

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

ADAM SCOTT MITCHELL,)	Civil Action No. 7:12-cv-00370
Plaintiff,)	
)	
v.)	<u>MEMORANDUM OPINION</u>
)	
DR. ABROKWAH, <u>et al.</u>,)	By: Hon. Michael F. Urbanski
Defendants.)	United States District Judge

Adam Scott Mitchell, a Virginia inmate proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 with jurisdiction vested in 28 U.S.C. § 1343. Plaintiff names as defendants the S.W.V.R.J.A. Duffield Facility (“Jail”); Dr. Abrokwah, the Jail’s doctor; and Amanda Davis, the Jail’s head nurse. Plaintiff alleges that the medical care he received at the Jail violates the Eighth Amendment of the United States Constitution. After reviewing plaintiff’s submissions, the court dismisses the claims against the Jail and terminates it as a defendant.

The court must dismiss any action or claim filed by an inmate if the court determines that the action or claim is frivolous or fails to state a claim on which relief may be granted. See 28 U.S.C. §§ 1915(e)(2), 1915A(b)(1); 42 U.S.C. § 1997e(c). The first standard includes claims based upon “an indisputably meritless legal theory,” “claims of infringement of a legal interest which clearly does not exist,” or claims where the “factual contentions are clearly baseless.” Neitzke v. Williams, 490 U.S. 319, 327 (1989). The second standard is the familiar standard for a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), accepting a plaintiff’s factual allegations as true. A complaint needs “a short and plain statement of the claim showing that the pleader is entitled to relief” and sufficient “[f]actual allegations . . . to raise a right to relief above the speculative level . . .” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (internal quotation marks omitted). Therefore, a plaintiff must “allege facts sufficient to state all

the elements of [the] claim.” Bass v. E.I. Dupont de Nemours & Co., 324 F.3d 761, 765 (4th Cir. 2003).¹

To state a claim under § 1983, a plaintiff must allege “the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law.” West v. Atkins, 487 U.S. 42, 48 (1988). The Jail does not qualify as a “person” for purposes of § 1983 litigation. See, e.g., Will v. Michigan Dep’t of State Police, 491 U.S. 58, 70 (1989); McCoy v. Chesapeake Corr. Ctr., 788 F. Supp. 890, 894 (1992). Accordingly, plaintiff presently fails to state a claim against the Jail upon which relief may be granted, and the Jail is terminated as a defendant, pursuant to 28 U.S.C. § 1915A(b)(1).²

The Clerk is directed to send copies of this Memorandum Opinion and the accompanying Order to plaintiff.

Entered: November 2, 2012

/s/ Michael F. Urbanski

Michael F. Urbanski
United States District Judge

¹ Determining whether a complaint states a plausible claim for relief is “a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009). Although the court liberally construes pro se complaints, Haines v. Kerner, 404 U.S. 519, 520-21 (1972), the court does not act as an inmate’s advocate, sua sponte developing statutory and constitutional claims not clearly raised in a complaint. See Brock v. Carroll, 107 F.3d 241, 243 (4th Cir. 1997) (Luttig, J., concurring); Beaudett v. City of Hampton, 775 F.2d 1274, 1278 (4th Cir. 1985). See also Gordon v. Leeke, 574 F.2d 1147, 1151 (4th Cir. 1978) (recognizing that a district court is not expected to assume the role of advocate for a pro se plaintiff).

² Plaintiff’s claims against the other defendants remain pending before the court.