Haner v. Vt. Dep't of Corr., No. 327-5-09 Wrcv (Eaton, J., July 30, 2009)

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STATE OF VERMONT
WINDSOR COUNTY, SS

Harold Haner, Sr. Plaintiff v. Vermont Department of Corrections Defendant	SUPERIOR COURT Docket No. 327-5-09 Wrcv

DECISION ON MOTION TO DISMISS

The Plaintiff brought suit against the Department of Corrections and MHM Correctional Services alleging negligence arising from his transfer to a correctional facility in Virginia and subsequent assaults against him while in the Virginia facility. Plaintiff alleges he could not speak and had mental health issues at the time of transfer.

At Plaintiff's request, the claims against MHM were dismissed. The Vermont Department of Corrections (DOC) has moved to dismiss the claims against them alleging a statutory right to make the transfer, sovereign immunity and lack of proximate cause.

Motions to dismiss are not favored, and are rarely granted. *Gilman v. Maine Mutual Fire Ins. Co.*, 2003 VT 55, ¶ 14, 175 Vt. 554 (mem.). The purpose of a motion to dismiss is to test the law of the case, not the facts which underlie the complaint. *Kane v. Lamothe*, 2007 VT 91, ¶ 14, 182 Vt. 241. In considering a motion to dismiss, the court assumes all factual allegations in the complaint to be true and gives the benefit of all reasonable inferences to the non-moving party. *Richards v. Town of Norwich*, 169 Vt. 44, 48 (1999). A motion to dismiss should not be granted unless it is beyond doubt that there exist no facts or circumstances which would entitle the plaintiff to relief. *Assoc. of Haystack Property Owners, Inc. v. Sprague*, 145 Vt. 443, 446–47 (1985).

In addition, "courts should be especially reluctant to dismiss on the basis of pleadings when the asserted theory of liability is novel or extreme." *Assoc. of Haystack Property Owners*, 145 Vt. at 447. In particular, courts should remain mindful that when the asserted theory of liability is extreme "or even far-fetched," it is even more important "that the conceptual legal theories be explored and assayed in the light of actual facts, not

a pleader's supposition." *Id*. (quoting *Shull v. Pilot Life Ins. Co.*, 313 F.2d 445, 447 (5th Cir. 1963)).

Despite this deferential standard, a motion to dismiss should be granted where it is meritorious. *O'Connor v. City of Rutland*, 172 Vt. 570 (2001). Here, Plaintiff's complaint can not survive the motion to dismiss.

The DOC is given statutory authority to transfer inmates in their custody. The Commissioner of Corrections has the authority to place inmates where he wishes. 28 V.S.A. § 701(b). Vermont has adopted the Interstate Corrections Compact (28 V.S.A. § 1601 et seq.), which is designed to deal with interstate transfer of prisoners. Vermont has held that the DOC has authority to transfer inmates to facilities located outside of Vermont. *Daye v. State*, 171 Vt. 475 (2000).

That the Plaintiff claims to have mental health issues or that he could not speak at the time of transfer does not affect the analysis. The Commissioner had the authority to make the transfer.

In addition, such transfer was a discretionary function of the Department of Corrections. As such, the Department of Corrections retains sovereign immunity for claims arising out of the exercise of that discretion. 12 V.S.A. § 5601(e)(1).

Furthermore, claims arising out of assaults committed in a Virginia facility, at the hands of inmates within that facility are not proximately caused by the transfer decision. Even assuming some negligence in making the inmate transfer, the assaultive behavior by inmates would break the causal chain and become an intervening cause. In *Johnson v. Cone*, 112 Vt. 459, 464 (1942), the Court stated:

> Our often cited rule in such cases is as stated in *Beatty v. Dunn*, 103 Vt. 340, 343, 154 A. 770, 771, omitting the authorities there cited: "'When negligence is established, liability attaches for all the injurious consequences that flow therefrom until diverted by the intervention of some efficient cause that makes the injury its own, or until the force set in motion by the negligent act has so far spent itself as to be too small for the law's notice.' The difficulty in applying this rule often lies in determining what is an 'intervening cause' therein referred to. The answer to this question is to be found in the character of the intervening act. *** If this, itself, is 'a natural and proper result of the original negligence, it will not necessarily prevent a recovery thereon.' Otherwise, it will. Such an efficient intervening cause, in order to stand as the responsible cause of the ultimate result, must be a new and independent force or agency breaking the chain of causal connection between the original wrong and that result. *** Thus it is that the negligence of a third person may or may not amount to an efficient intervening cause. If it is something that, in the eye of the law, the person charged was bound to anticipate, the causal connection is not broken; otherwise, the chain of causation is broken." See, also, *Bennett v. Robertson*, 107 Vt. 202, 209, 177 A.

625, 98 A.L.R. 152; *Wagner, Adm'r v. Village of Waterbury*, 109 Vt. 368, 377, 196 A. 745; *Meyette v. Canadian Pacific Ry. Co*., 110 Vt. 345, 353, 6 A.2d 33.

In this case, it can not be gainsaid that assaultive behavior by other inmates in the Virginia correctional facility was an intervening cause breaking the chain of causation concerning the negligence, should any have existed, in making the transfer and the injuries of which Plaintiff complains.

For the reasons stated herein, the Motion to Dismiss filed by the DOC is **GRANTED**. Claims against MHM having been previously dismissed, this is a final order pursuant to V.R.C.P. 54.

Dated at Woodstock this 30th day of July, 2009.

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Harold E. Eaton, Jr.
Superior Court Judge