

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RICHARD J. McLAUGHLIN,)	
)	
Plaintiff)	Civil Action
)	No. 13-cv-01926
v.)	
)	
GRADY CUNNINGHAM, JR., and)	
BOROUGH OF FOUNTAIN HILL,)	
)	
Defendants)	

O R D E R

NOW, this 25th day of March, 2014, upon consideration of the following documents:

- (1) Motion to Dismiss by Defendant, Grady Cunningham filed May 17, 2013 ("Cunningham Motion to Dismiss"); and
- (2) Defendant, Borough of Fountain Hill's Motion to Dismiss filed May 16, 2013 (Fountain Hill Motion to Dismiss);

upon consideration of the pleadings, together with defendants' respective memoranda and plaintiff's brief in this matter; and for the reasons expressed in the accompanying Opinion,

IT IS ORDERED that the Cunningham Motion to Dismiss and the Fountain Hill Motion to Dismiss are each granted, in part, and denied, in part.

IT IS FURTHER ORDERED that the Cunningham Motion to Dismiss and the Fountain Hill Motion to Dismiss are each granted to the extent that they seek to dismiss plaintiff's Eighth Amendment claim in Counts One and Two of the Complaint.

IT IS FURTHER ORDERED that Counts One and Two of the Complaint are each dismissed to the extent that they seek to assert a claim under the Eighth Amendment.

IT IS FURTHER ORDERED that the Cunningham Motion to Dismiss is denied in all other respects.

IT IS FURTHER ORDERED that the Fountain Hill Motion to Dismiss is granted to the extent that it seeks to dismiss plaintiff's municipal liability claim asserted under official-policy and failure-to-train theories in Count Two.

IT IS FURTHER ORDERED that Count Two of the Complaint is dismissed to the extent that it seeks to establish municipal liability under official-policy and failure-to-train theories.

IT IS FURTHER ORDERED that the Fountain Hill Motion to Dismiss is denied to the extent that it seeks to dismiss plaintiff's municipal liability claim asserted under a municipal-custom theory in Count Two.

IT IS FURTHER ORDERED that plaintiff shall have until April 18, 2014 to file an amended complaint for the purpose of re-pleading his claims in Counts One and Two in order to remedy the deficiencies identified in the accompanying Opinion.

IT IS FURTHER ORDERED that, in the event that plaintiff does not file an amended complaint by April 18, 2014, defendants shall have until May 16, 2014 to answer plaintiff's Complaint.

BY THE COURT:

/s/ JAMES KNOLL GARDNER _____
James Knoll Gardner
United States District Judge