

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

JAMES H. SIMONSON,)
)
 Plaintiff)
)
 v.) Civil No. 96-0129-B
)
 BRYAN T. LAMOREAU, et al.,)
)
 Defendants)

RECOMMENDED DECISION

Plaintiff has filed this *pro se* Complaint pursuant to 42 U.S.C. § 1983. His Application to Proceed *In Forma Pauperis* has been granted. However, the Court concludes that, in several respects, the Complaint is frivolous or fails to state a claim such that dismissal of those portions of the Complaint is appropriate under 28 U.S.C. § 1915(d).

Plaintiff alleges that, while a pretrial detainee at the Kennebec County Jail, he was beaten and refused medical care by various officials at the Jail. However, as to several of the named Defendants, Plaintiff has failed to allege personal involvement in any of the actions giving rise to the Complaint.

First, Plaintiff alleges that the medical company which contracts to provide medical services to the Kennebec County Jail is liable by virtue of its position as employer of the Jail's Nurse and Physician's Assistant. However, there is no *respondeat superior* liability under section 1983. *Monell v. Department of Soc. Serv.*, 436 U.S. 658, 691 (1978). Defendant may only be held liable for its own acts or omissions. *Id.* Accordingly, Plaintiff's claims against this Defendant are properly dismissed.

Second, Plaintiff asserts that Defendant Lohan is liable because she misplaced a videotape of the incident which Plaintiff believes would have supported his claims. Plaintiff has failed to identify which of his constitutional rights were violated by this action, and the Court is unable to do so. Defendant Lohan is also properly dismissed.

Third, Plaintiff alleges that Defendant Taylor, a nurse servicing inmates at the Kennebec County Jail, is liable because she failed to prevent the physician's assistant from refusing to treat Plaintiff's injuries. This allegation simply fails to state a constitutional cause of action.

Finally, Plaintiff alleges that Defendants Lamoreau and Fore, the Sheriff and Jail Administrator, are liable "because they failed to properly train, supervise, direct and control the actions of subordinates who caused this punishment and injuries." Complaint at 11. Such a claim rises to the level of a constitutional violation only if the failure to train results from the defendants' "deliberate indifference" to a plaintiff's constitutional rights. *City of Canton v. Harris*, 489 U.S. 378, 388 (1989); see *Gutierrez-Rodriguez v. Cartagena*, 882 F.2d 553, 562 (1st Cir. 1989) ("deliberate, reckless or callous" indifference required under section 1983). In this case, Plaintiff's allegation of 'improper training and supervision' does not meet that standard. Accordingly, Defendants Lamoreau and Fore are properly dismissed.

Conclusion

For the foregoing reasons, I hereby recommend the Court DISMISS Plaintiff's claims against Defendants Lamoreau, Fore, Lohan, Taylor, and "medical company." I further recommend that Plaintiff be permitted to proceed on his claims against Defendants Skawinski, Hatch, Veilleux, Skiddell, and Chicon.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Eugene W. Beaulieu
United States Magistrate Judge

Dated in Bangor, Maine on June 17, 1996.