

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

FREDERICK BANKS,	:	CIVIL ACTION NO. 1:06-CV-1127
	:	
Plaintiff	:	(Judge Conner)
	:	
v.	:	
	:	
	:	
JULIE NICLKIN, et al.,	:	
	:	
Defendants	:	

ORDER

AND NOW, this 19th day of October, 2009, upon consideration of defendants' motion for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c)¹ (Doc. 87), in which they argue that plaintiff's remaining constitutional claims must be dismissed because the allegations that comprise those claims fail to state claims in accordance with the new pleading standards set forth in Ashcroft v. Iqbal, ---U.S. ----, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009) (explaining that Rule 8 requires more than "an unadorned, the-defendant unlawfully-harmed-me accusation"), and the court having reviewed the facts presented in the pleadings in a light most favorable to plaintiff, as required by the

¹ Pursuant to Federal Rule of Civil Procedure 12(c), a party may move for judgment on the pleadings "after the pleadings are closed but within such time as to not delay the trial." Fed.R.Civ.P. 12(c). The motion is decided under the same standard as that for a motion to dismiss under Fed.R.Civ.P. 12(b). See Spruill v. Gillis, 372 F.3d 218, 223 fn. 2 (3d Cir.2004) ("There is no material difference in the applicable legal standards.") When ruling on a motion to dismiss under Rule 12(b)(6), the court must "accept as true all factual allegations in the complaint and all reasonable inferences that can be drawn therefrom, and view them in the light most favorable to the plaintiff." Kanter v. Barella, 489 F.3d 170, 177 (3d Cir. 2007) (quoting Evancho v. Fisher, 423 F.3d 347, 350 (3d Cir. 2005)).

governing standard of review, see Hayes v. Cmty. Gen. Osteopathic Hosp., 940 F.2d 54, 56 (3d Cir. 1991) (stating that when deciding a motion for judgment on the pleadings, the court is directed to view “the facts presented in the pleadings and the inferences to be drawn therefrom in the light most favorable to the nonmoving party”), and it appearing that the allegations that make up the five remaining constitutional claims are sufficient to assert constitutional claims, and it further appearing that defendants have failed to establish that no material issue of fact remains to be resolved, see id., (stating that to succeed on a motion under Rule 12(c), “the movant [must] clearly establish [] that no material issue of fact remains to be resolved and that he is entitled to judgment as a matter of law”), it is hereby ORDERED that defendants’ motion for judgment on the pleadings (Doc. 87) is DENIED.

S/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge