

United States District Court
District of Massachusetts

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| _____ |) | |
| MANUEL COLON, |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Civil Action No. |
| |) | 08-11960-NMG |
| CITY OF LAWRENCE and CARL |) | |
| FARRINGTON, |) | |
| Defendants. |) | |
| _____ |) | |

MEMORANDUM & ORDER

GORTON, J.

Plaintiff Manuel Colon ("Colon") brings suit against the City of Lawrence, Massachusetts ("the City") and Lawrence Police Officer Carl Farrington ("Farrington") alleging, inter alia, that he suffered intimidation, physical abuse and wrongful arrest without probable cause.

In June, 2010, Farrington moved for partial summary judgment, which Colon opposed. The motion was referred to Magistrate Judge Judith Dein, who issued a Report and Recommendation ("R&R") in December, 2010, recommending that the motion be allowed, in part, and denied, in part. Both Farrington and Colon have filed objections to portions of the R&R. Colon also moves to withdraw one paragraph of his objection, which the Court will allow. The plaintiff's remaining objections are unpersuasive because they either reiterate arguments already considered by Magistrate Judge Dein or misconstrue the R&R.

Farrington's sole objection to the R&R is that he is entitled to summary judgment with respect to Count IX in its entirety pursuant to the Massachusetts Tort Claims Act, Mass. Gen. Laws ch. 258, § 2 ("MTCA"). Under the MTCA, a public employee is not personally liable for personal injury caused by his negligent or wrongful act or omission while acting within the scope of his employment. Martinez v. Wolferseder, 997 F. Supp. 192, 195 (D. Mass. 1997). Farrington contends he was acting within the scope of his employment and under color of law at all relevant times and thus is immunized from liability on Count IX.¹

Magistrate Judge Dein declined to analyze the MTCA argument because it was not raised in Farrington's summary judgment motion and the plaintiff did not have an opportunity to address it. The plaintiff, however, could have responded to Farrington's objection (just as Farrington responded to the plaintiff's objections) but did not. Because the MTCA immunizes Farrington from liability for his alleged negligence in failing to provide medical care, the Court will sustain Farrington's objection and allow summary judgment in favor of Farrington on Count IX in its entirety. Count IX with respect to the City remains pending.

¹ Count IX alleges both negligent and intentional failure to provide medical assistance but the intentional claim was disposed of in favor of Farrington by the Magistrate Judge's recommendation as to the constitutional claim of failure to provide adequate medical treatment.

ORDER

In accordance with the foregoing,

- 1) the Report and Recommendation (Docket No. 39) is, in all respects except as to Count IX against defendant Farrington, **ACCEPTED AND ADOPTED**;
- 2) plaintiff's motion to withdraw part of his objection to the R&R (Docket No. 44) is **ALLOWED**;
- 3) plaintiff's Objections to the R&R (Docket No. 43) are **OVERRULED**; and
- 4) defendant Farrington's Objection to the R&R (Docket No. 41) is, with respect to Count IX against him, **SUSTAINED**, and that count is, with respect to defendant Farrington only, **DISMISSED**.

So ordered.

/s/ Nathaniel M. Gorton
Nathaniel M. Gorton
United States District Judge

Dated January 6, 2011