Iseley is attempting to assert any state law claims, the court declines to exercise supplemental jurisdiction pursuant to 28 U.S.C. § 1367(c)(3) and will dismiss those claims without prejudice to any right he may have to pursue them in state court.

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

FILED
HARRISBURG, PA

MAR 15 2000

MARY E. DIANDREA, CLERK
Per MB Deputy Clerk

CHARLES ISELEY,
Plaintiff

v.

MARTIN HORN, ET AL.,
Defendants

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: CIVIL NO. 3:CV-98-0743
:
: (Judge Kane)
:

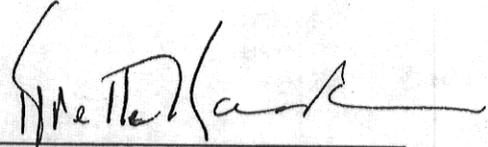
ORDER

NOW, THIS 14th DAY OF MARCH, 2000, in accordance with the foregoing

Memorandum, **IT IS HEREBY ORDERED THAT:**

1. Plaintiff's motion for a preliminary injunction (Doc.) is DENIED.
2. The amended complaint is DISMISSED in its entirety for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).
3. The pending motions to dismiss (Doc. Nos. 33, 53); motion for summary judgment (Doc. 56) and motion for appointment of counsel (Doc. 66) are DENIED as moot.
4. The Clerk of Court is directed to close this case.
5. Any appeal from this Order will be deemed frivolous, without probable cause

and not taken in good faith.

A handwritten signature in black ink, appearing to read "Yvette Kane", written over a horizontal line.

Yvette Kane
United States District Judge

YK:mcs