

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

DANIEL WESLEY,)
) Civil Action No. 09 - 285J
 Plaintiff,)
) District Judge Kim R. Gibson
v.)
)
NICHOLAS SCHARFF, *Medical Director, Bureau*)
of Health Care Services; ALLEN B. FOGEL,)
Director, Bureau of Health Care Services;)
EUGENE GINCHEREON, *Assistant Medical*)
Director, Bureau of Health Care Services; JOHN)
VISINSKY, *Correctional Health Care*)
Administrator, Medical Staff; DENNIS THOMAS,)
R.N., Acting Correctional Health Care)
Administrator,)
)
)
Defendants.)

MEMORANDUM ORDER

On November 9, 2010, Plaintiff, Daniel Wesley, an inmate presently incarcerated at the State Correctional Institution at Coal Township, Pennsylvania, commenced this civil action against various individuals and/or agents employed with the Pennsylvania Department of Corrections (DOC) claiming that Defendants denied him access to a colostomy reversal and, therefore, are liable pursuant to the Civil Rights Act of 1871, 42 U.S.C. § 1983. The matter was referred to a United States magistrate judge for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and the Local Rules for Magistrate Judges.

On August 10, 2010, Defendants filed a Motion to Dismiss the Complaint (ECF No. 24). On February 22, 2011, the Court granted Defendants' Motion to Dismiss (ECF No. 24) as to Defendants Beard, Varner, Rozum, Sroka, Gibson, Glunt, and Joseph, and denied it as to Defendants Scharff,

Fogel, Ginchereau, Visinsky, and Thomas. On April 15, 2011, Plaintiff filed a Motion for Partial Summary Judgment and a Brief in Support of that Motion (ECF Nos. 73, 74). Attached to the Brief are two documents wherein Plaintiff forged the signatures of one of the Defendants and counsel for the Defendants in this matter. Also, in typewritten font, he forged the names of the former Attorney General of the Commonwealth of Pennsylvania and the Chief of the Litigation Section of the Attorney General's office, as alleged witnesses to these forged signatures. The document at ECF No. 74-1 purports to be a settlement agreement between Plaintiff and Defendant Thomas, witnessed by then Attorney General Thomas Corbett and counsel, agreeing to payment of \$875,000.00 in settlement of Plaintiff's claims.

In response to this Motion, on April 15, 2011, Defendants filed a Motion for Sanctions pursuant to Fed. R. Civ. Proc. 11 (ECF No. 75) and Exhibits in Support (ECF No. 80). The Exhibits contain declarations from Defendant Denise Thomas and Defendants' counsel Douglas Barbour attesting to the fact that neither individual signed the document that was submitted by Plaintiff in support of his case. The declarations further provide that the date of the alleged signatures was a federal and state holiday and neither individual was at work on that date.

On July 13, 2011, Plaintiff filed a Motion for Preliminary Injunction basically restating his allegations and requesting that DOC send him to an outside hospital for a serious operation (ECF No. 91).

As a result of the pending motions, on September 23, 2011, the magistrate judge filed a Report and Recommendation recommending that Plaintiff's Motion for Preliminary Injunction be denied (ECF No. 99). On September 26, 2011, the magistrate judge filed a Report and Recommendation recommending that Defendants' Motion for Sanctions (ECF No. 75) be granted,

that the Complaint be dismissed with prejudice against all Defendants, and that Plaintiff's Motion for Partial Summary Judgment (ECF No. 73), Plaintiff's Motion for Sanctions (ECF No. 88), and Defendants' Motion for Judgment on the Pleadings (ECF No. 83) all be denied as moot (ECF No. 100). Plaintiff filed several objections to the report and recommendations (ECF Nos. 104, 105, 108 and 109). Plaintiff's Objections do not undermine the recommendations of the magistrate judge.

After *de novo* review of the pleadings and documents in the case, together with the Report and Recommendations, and the Objections thereto, the following order is entered:

AND NOW, this 23rd day of November, 2011;

IT IS HEREBY ORDERED that Plaintiff's Motion for Preliminary Injunction (ECF No. 91) is **DENIED**.

IT IS FURTHER ORDERED that Defendants' Motion for Sanctions (ECF No. 75) is **GRANTED**.

IT IS FURTHER ORDERED that the Complaint is **DISMISSED** with prejudice against the remaining Defendants.

IT IS FURTHER ORDERED that Plaintiff's Motion for Partial Summary Judgment (ECF No. 73), Defendants' Motion for Judgment on the Pleadings (ECF No. 83), and Plaintiff's Motion for Sanctions (ECF No. 88), all are **DENIED** as moot.

IT IS FURTHER ORDERED that the Report and Recommendations dated September 23, 2011 (ECF no. 99), and September 26, 2011 (ECF No. 100) respectively are **ADOPTED** as the Opinions of the Court.

IT IS FURTHER ORDERED that the Clerk of Court mark this case **CLOSED**.

AND IT IS FURTHER ORDERED that pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, Plaintiff has thirty (30) days to file a notice of appeal as provided by Rule 3 of the Federal Rules of Appellate Procedure.

By the Court:

A handwritten signature in black ink, appearing to read "Kim R. Gibson", written over a horizontal line.

Kim R. Gibson
United States District Judge

cc: Daniel Wesley
GB-0430
SCI Somerset
1600 Walters Mill Road
Somerset, PA 15510