

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

BRIAN C. MOORE,	:	Civil No. 3:13-CV-2771
	:	
Plaintiff,	:	(Judge Brann)
	:	
v.	:	
	:	
ANGELA D. MANN, <i>et al.</i> ,	:	
	:	
Defendants.	:	

**MEMORANDUM**

APRIL 6, 2017

Plaintiff Brian C. Moore, an inmate currently confined at the State Correctional Institution at Mahanoy in Frackville, Pennsylvania, filed this *pro se* civil rights action pursuant to 42 U.S.C. § 1983. The matter proceeds on an amended complaint. (Doc. 10.) Named as Defendants are John Wetzel, Secretary of the Department of Corrections, and the following seven (7) employees at the State Correctional Institution at Coal Township (SCI-Coal Township), Plaintiff's former place of confinement: Angela Mann, Counselor; Renee Foulds, Unit Manager; Correctional Officers Hering, Briner, Zamboni and Long; and David Varano, former Superintendent.

## **I. BACKGROUND**

Plaintiff alleges that while confined at SCI-Coal Township in August and September 2011, he saw Defendant Mann participating in a sexual act with an inmate. During this same period of time, Mann began discussing the details of Plaintiff's criminal case with other staff members and inmates. In September 2011, Mann told another staff member, who then told Defendant Foulds, that Plaintiff had an "attitude problem." (Doc. 10, Am. Compl. at 3.) In or about September or October 2011, Mann told Defendant Hering in front of other staff members and inmates on Unit B-2 that Plaintiff was "out of his mind," is a "child rapist," and "belongs in a psychiatric hospital." In October of 2011, Mann is also alleged to have told Defendant Briner that he would be glad when Plaintiff left the institution because he was a snitch and a pedophile.

As a result of Defendants discussing his criminal case with inmates and staff members, Plaintiff claims he was threatened with bodily harm at SCI-Coal Township in 2011-2012, as well as at SCI-Smithfield in 2013. He alleges that he brought his concerns about Mann's behavior to Defendant Foulds in September 2011.

On November 14, 2011, Plaintiff states he again observed Mann engaging in sexual activities in her office on B-2 Unit with an inmate. (*Id.* at 3.) Although

Defendants Zamboni and Briner were aware that this activity was taking place, they did nothing to stop it. (*Id.* at 4.) When the inmate left, Plaintiff entered Mann's office. On the same date, during the 2 p.m. to 10 p.m. shift, Mann wrote a misconduct report on Plaintiff (#429102) and charged him with sexual harassment. After being found guilty, Plaintiff was sanctioned to 270 days in the Restricted Housing Unit. He forfeited months of earned wages because of this report.

A grievance was filed with respect to these issues (#401780), and it was investigated by Defendant Long. Defendant Varano was also made aware of the allegations pursuant to the grievance appeal and Defendant Wetzel was made aware pursuant to a letter Plaintiff sent to the Office of Professional Responsibility in March 2012. (*Id.* at 4.) That month, Plaintiff was interviewed by an officer from the Office of Special Investigations and Intelligence.

Based on the foregoing, Plaintiff seeks declaratory, injunctive and monetary relief for violations of substantive due process; deliberate indifference to his health and safety; defamation and intentional infliction of emotional distress under Pennsylvania state tort law; violations of the Pennsylvania Constitution and the DOC's sexual harassment policy with respect to sexual contact with inmates; and violations of Pennsylvania and Federal statutes prohibiting sexual contact between prison employees and inmates. (*Id.* at 5.)

Defendants' motion to stay discovery was granted pending the resolution of a motion to dismiss Defendants filed on October 29, 2014. February 17, 2015, ECF Nos. 50, 51. Defendants' motion to dismiss was granted in part and denied in part. June 16, 2015, ECF Nos. 52, 53. Wetzel and Varano were dismissed from this action, along with all claims against the Defendants in their official capacities for monetary damages, all state law tort claims, all due process claims and all claims of violation of criminal statutes and DOC regulations. The motion to dismiss was denied with respect to the Eighth Amendment failure to protect claim against the remaining six (6) Defendants.

A scheduling order was issued directing that all discovery be completed on or before December 22, 2015, and any dispositive motions be filed by January 22, 2016. June 22, 2015, ECF No. 55. An order was later issued dismissing, without prejudice to renewal, discovery motions filed by Plaintiff because he had failed to file supporting briefs. September 30, 2015, ECF No. 62. Thereafter, Plaintiff filed a motion to compel and a supporting declaration and brief. October 30, 2015, ECF Nos. 65-67. This motion has been opposed by Defendants. November 2, 2015, ECF No. 68. Plaintiff then moved to extend the discovery deadline and for the issuance of subpoenas. November 18, 2015, ECF No. 70; November 20, 2015, ECF No. 76. Defendants filed a motion for summary judgment supported by a

brief, a statement of material facts and an appendix. November 19, 2015, ECF Nos. 72-74.

An order was issued provisionally granting Plaintiff's motion to extend the discovery deadline, if necessary, following the resolution of Defendants' summary judgment motion, and denying without prejudice Plaintiff's request for the issuance of subpoenas. November 24, 2015, ECF No. 78. Discovery was stayed until the summary judgment motion was resolved finding that a stay was appropriate because the summary judgment motion was potentially dispositive.<sup>1</sup>

Plaintiff did oppose Defendants' motion for summary judgment by filing a brief, exhibits and a statement of facts.<sup>2</sup> December 18, 2015, ECF Nos. 81-83. Plaintiff has moved to lift the stay on discovery and filed a brief in support thereof. October 13, 2016, ECF Nos. 87, 88.

## **II. DISCUSSION**

While this Court has issued an Order stating that no further discovery will be permitted until after Defendants' motion for summary judgment is resolved, it is clear that Plaintiff filed his motion to compel discovery on October 30, 2015, prior

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<sup>1</sup> See *Johnson v. New York Univ. School of Educ.*, 205 F.R.D. 433, 434 (S.D.N.Y. 2002).

<sup>2</sup> Plaintiff was permitted to amend his statement of facts. December 29, 2015. ECF No. 85.

to the issuance of the Order, and in response to the Court's dismissal of said motion, without prejudice, because Plaintiff failed to file a supporting brief. September 30, 2015, ECF No. 62. Plaintiff re-filed his motion to compel with a supporting brief and this motion has been opposed by Defendants. These filings were all made prior to the filing by Defendants of their motion for summary judgment. As such, any further discovery will remain stayed, but Defendants' motion for summary judgment will be denied, without prejudice to re-file and supplement, following the resolution of Plaintiff's pending motion to compel. Following the resolution of the motion to compel, Plaintiff will also be provided with the opportunity to re-file and supplement his opposition to Defendants' summary judgment motion.

### **III. CONCLUSION**

Accordingly, for all of the foregoing reasons, a separate Order will issue denying Defendants' motion for summary judgment without prejudice to re-file and supplement the motion following the resolution of Plaintiff's pending motion to compel. Further, Plaintiff's motion to lift the stay of discovery will be denied.

BY THE COURT:

s/ Matthew W. Brann  
Matthew W. Brann  
United States District Judge