

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

JAMES E. OWENS,

Plaintiff,

vs.

DR. HARDESTY, ET AL.,

Defendants.

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: CIVIL NO. 3:CV-03-1194
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: (CHIEF JUDGE VANASKIE)
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MEMORANDUM

I. INTRODUCTION

James E. Owens, an inmate presently confined at the State Correctional Institution at Huntingdon (SCI-Huntingdon), Pennsylvania, filed a pro se civil rights action pursuant to 42 U.S.C. § 1983. Along with his petition, Owens filed an application for leave to proceed in forma pauperis.¹ Named as defendants in this action are J.C. Blair Hospital and Dr. Hardesty, a surgeon employed there.

The case is presently before the Court for preliminary review pursuant to the screening

¹ Owens completed this Court's form application for leave to proceed in forma pauperis and authorization form. An Administrative Order was thereafter issued on July 30, 2003 (Dkt. No. 4), directing the warden at SCI-Huntingdon to commence deducting the full filing fee from Owens' prison trust fund account.

provisions of 28 U.S.C. § 1915(e)(2)(B). For the reasons set forth below, Owens' complaint will be dismissed as legally frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) because it fails to state a cognizable § 1983 claim.

II. **BACKGROUND**

In his complaint Owens alleges that Dr. Hardesty performed hernia surgery on him at J.C. Blair Hospital. While he does not specify the date the surgery occurred, or provide many other details about the problems he experienced leading up to the surgery, these underlying facts were set forth in a previous action filed in this Court by Owens on November 1, 2002.² Owens contends that he is filing this medical malpractice action against Hardesty because when he performed the hernia repair operation on him, he punctured his bladder which resulted in thirty (30) staples and permanent injuries to him. He contends that the director of J.C. Blair Hospital was deliberately indifferent in failing to assure that one of its employees, Hardesty, was qualified and responsible. As relief, Owens requests monetary damages as

² The action referred to is Owens v. Kyler, et al., 3:CV-02-1987 (M.D. Pa.)(Vanaskie, C.J.). In this case, Owens named as defendants employees of SCI-Huntingdon, contract medical providers to SCI-Huntingdon, and officials at the Department of Corrections. He claimed that beginning in May of 2001 and continuing at least through July of 2001, defendants denied him adequate medical treatment for abdominal and urinary problems he was experiencing. It was ultimately determined that Owens would need to be referred out of the prison to a surgeon for hernia repair surgery. It appears the surgery took place some time in the fall of 2001.

well as the appointment of a medical specialist to repair his injury.

III. DISCUSSION

28 U.S.C. § 1915(e)(2) provides as follows:

(2) 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.)

When considering a complaint accompanied by a motion to proceed in forma pauperis, a district court may determine that process should not be issued if the complaint is malicious, presents an indisputably meritless legal theory, or is predicated on clearly baseless factual contentions. Neitzke v. Williams, 490 U.S. 319, 327-28 (1989); Wilson v. Rackmill, 878 F.2d 772, 774 (3d Cir. 1989).³ “The frivolousness determination is a discretionary one,” and trial courts “are in the best position” to determine when an indigent litigant’s complaint is appropriate for summary dismissal. Denton v. Hernandez, 504 U.S. 25, 33 (1992).

A plaintiff, in order to state a viable § 1983 claim, must plead two essential elements: (1)

³ Indisputably meritless legal theories are those “in which it is either readily apparent that the plaintiff’s complaint lacks an arguable basis in law or that the defendants are clearly entitled to immunity from suit.” Roman v. Jeffes, 904 F.2d 192, 194 (3d Cir. 1990) (quoting Sultenfuss v. Snow, 894 F.2d 1277, 1278 (11th Cir. 1990)).

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).

While there is no indication that Owens initiated this lawsuit with malicious intentions, the complaint is suitable for dismissal under § 1915(e)(2)(B) because it fails to articulate an arguable basis for a civil rights claim against Dr. Hardesty or J.C. Blair Hospital. There is no indication that Dr. Hardesty or officials at J.C. Blair Hospital were acting under color of state law for purposes of § 1983. Rather, it appears that Owens was referred outside of the prison to a surgeon for treatment of his hernia.

The definition of acting under color of state law requires that a defendant in a § 1983 action be a person for whom the State is responsible or have exercised some right or privilege created by the State. West v. Atkins, 487 U.S. at 49. Thus, the actions and decisions of physicians and administrators of privately owned and operated hospitals, without more, do not constitute state actions. It has even been held that merely having received payment from the state is not sufficient in and of itself, to make an otherwise private individual a state actor. See Rendell-Baker v. Kohn, 457 U.S. 830, 841 (1982). There must exist some nexus with the

State to attribute such conduct as state action. There is no indication that Dr. Hardesty or J.C. Blair Hospital was under any contract with the State of Pennsylvania to provide medical services to inmates at state correctional facilities within the State. As such, Owens' civil rights claims lack an arguable basis in law and will be dismissed.⁴

IV CONCLUSION

For the reasons set forth above, I will dismiss Owens' complaint pursuant to § 1915(e)(2) (B)(i) as his civil rights claims against Defendants have no legal merit. An appropriate Order is attached.

s/ Thomas I. Vanaskie

Thomas I. Vanaskie, Chief Judge
Middle District of Pennsylvania

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⁴ Owens has clearly stated that he is pursuing only a civil rights action for violation of constitutional rights. To the extent, however, that Owens may intend to pursue a state law negligence claim, I decline to exercise supplemental jurisdiction. See 28 U.S.C. § 1367(c)(3) (district court may decline to exercise supplemental jurisdiction if it has dismissed all claims over which it has original jurisdiction); Queen City Pizza, Inc. v. Domino's Pizza, Inc., 124 F.3d 430, 444 (3d Cir. 1997), cert. denied, 523 U.S. 1059 (1998); Stehney v. Perry, 101 F.3d 925, 939 (3d Cir. 1996).

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ORDER

NOW, THIS 1st DAY OF DECEMBER, 2003, for the reasons set forth in the foregoing

Memorandum, IT IS HEREBY ORDERED THAT:

1. The complaint (Dkt. No. 1) is dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(I).
2. The Clerk of Court is directed to mark this matter closed.
3. Any appeal from this Order will be deemed frivolous, lacking in probable cause,

and not taken in good faith.

s/ Thomas I. Vanaskie

Thomas I. Vanaskie, Chief Judge
Middle District of Pennsylvania