

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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|--------------------------|---|---------------------------|
| DERRICK WASHINGTON, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | C.A. No. 11-10771-PBS |
| |) | First Circuit No. 17-2030 |
| PETER ST. AMAND, et al., |) | |
| |) | |
| Defendants. |) | |
| |) | |

**STATEMENT WITH RESPECT TO ENTRY OF
SEPARATE AND FINAL ORDER OF JUDGMENT**

November 8, 2017

Saris, C.J.

Upon an unopposed motion of defendant Maryjo Gagliani, on October 2, 2017, the Court entered a separate and final judgment in favor of her (#179). Thereafter, plaintiff Derrick Washington, who is proceeding pro se, filed a notice of appeal as to the partial judgment (#187). In response to the directive of the United States Court of Appeals for the First Circuit (#191), the Court now sets forth a statement with respect to the separate and final judgment in favor of Gagliano.

In the plaintiff's amended complaint (#40), he claims that defendant Maryjo Gagliani "exercised deliberate indifference to plaintiff's health by failing to provide adequate medical care to him" following the alleged use of excessive force by correction officers at MCI Cedar Junction. Amend. Compl. ¶ 43. Gagliani is the only medical care provider named as a defendant.

Upon her motion, Judge Woodlock, who presided over this action at the time, referred the matter to the state Medical Malpractice Tribunal ("Tribunal"), which found in favor of Gagliani. On March 28, 2015, Judge Woodlock entered an electronic order (#118) granting Gagliani's motion to dismiss based on Washington's failure to post the bond required under M.G.L. ch. 231 § 60B.

This case was reassigned to the undersigned on April 27, 2017, more than two years after Gagliani had been dismissed from this action. On September 12, 2017, Gagliani filed a motion for a separate and final judgment (#175), which the plaintiff did not oppose. Gagliani had argued: "The Suffolk Superior Court dismissed the only claim against Ms. Gagliani. Mr. Washington's attempts to appeal that dismissal have been futile The counts against the remaining Defendants are not related to Ms. Gagliani; they involve constitutional claims, as well as claims concerning alleged violations involving prison policies." Mot. at 2 (emphasis added). The Court allowed the motion.

Upon further examination of docket, the Court believes that it erred in entering the partial judgment because the plaintiff also brought a claim under 42 U.S.C. § 1983 against her which the prior judge did not address. Having entered the order, the Court is now without jurisdiction. See Fed. R. Civ. P. 54(b). Should the First Circuit deem it appropriate to remand this

case, the Court would vacate the entry of partial judgment and address the § 1983 claim.

The Clerk shall transmit a copy of this order to the United States Court of Appeals for the First Circuit.

SO ORDERED.

/s/ Patti B. Saris _____
PATTI B. SARIS
CHIEF, U.S. DISTRICT JUDGE