IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

RICHARD K. JACKSON,	)	
	)	C.A. No. 07C-11-030 JTV
Plaintiff,	)	
	)	
v.	)	
	)	
JEANNETTE MINNER, DEBBIE STYLES, MILES EDGE, DAVE HALL, STANLEY TAYLOR, PAUL HOWARD, DELAWARE DEPARTMENT OF CORRECTIONS, DELAWARE BUREAU OF PRISONS, and THE STATE OF DELAWARE,	)	
	)	
Defendants.	)	

Decided: March 17, 2011

Richard K. Jackson, *Pro Se.*

Marc P. Niedzielski, Esq., and Ophelia Waters, Esq., Department of Justice, Wilmington, Delaware. Attorneys for Defendants.

Upon Consideration of Defendants' Motion For Summary Judgment
GRANTED In Part
DENIED In Part

VAUGHN, President Judge

Jackson v. Minner, et al.
C.A. No. 07C-11-030 JTV
March 17, 2011

OPINION

This is the Court's decision on the individual defendants' Motion For Summary Judgment.

FACTS

On May 23, 2006, the plaintiff, Richard K. Jackson, a prisoner housed at Sussex Correctional Institute, was taken by a prison transport van to a Board of Parole hearing at, what was then, the Delaware Correctional Center. The plaintiff's hands and feet were shackled during the course of his transportation , as it is standard operating procedure. After arriving at the Center the plaintiff exited the van and traversed the distance between the van drop-off point and the front of the Center. After completing the purpose for which he was transported, the plaintiff returned to the van. Throughout this series of events the plaintiff was in restraints.

The plaintiff then made an attempt to re-enter the van. This attempt, however, was unsuccessful and the plaintiff fell backwards onto the ground. According to the plaintiff, he suffered serious back injuries as a result of the fall.

The Court has previously granted summary judgment as to the Delaware Department of Corrections, the Delaware Bureau of Prisons, and the State of Delaware on grounds of sovereign immunity. As a result, these institutional defendants have been deleted from the case caption and will not be referred to further in this opinion.

STANDARD OF REVIEW

Summary judgment should be granted when there are no genuine issues of

material fact and the moving party is entitled to judgment as a matter of law.[1] The moving party bears the burden of establishing the non-existence of material issues of fact.[2] If a motion is properly supported, the burden shifts to the non-moving party to establish the existence of material issues of fact.[3] In considering the motion, the facts must be viewed in the light most favorable to the non-moving party.[4] Thus, the court must accept all undisputed factual assertions and accept the non-movant's version of any disputed facts.[5] Summary judgment is inappropriate "when the record reasonably indicates that a material fact is in dispute or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of law to the circumstances."[6]

THE PLAINTIFF'S CLAIMS

It appears that the plaintiff avers a federal claim under 42 U.S.C § 1983 against all individual defendants (Count VIII); state claims based on negligence, gross negligence and recklessness against defendants Minner, Styles, and Edge (Counts I through VI); and state claims based on gross negligence and recklessness against

---

[1] Super. Ct. Civ. R. 56(c).

[2] *Gray v. Allstate Ins. Co.*, 2007 WL 1334563, at *1 (Del. Super.).

[3] *Id.*

[4] *Pierce v. Int'l Ins. Co. Of Ill.*, 671 A.2d 1361, 1363 (Del. 1996).

[5] *Merrill v. Crothall-American, Inc.*, 606 A.2d 96, 99-100 (Del. 1992).

[6] *Mumford & Miller Concrete, Inc. v. New Castle County*, 2007 WL 404771, at *4 (Del. Super.).

defendants Hall, Taylor and Howard (Count VII). Defendants Minner, Styles and Edge were the correctional officers involved in transporting the plaintiff. Defendants Hall, Taylor and Howard were Department of Correction supervisors.

The claims center around the alleged negligence of the correctional officers responsible for the defendant's transport on May 23, 2010. More specifically, the plaintiff alleges that the correctional officers: (1) failed to assist him in entering the van; (2) ignored the plaintiff's request for assistance in entering the van; (3) failed to warn the plaintiff of the risk of falling when entering the van; and (4) failed to comply with the Operating Policies and Procedures of Delaware Fleet Services. Additionally, the plaintiff accuses Correctional Officer Minner of placing restraints on the plaintiff in a manner that substantially increased his likelihood of falling. This claim is, in part, premised on the fact that Correctional Officer Minner placed shorter leg irons on the plaintiff, and neglected to remove the leg irons while he entered the van.

The averments of gross negligence and recklessness against the supervisors are based upon their alleged supervision and control of those whose acts and omissions allegedly caused the injury – the correctional officers. More specifically, the allegations are that the supervisors: (1) failed to adopt, promulgate and/or enforce written regulations rules, policies and practices regarding the safe entry of inmates into prison vans; (2) failed to adequately train, supervise and monitor the job performance of the correctional officers involved in this case; (3) entrusted the custody of the plaintiff's transport to inadequately trained, supervised and monitored correctional officers; (4) and entrusted operation of the van to inadequately trained, supervised and monitored correctional officers.

DISCUSSION

I will first address Count VIII, the §1983 claim. When a citizen has his federal constitutional or statutory rights violated by a state actor, § 1983 provides a private cause of action.[7] A § 1983 claim has two essential elements: "(1) the conduct complained of must be committed by a person acting under color of state law; and (2) this conduct must deprive a person of rights, privileges, or immunities secured by the constitution or laws of the United States."[8]

In his complaint, the plaintiff alleges that the federal right involved is his right under the due process clause to be safe and secure in his person against physical injury. Typically, prisoners raise these claims under the Eighth Amendment's cruel and unusual punishment clause as applied to the states through the due process clause.[9] Such claims are commonly referred to as failure-to-protect claims. In order to establish a failure-to-protect claim, inmates must demonstrate that "(1) they are incarcerated under conditions posing a substantial risk of serious harm; and (2) the prison official acted with deliberate indifference to their health and safety."[10] It is well-settled law that mere negligent conduct is insufficient to sustain a § 1983

---

[7] *Thomas v. Bd. of Educ. of the Brandywine Sch. Dist.*, 2010 WL 5514367 (D.Del. 2010).

[8] *Burton v. Kindle*, 2010 WL 4487121, Slip Op. at *1 (3d Cir. 2010).

[9] *Hamilton v. Leavy*, 117 F.3d 742, 746 (3d Cir. 1997).

[10] *Burton*, 2010 WL at *2 (citing *Farmer v. Brennan*, 511 U.S. 824, 834 (1994)).

claim.[11]

Where a defendant's alleged liability is based on his role as a supervisor, as is the case with Hall, Turner and Howard, the defendant "must have personal involvement in the alleged wrongs . . . Personal involvement can be shown through allegations of personal direction or of actual knowledge and acquiescence . . . ."[12] Alternatively, personal involvement can be shown when a superisor maintained a policy, or failed to maintain a policy, which directly caused the constitutional harm, and was aware of and consciously disregarded a substantial risk that an obvious consequence of his action or inaction would be the plaintiff's injury.[13]

After viewing the facts in the light most favorable to the plaintiff, I conclude that the evidence is insufficient as a matter of law to satisfy the standard of liability against defendants Hall, Stanley and Howard as to the plaintiff's § 1983 claim. Summary judgment, as to that claim, for those defendants should be granted.[14]

Turning next to defendants Minner, Styles and Edge, I must determine whether

---

[11] *County of Sacramento v. Le*wis, 523 U.S. 833, 849 (1998)("Liability for negligently inflicted harm is categorically beneath the threshold of constitutional due process.").

[12] *Rode v. Dellariprete*, 845 F.2d 1195, 1207 (3d Cir. 1988).

[13] *Thomas,* 2010 WL at *9.

[14] Additionally, it is noted that "a government official may not be held liable for the unconstitutional conduct of their subordinates under a theory of *respondeat superior* . . . In a § 1083 suit or a *Bivens* action - where masters do not answer for the torts of their servants - the terms supervisory liability is a misnomer ... each Government official, his or her title notwithstanding, is only liable for his or her own misconduct." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1948 (2009); *see Monell v. New York City Dep't of Soc. Serv.*, 436 U.S. 658, 691 (1978) (holding that *Bivens* liability cannot be grounded on a theory of *repondeat superior).*

the correctional officers' alleged behavior on May 23, 2010 is actionable as a failure-to-protect.[15] The officers allegedly ignored the plaintiff's requests for help. Allegedly, while the guards laughed and socialized, the plaintiff lost his balance and fell backwards. The officers allegedly failed to warn the plaintiff that wearing leg irons could increase a person's risk of falling. They also allegedly placed the restraints incorrectly on the defendant, in such a manner as to significantly increase his likelihood of falling. More specifically, the plaintiff contends that the correctional officers should have removed one end of the leg irons.

The survival of the § 1983 claim against defendants Minner, Styles and Edge hinges on a determination of whether there were conditions that could pose a substantial risk of serious harm to the plaintiff, and whether the correctional officers' behavior can be deemed to evidence deliberate indifference to the health and safety of the plaintiff.[16]

After viewing the facts in the light most favorable to the plaintiff, I have concluded that the plaintiff's claim fails both prongs of the failure-to-protect test. Entering a correctional transportation van, even while shackled as the plaintiff was here, cannot be deemed as creating a substantial risk of serious harm. This activity happens numerous times each day in this state, as inmates are transported to and from court and from institution to institution.

---

[15] Subsumed within this cause of action is the allegation that the plaintiff should have been warned that leg irons cause an increased risk of falling.

[16] *Burton*, *supra* note 12, at *2.

Further, I am persuaded that the correctional officers' conduct fails to rise to the necessary level of deliberate indifference to the health and safety of the plaintiff. "If no constitutional right would have been violated were the allegations established, there is no necessity for further inquiries."[17]

For conduct to be actionable, it "must involve more than ordinary lack of due care for the prisoner's interests of safety."[18] Additionally, "deference is given to prison officials' adoption and execution of policies to preserve internal order . . . ."[19] Standard restraints were used on the plaintiff. This does not evidence lack of due care. There is no evidence that the procedures used on May 23, 2010 were different than standard protocol, and deference is always given to reasonable policies that correctional officers use to maintain order. For these reasons, I conclude that the evidence is insufficient as a matter of law to satisfy the standard of liability against defendants Minner, Styles and Edge as to the plaintiff's § 1983 claim, and that summary judgment, as to that claim, against those defendants should be granted.

I now turn to the remaining counts. The introductory paragraph of the defendants' motion for summary judgment makes it appear that the defendants have moved for summary judgment as to the entire action. After carefully reviewing the defendants' motion and the transcript of the oral argument presented in support of the motion, I find that the defendants did not address, or did not adequately address, the

---

[17] *Reedy v. Evanson*, 615 F.3d 197, 223 (3d Cir. 2010).

[18] *Whitley v. Albers*, 475 U.S. 312, 319 (1986).

[19] *Id.*

averments of Counts I through VII. For this reason, I do not consider those counts at this time, and to the extent that the motion was intended to seek summary judgment as to those counts, it will be denied without prejudice.

Defendants Minner and Styles also ask for dismissal of the action as to them on the grounds that service of process was not made upon them. A review of the docket shows that the plaintiff had the Sheriff of Sussex County attempt service and he was unable to serve either party. The reason for the Sheriff's Return of Non-Est is that both defendants work out of a location outside Sussex County.

Superior Court Civil Rule 4(j) provides that service upon a defendant must be made within 120 days after filing. This rule is not absolutely inflexible.[20] In fact, Delaware law has a "strong judicial policy of deciding cases on the merits and giving parties to litigation their day in court."[21] Therefore, the court has the discretion to enlarge that window of time when there is excusable neglect.

I find that there is a reasonable basis for the failure to effect service in this case. The plaintiff, a Sussex Correctional Institution prison inmate, attempted to serve defendants Minner and Styles at, what he believed, was their Sussex County office. Defendants Minner and Styles, however, work in Kent County. I believe that this mistaken belief is excusable neglect, and therefore, the plaintiff should have another 120 days to serve these defendants. Therefore, the plaintiff is granted an additional

---

[20] *Dolan v. Williams*, 707 A.2d 34, 36 (Del. 1998).

[21] *Verizon Delaware, Inc. v. Baldwin Line Constr. Co., Inc.*, 2004 WL 838610, at *1 (Del. Super.); *see also Watson v. Simmons et. al.*, 2009 WL 1231145, at *1 (Del. Super.).

120 days from the date of this opinion to effect service upon these two defendants.

CONCLUSION

For the aforementioned reasons, summary judgment is ***granted*** in part and ***denied*** in part, and the defendant is given an additional 120 days to serve defendants Minner and Styles.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

cc: Prothonotary
Counsel
Mr. Richard K. Jackson
File