

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE**

DEREK LEE DAUGHERTY

PLAINTIFF

v.

CIVIL ACTION NO. 3:16-CV-P490-GNS

SOUTHERN HEALTH PARTNERS

DEFENDANT

MEMORANDUM OPINION

This is a civil rights action brought by a convicted prisoner pursuant to 42 U.S.C. § 1983. The Court has granted Plaintiff Derek Lee Daugherty leave to proceed in forma pauperis. This matter is before the Court for screening pursuant to 28 U.S.C. § 1915(e)(2) and *McGore v. Wrigglesworth*, 114 F.3d 601 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 594 U.S. 199 (2007). For the reasons set forth below, the action will be dismissed.

I.

Plaintiff is currently detained at Hardin County Detention Center (HCDC). He brings this action against Southern Health Partners (SHP). In his complaint, Plaintiff writes as follows:

I, Derek Daugherty, have had my rights violated by the way of intentional denial of medical services & treatment by Southern Health Partners, medical provider at Hardin County Detention Center. My eighth amendment right has been violated, as a result of intentional denial of Medical Provider, Southern Health Partners at Hardin County Detention Center. 10.3 Right to Medical Aid as stated as a right in the eighth amendment as a citizen of United States of America.

As relief, Plaintiff request money damages.

II.

Upon review under 28 U.S.C. § 1915(e), a district court must dismiss a case at any time if it determines that the action is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief.

28 U.S.C. § 1915(e)(2)(B). In order to survive dismissal for failure to state a claim, “a complaint

must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “[A] district court must (1) view the complaint in the light most favorable to the plaintiff and (2) take all well-pleaded factual allegations as true.” *Tackett v. M & G Polymers, USA, LLC*, 561 F.3d 478, 488 (6th Cir. 2009) (citing *Gunasekera v. Irwin*, 551 F.3d 461, 466 (6th Cir. 2009) (citations omitted)). However, this Court is not required to create a claim for Plaintiff. *Clark v. Nat’l Travelers Life Ins. Co.*, 518 F.2d 1167, 1169 (6th Cir. 1975).

Based on the complaint, the Court presumes that SHP is a private entity which contracts with HCDC to provide medical care to inmates. The Sixth Circuit has held that the analysis that applies to a § 1983 claim against a municipality also applies to a § 1983 claim against a private corporation such as SHP. See *Street v. Corr. Corp. of Am.*, 102 F.3d 810, 818 (6th Cir. 1996) (citing *Monell v. Dep’t of Social Servs.*, 436 U.S. 658, 691 (1978) (“*Monell* involved a municipal corporation, but every circuit to consider the issue has extended the holding to private corporations as well.”)). Thus, a private corporation such as SHP is liable under § 1983 only when an official policy or custom of the corporation causes the alleged deprivation of a constitutional right. *Id.* at 817. Here, Plaintiff makes no allegation that any alleged constitutional deprivation resulted from a SHP policy or custom.

Additionally, Plaintiff’s complaint is no more than a “bare assertion of legal conclusions.” *Columbia Natural Resources, Inc. v. Tatum*, 58 F.3d 1101, 1109 (6th Cir. 1995). It does not “contain either direct or inferential allegations” respecting the material elements of any viable legal theory. *Id.* And although this Court recognizes that pro se pleadings are to be held to a less stringent standard than formal pleadings drafted by lawyers, *Haines v. Kerner*, 404

U.S. 519, 520 (1972), the duty “does not require us to conjure up unpled allegations.”

McDonald v. Hall, 610 F.2d 16, 19 (1st Cir. 1979). Here, Plaintiff’s complaint would require the Court to conjure up unpled allegations “to create a claim” for Plaintiff which he “has not spelled out in his pleading.” Clark v. *Nat’l Travelers Life Ins. Co.*, 518 F.2d at 1169.


Thus, Plaintiff’s complaint will be dismissed for failure to state a claim upon which relief may be granted.

III.

For the foregoing reasons, this action will be dismissed by separate Order.

Date: November 29, 2016

cc: Plaintiff, pro se
Defendant
4416.011



Greg N. Stivers, Judge
United States District Court