

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

GREGORY TUTTLE, <i>et.al.</i> ,)	
)	
Plaintiffs,)	Civil Action No. 14-164
)	
v.)	Judge Cathy Bissoon
)	Magistrate Judge Lisa Pupo Lenihan
TREVOR WINGARD, <i>et.al.</i> ,)	
)	
)	
Defendants.)	

MEMORANDUM ORDER

This case was referred to United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. §§ 636(b)(1)(A) and (B), and Local Rule of Civil Procedure 72.

On November 26, 2014, the Magistrate Judge issued a Report recommending the following:

It is respectfully recommended that the Motion to Dismiss at ECF No. 14 filed by Allegheny County, Allegheny Health Department, Dan Onorato and Trevor Wingard be granted in part and denied in part. It should be denied as it relates to the Eighth Amendment claim. It should be granted as it relates to the following: the official and individual capacity claims against Defendants Onorato and Wingard; the claims against the Allegheny Health Department; Fifth Amendment claims, and the state negligence claims against Allegheny County and its officials Wingard and Onorato. It should be granted without prejudice to Plaintiffs filing an amended complaint as to the municipal liability claim. If Plaintiffs fail to amend the municipal liability claim in the time allotted by the District Judge, this Court recommends that the municipal liability claim against Allegheny County be dismissed with prejudice.

It is also recommended that the Motion to Dismiss at ECF No.10 filed by Virginia Cook be granted in its entirety.

Finally, it is recommended that the Motion to Dismiss at ECF No. 8 filed by Allegheny Correctional Health Services, Inc., Dana Phillips, and Bruce Dixon in his capacity as Chair of the Board of Directors of Allegheny Correctional Health Services, Inc. be denied in part and granted in part. The Motion should be denied as it

relates to the following: state law negligence claims against ACHS and its officials Phillips and Dixon; § 1983 individual capacity claims against Phillips; and punitive damages. The Motion should be granted as it relates to the following: Fifth Amendment claims; Fourteenth Amendment claims; § 1983 official capacity claims against Phillips and Dixon; § 1983 individual capacity claims against Dixon; and any state medical malpractice claims. The Motion should be granted without prejudice to Plaintiffs filing an amended complaint as to the *Monell* claim. If Plaintiffs fail to amend the *Monell* claim in the time allotted by the District Judge, this Court recommends that the *Monell* claim against ACHS be dismissed with prejudice.

(Doc. 24 at 1-2). Service of the Report and Recommendation was made on the parties.

Defendants Allegheny Correctional Health Services, Inc. (“ACHS”), Dana Phillips, and Dr. Bruce Dixon timely filed objections. (Doc. 27).

After a *de novo* review of the issues raised in the objections, together with the Report and Recommendation, the following Order is entered:

The Motion to Dismiss by Defendants Allegheny County, Allegheny Health Department, Dan Onorato, and Trevor Wingard (**Doc. 14**) is **GRANTED IN PART AND DENIED IN PART**. It is denied as it relates to the Eighth Amendment claim. It is granted as it relates to: the official and individual capacity claims against Defendants Onorato and Wingard; the claims against the Allegheny Health Department; the Fifth Amendment claims; and the state negligence claims against Allegheny County and its officials Wingard and Onorato. It is granted without prejudice to Plaintiffs filing an amended complaint as to the municipal liability claim. If Plaintiffs fail to amend the municipal liability claim by **January 5, 2015**, that claim will be dismissed with prejudice.

The Motion to Dismiss filed by Defendant Virginia Cook (**Doc. 10**) is **GRANTED**.

The Motion to Dismiss filed by Defendants Allegheny Correctional Health Services, Inc., Dana Phillips, and Bruce Dixon in his capacity as Chair of the Board of Directors of Allegheny Correctional Health Services, Inc., (**Doc. 8**) is **GRANTED IN PART AND DENIED IN PART**. The Motion is denied as it relates to: the state law negligence claims against ACHS and

its officials Phillips and Dixon; the Section 1983 individual capacity claims against Phillips; and the claim for punitive damages. The Motion is granted as it relates to: the Fifth Amendment claims; the Fourteenth Amendment claims; the Section 1983 official capacity claims against Phillips and Dixon; the Section 1983 individual capacity claims against Dixon; and any state medical malpractice claims. This ruling is without prejudice to Plaintiffs filing an amended complaint as it relates to the *Monell* claim. If Plaintiffs fails to amend the *Monell* claim by **January 5, 2015**, that claim will be dismissed with prejudice.

The Magistrate Judge's Report and Recommendation dated September 29, 2014, hereby is adopted as the Opinion of the District Court.

IT IS SO ORDERED.

December 17, 2014

s/Cathy Bissoon
Cathy Bissoon
United States District Judge

cc (via ECF email notification):

All counsel of record