

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

JOSEPH JACKSON,)
)
 Plaintiff,)
) C.A. No. K16C-03-015 NEP
 v.) In and for Kent County
)
 ROBERT COUPE, et al.)
)
 Defendants.)

Submitted: July 10, 2017
Decided: July 14, 2017

Upon Defendants Robert Coupe, Christopher Klein, David Pierce, James Scarborough and John Brennan's Motion to Dismiss
GRANTED

Upon Defendant William Ray Lynch, M.D.'s Motion to Dismiss
GRANTED

MEMORANDUM OPINION AND ORDER

Joseph Jackson, *Pro se*

Ophelia M. Waters, Deputy Attorney General, Department of Justice, Wilmington, Delaware for Defendants Robert Coupe, Christopher Klein, David Pierce, James Scarborough and John Brennan

Dana Spring Monzo, Esquire and Randall S. MacTough, Esquire, White and Williams, LLP, Wilmington, Delaware, Attorneys for Defendants Connections Community Support Programs, Inc., C.D. McKay, Christine Francis and William Ray Lynch, M.D.

PRIMOS, J.

I. Introduction

Before the Court is (1) the motion to dismiss or in the alternative for summary judgment of Defendants Robert Coupe, Christopher Klein, David Pierce, James Scarborough and John Bennon (hereinafter the “State Defendants”); and also (2) the motion to dismiss of Defendant William Ray Lynch, M.D. (“Dr. Lynch”). This suit arises from injuries that Plaintiff Joseph Jackson, an incarcerated inmate at James T. Vaughn Correctional Center (hereinafter “JTVCC”), alleges he sustained while working in a kitchen at JTVCC. Mr. Jackson alleges that he broke his foot and that he later failed to receive adequate treatment from the Department of Corrections (hereinafter “DOC”) due to the alleged indifference and neglect of DOC officials as well as personnel of DOC’s contractual medical provider. Mr. Jackson now brings suit alleging that Defendants’ actions and inaction violated his Eighth Amendment right to freedom from cruel and unusual punishment and further that their conduct constituted negligence pursuant to 11 *Del C.* § 4001 (Tort Claims Act). Mr. Jackson emphasizes that his claim is not made pursuant to 42 U.S.C. § 1983.

The State Defendants seek dismissal or, in the alternative, partial summary judgment on numerous bases. Dr. Lynch separately moves to dismiss for improper service.

II. Facts and Procedural History

As this is a motion to dismiss pursuant to Rule 12(b) (6), the facts referenced herein are those found in Mr. Jackson’s Complaint. On or about September 5, 2015, Mr. Jackson was working at one of the JTVCC kitchens when he accidentally stepped into an uncovered drain, breaking his right foot. While at first the pain was minor and

Mr. Jackson believed his ankle was merely sprained, the pain increased over time. Soon, Mr. Jackson was unable to work. When Plaintiff submitted his first sick call, a nurse determined it was only a sprain, despite considerable swelling and pain. Returning later, Mr. Jackson informed an unknown physician that he believed his foot was broken. However, the physician did not believe Mr. Jackson and treated him only with cold compress and over-the-counter pain medicine.

Mr. Jackson continued to seek treatment for five months, but received none. Finally, in December of 2015, Mr. Jackson had an MRI of his foot, which revealed that his right foot was broken in two places and had suffered ligament damage.

Mr. Jackson filed this complaint on February 29, 2016. On December 1, 2016, a New Castle County Sheriff's deputy attempted to serve Dr. Lynch by leaving copies of the summons and complaint with one Heather Emig, a paralegal for Connection CSP Inc, at 500 W 10th Street, Wilmington, DE 19801. The State Defendants and Dr. Lynch now move to dismiss.

III. Standard of Review

When deciding a motion to dismiss for failure to state a claim, the court must accept as true all well-pleaded allegations in the complaint.¹ The test for sufficiency is a broad one: the complaint will survive the motion to dismiss so long as “a plaintiff may recover under any reasonably conceivable set of circumstances susceptible of proof under the complaint.”² However, the Court will not “accept conclusory

¹ *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

² *Id.* (citing *Klein v. Sunbeam Corp.*, 94 A.2d 385 (Del. 1952)).

allegations unsupported by specific facts,” nor will the Court “draw unreasonable inferences in favor of the non-moving party.”³ Stated differently, a complaint will not be dismissed unless it clearly lacks factual or legal merit.⁴

Furthermore, when examining a 12(b)(6) motion, “[t]he complaint generally defines the universe of facts that the trial court may consider.”⁵ If the court looks outside of the facts set forth in the complaint, generally the court will convert a motion to dismiss into a motion for summary judgment and the parties will be given an opportunity to expand the record.⁶ However, there is an exception to the rule that prohibits the trial court from reviewing documents outside of the complaint. Namely, “when the document [or documents are] integral to a plaintiff’s claim and incorporated into the complaint,” the trial court need not convert the motion into a motion for summary judgment.⁷

IV. PARTIES’ CONTENTIONS

The State Defendants seek dismissal or, in the alternative, partial summary judgment because they are immune from suit on the basis of sovereign immunity, because Mr. Jackson has failed to demonstrate compliance with 10 *Del. C.* § 8804(f),

³ *Price v. E.I. DuPont de Nemours & Co.*, 26 A.3d 162, 166 (Del. 2011) (quoting *Clinton v. Enterprise Rent-A-Car Co.*, 977 A.2d 892, 895 (Del. 2009)).

⁴ *Diamond State Tel. Co. v. Univ. of Del.*, 269 A.2d 52, 58 (Del. 1970).

⁵ *In re General Motors (Hughes) Shareholder Litigation*, 897 A.2d 162, 168 (Del. 2006).

⁶ *Id.*

⁷ *Vanderbilt Income and Growth Associates, LLC v. Arvida/JMB Managers, Inc.*, 691 A.2d 609, 613 (Del. 1996).

because Mr. Jackson's claim is barred under the Delaware Tort Claims Act, and because Mr. Jackson has failed to exhaust his administrative remedies.

Mr. Jackson did not respond to the State Defendants' motion.

Dr. Lynch moved separately for dismissal based on improper service. Dr. Lynch contends that service for an individual cannot be made to an employee of the individual's former employer.

Mr. Jackson responds that Dr. Lynch was served as a state actor, and that service upon Dr. Lynch's former employer, which Mr. Jackson designates as Corrections, Inc., is an appropriate means of service.

V. DISCUSSION

A plaintiff's failure to respond to a motion to dismiss may warrant dismissal of the complaint, as it indicates that the plaintiff has abandoned the claim.⁸ When a plaintiff responds to some claims and not others, it indicates a partial rather than total abandonment, surrendering only those claims whose dismissal the plaintiff did not

⁸ Super. Ct. Civ. R. 107(f) (providing that the Superior Court "may, in its discretion, dismiss the proceeding if the plaintiff is in default, consider the motion as abandoned, or summarily deny or grant the motion, such as the situation may present itself"); *Pierre-Louis v. Bank of America, N.A.*, 128 A.3d 993 (Table) 2015 WL 7353904 at *2 (Del. Nov. 19, 2015) (affirming Superior Court's dismissal of a complaint for failure to respond to the complaint or appear at the hearing). *See Hoag v. Amex Assurance Co.*, 953 A.2d 713, 716-717 (Del. 2008) (holding that the Superior Court is vested with the inherent authority and discretion to dismiss a party's action for failure to prosecute or comply with the court's rules or orders); *Boulden v. Albiorix, Inc.*, 2013 WL 396254, at *5 (Del. Ch. Jan. 31, 2013) (noting that when a plaintiff fails to respond "it appears as if he has conceded that argument" by failing to respond). *See also Hollister v. United States Postal Service*, 142 Fed.Appx. 576, 577 (3d Cir. 2005); *Sisk v. Sussex County*, 2013 WL 240606, at *5 (D. Del. Jan. 22, 2013).

oppose.⁹

Superior Court Civil Rule 4(f)(1)(I) provides that service upon an individual shall be made by “delivering a copy of the summons, complaint and affidavit, to that individual personally or by leaving copies thereof at the individual’s dwelling house or usual place of abode . . . or by delivering copies thereof to an agent authorized by appointment or by law to receive service of process.”

Here, Mr. Jackson’s failure to respond to the State Defendants’ motion to dismiss constitutes an abandonment of his claims against them, and an acknowledgment of the defense of sovereign immunity.

Mr. Jackson also failed to deliver a copy of the summons and complaint to Dr. Lynch personally and did not leave copies at his dwelling home or usual place of abode. There has been no showing that Ms. Enig was appointed by Dr. Lynch to serve as an agent to receive service of process for him.

WHEREFORE, the Court rules as follows:

1. The State Defendants’ motion to dismiss is **GRANTED**.
2. Dr. Lynch’s motion to dismiss is **GRANTED**.
3. The Court does not consider Mr. Jackson’s claims against the remaining defendants to be abandoned and with the above exceptions, Mr. Jackson’s complaint is not dismissed.

⁹*Dunfee v. KGL Holdings Riverfront, LLC*, 2016 WL 6988791, at *6 (Del. Super. Ct. Nov. 23, 2016) (holding that a plaintiff’s choice to respond to a motion to dismiss of certain claims “and not others,[likely indicates] a decision to pursue the claim that they thought was most meritorious.”)

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IT IS SO ORDERED.

/s/ Noel Eason Primos
J.

NEP/dsc