IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Natalie M. Dotson,	:	
Plaintiff,	:	Case No. 2:14-cv-1831
v.	:	JUDGE GREGORY L. FROST
Twin Valley Behavioral Healthcare,	:	Magistrate Judge Kemp
Defendant.	:	

REPORT AND RECOMMENDATION

Plaintiff, Natalie M. Dotson, who, at the time this action was filed, was confined at the Twin Valley Behavioral Healthcare facility located in Columbus, Ohio, filed this action alleging that she had been assaulted by another resident of the facility, identified only as "Amanda." She has moved for leave to proceed *in forma pauperis*. When she submitted that motion, it appears she was a "prisoner" as defined in 28 U.S.C. §1915(h) because she was, in the words of that statute, "detained in a facility" and accused of ... violations of criminal law ...." However, according to the records of the Licking County Court of Common Pleas, *see* www.lcounty.com/clerkofcourts/frmCourtView.aspx, her case was dismissed on November 14, 2014. The Court therefore does not assess a partial filing fee, but rather grants her application for leave to proceed. For the following reasons, however, it will be recommended that this case be dismissed.

I. The *In Forma Pauperis* Statute

28 U.S.C. §1915(e)(2) provides that in proceedings in forma pauperis, "[t]he court shall dismiss the case if ... (B) the action ... is frivolous or malicious [or] fails to state a claim on which relief can be granted...." The purpose of this statutory section is to prevent suits which are a waste of

judicial resources and which a paying litigant would not initiate because of the costs involved. See Neitzke v. Williams, 490 U.S. 319 (1989). A complaint may be dismissed as frivolous only when the plaintiff fails to present a claim with an arguable or rational basis in law or fact. See id. at 325. Claims which lack such a basis include those for which the defendants are clearly entitled to immunity and claims of infringement of a legal interest which does not exist, see id. at 327-28, and "claims describing fantastic or delusional scenarios, claims with which federal district judges are all too familiar." Id. at 328; see also Denton v. Hernandez, 504 U.S. 25 (1992). A complaint may not be dismissed for failure to state a claim upon which relief can be granted if the complaint contains "enough facts to state a claim to relief that is plausible on its face." Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1974 (2007). Claims against defendants who are immune from suits for money damages, such as judges or prosecutors acting in their judicial or prosecutorial capacity, are also within the ambit of §1915A. Pro se complaints are to be construed liberally in favor of the pro se party. See Haines v. Kerner, 404 U.S. 519 (1972). Ms. Dotson's complaint will be reviewed under these legal standards.

II. The Facts

The facts of the case, taken from the complaint and from the Licking County Court records, can be stated as follows. Ms. Dotson was initially confined to Twin Valley for purposes of a psychological evaluation and in order to attempt to restore her to competency. She had been charged with a crime in Licking County. The Common Pleas Court records indicate that she was not restored to competency within the allowable period, that the charge against her was dismissed, and that she was ordered to be held an additional ten days to permit the State to file a petition to have her involuntarily committed.

While at Twin Valley, Ms. Dotson claims that she was one of three people assaulted by "Amanda." All of the assaults allegedly occurred in September of this year. Her complaint identifies four members of Twin Valley's staff who were present during one or more of these incidents. She provides the following details, which the Court will quote from her complaint:

> 9/18/2014 approximately 3:30 PM I had an argument with Amanda. I was telling Amanda not to slap me or punch me playfully anymore. Amanda punched me in the face. The staff did not call a code. They did not call the assist team. They took Amanda outside for fresh air twice. I specifically told the staff I wanted to press charges. Amanda has come into my room without permission. Amanda has punched 4 different clients. Amanda has been informed she will be moving to level 2 soon. Amanda does not respect the rules here and acts immature, vengeful on purpose, and then acts as if she is "dissociating" so that she won't be held accountable for her actions. The staff refuses to allow me to discover her last name. Therefore the staff is inhibiting my right to press charges. I do believe she may have broken my nose or fractured my maxilla.

III. Legal Analysis

The first issue with Ms. Dotson's complaint is that it names only Twin Valley Behavioral Health as a defendant. According to records of the Ohio Department of Mental Health and Addiction Services, Twin Valley Behavioral Healthcare Hospital is a "state psychiatric hospital." As this Court has noted, "Twin Valley Behavioral Healthcare is a regional psychiatric hospital administered by the Ohio Department of Mental Health. See http//: www.mentalhealth.ohio.gov." Franklin v. Astrue, 2010 WL 2667388, *2 n.2 (S.D. Ohio June 10, 2010), adopted and affirmed 2010 WL 2653332 (S.D. Ohio June 30, 2010). As an agency or arm of the State of Ohio, it cannot be sued in a federal court under 42 U.S.C. §1983 both because it is not a "person" which can be sued under that statute and because the State of Ohio has immunity

from suit under the Eleventh Amendment to the United States Constitution. See Will v. Michigan Dept. of State Police, 491 U.S. 58 (1989); see also Bremiller v. Cleveland Psychiatric Institute, 879 F. Supp. 782, 787 (N.D. Ohio 1995) (holding that the Cleveland Psychiatric Institute, which is also a psychiatric hospital created and maintained by the Ohio Department of Mental Health, "is an 'arm' or 'alter ego' of the state entitled to Eleventh Amendment protection from plaintiff's federal constitutional and state law claims").

Even if Ms. Dotson had sued the staff members she identifies in the complaint, however, the complaint states no federal constitutional claim against them. If an inmate of a prison facility or similar facility is assaulted by another inmate or resident, the staff of that facility can be held responsible only if the staff were aware beforehand of a substantial risk of assault and took no steps to prevent it. As the Court of Appeals said in Curry v. Scott, 249 F.3d 493, 508 (6th Cir. 2001), for prison officials to be liable for an inmate-on-inmate assault, there must be an allegation that they "were aware that [the assaultive inmate] posed a risk of substantial injury to [other] inmates and were deliberately indifferent to that risk."

Although Ms. Dotson claims that "Amanda" assaulted a few other residents, she provides no details which would support a claim that, at the time of her encounter with Amanda, the staff who were present were both aware that Amanda posed a substantial risk of harm to her and that they deliberately or recklessly disregarded that risk. She does not plead any facts about the nature or seriousness of the prior assaults. Further, she describes a situation in which she was voluntarily interacting with Amanda when Amanda suddenly punched her. Although she faults staff for not "calling a code," she provides no facts to suggest that they did not provide her with adequate medical

attention after the assault, and she says that they took Amanda outside after it occurred and then proposed an increase in her security level. A reasonable person could not infer from these facts that staff members intentionally or recklessly disregarded a risk that Amanda would harm Ms. Dotson by not intervening in some way before the actual assault occurred. Even if they were negligent, "any claim against the defendants based on the theory of negligence does not state a cognizable federal claim." Sexton v. Neil, 2014 WL 1418298, *5 (S.D. Ohio Apr. 14, 2014).

Ms. Dotson' primary complaint appears to be that staff would not give her enough information about Amanda to be able to press criminal charges against her. The Court knows of no federal constitutional right to such information. Consequently, that action cannot form the basis for a suit in this Court.

IV. Recommendation

For all of the reasons set forth above, it is recommended that this case be dismissed under 28 U.S.C. §§1915(e)(2). Should this recommendation be adopted, the Clerk should be directed to mail a copy of the complaint, this Report and Recommendation, and any dismissal order to the defendant.

V. Procedure on Objections

Any party may, within fourteen days after this Order is filed, file and serve on the opposing party a motion for reconsideration by a District Judge. 28 U.S.C. §636(b)(1)(A), Rule 72(a), Fed. R. Civ. P.; Eastern Division Order No. 14-01, pt. IV(C)(3)(a). The motion must specifically designate the order or part in question and the basis for any objection. Responses to objections are due fourteen days after objections are filed and replies by the objecting party are due seven days thereafter. The District Judge, upon consideration of the motion, shall set aside any part of this Order found to be clearly erroneous or contrary to law.

This order is in full force and effect even if a motion for reconsideration has been filed unless it is stayed by either the Magistrate Judge or District Judge. S.D. Ohio L.R. 72.4.

/s/ Terence P. Kemp
United States Magistrate Judge