

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ALFRED HASENFUS, et al.,)
)
 Plaintiffs)
)
v.) Civil No. 98-0091-B
)
L. ROGER LAJEUNESSE, et al.,)
)
 Defendants)

RECOMMENDED DECISION

Plaintiffs Alfred and Gale Hasenfus, individually and o/b/o Jamie Hasenfus, sue officials of the Winthrop Middle School, the Winthrop Board of Education, and the town of Winthrop, under both federal and state law. Specifically, they seek damages for Defendants' alleged failure to prevent a suicide attempt at the Winthrop Middle School by Plaintiff Jamie Hasenfus, who was then 14 years of age. Plaintiffs bring their federal claims under 42 U.S.C. § 1983, and invoke this Court's federal question jurisdiction on the basis of those claims.

Pending before the Court are Motions to Dismiss filed separately on behalf of the Town of Winthrop and the "School Defendants."¹ Plaintiff has responded to both

¹ Included in this group are Defendant LaJeunesse, Superintendent of the Winthrop Schools, Defendant Knowles, Principal of the Middle School, Carlos Kempton, a teacher at the Middle School, and the Winthrop Board of Education.

Motions, and the time for reply has expired with the School Defendants having filed a reply.

1. The School Defendants' Motion to Dismiss.

The School Defendants move to dismiss Plaintiffs' federal claims pursuant to Federal Rule of Civil Procedure 12(b)(6) for Plaintiffs' failure to allege a violation of a federal right. The factual averments of Plaintiff's Complaint allege generally that the School Defendants were aware of a rash of recent suicide attempts at the Middle School and of Plaintiff Jamie Hasenfus's tender emotional state. Despite this awareness, Plaintiffs allege the school officials did nothing to prevent her suicide attempt, which occurred following Defendant Kempton's dismissal of Jamie from his gym class without supervision or other direction. The essence of Defendant's argument is that even if true, these facts, indulging all reasonable inferences in Plaintiffs' favor, nevertheless fail to allege a violation of a constitutional right, as is required under Section 1983.

The Court agrees. The United States Supreme Court has held that the Constitution does not as a general rule insure the state will provide a minimal level of protective services to its citizens. *DeShaney v. Winnebago County Dept. of Soc. Serv.*, 489 U.S. 189, 196 (1989). The exception to this rule is that "when the State takes a person into its custody and holds him there against his will, the Constitution

imposes upon it a corresponding duty to assume some responsibility to his safety and general well-being." *Id.* at 199-200. This Court has interpreted the exception strictly, requiring a plaintiff to allege involuntary physical control to the extent that she would have been barred from leaving had she tried. *Bushey v. Derboven*, 946 F. Supp. 96, 98 (D. Me. 1996). This strict reading comports with the Supreme Court's rationale for the custody requirement:

when the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs -- e.g., food, clothing, shelter, medical care, and reasonable safety -- it transgresses the substantive limits on state action set by the Eighth Amendment and the Due Process Clause. *See Estelle v. Gamble, supra*, 429 U.S., at 103-104, 97 S. Ct. at 290-291 [regarding prison inmates]; *Youngberg v. Romeo, supra*, 457 U.S., at 315-316, 102 S. Ct., at 2457-2458 [regarding involuntarily committed mental patients]. *The affirmative duty to protect arises not from the State's knowledge of the individual's predicament or from its expressions of intent to help him, but from the limitation which it has imposed on his freedom to act on his own behalf.*

DeShaney, 489 U.S. at 200 (emphasis added).

The question in this case is whether the State's compulsory education law, combined with the notion of school officials standing *in loco parentis*, or "in the place of a parent," over the children in their daily care, renders a student's attendance at school a form of "custody" sufficient to impose upon those officials an affirmative duty to protect the student from private harm. In each case surveyed, courts

concluded that compulsory school attendance does not amount to sufficient restraint to give rise to that duty. *Eg., D.R. v. Middle Bucks Area Voc. Sch.*, 972 F.2d 1364 (3rd Cir. 1992); *J.O. v. Alton Community Unit Sch. Dist. 11*, 909 F.2d 267 (7th Cir. 1990); *Dorothy J. v. Little Rock Sch. Dist.*, 794 F. Supp. 1405 (E.D. Ark. 1992).² This Court agrees.

Compulsory school attendance does not deprive the student, or her parents, of the ability to care for her own basic human needs. Even if the student herself feels the attendance to be involuntary, and even if school officials would prevent the student from leaving of her own accord, no truancy law would prohibit a parent removing a child from school during the day as necessary for medical care and the like. At the close of the day, the student returns home. This situation is quite distinguishable from that of incarcerated or involuntarily committed persons, who have no one but state officials to satisfy their basic needs and protect them from harm.

Plaintiffs' alternative theory, that Defendants may be held liable because their affirmative actions placed Jamie in harm's way, fares no better. This claim is based upon a comment in *DeShaney* that defendants in that case had not created the dangers faced by the child, nor had it rendered him more vulnerable to those dangers.

² See *D.R. v. Middle Bucks Area Voc. Tech. Sch.*, 972 F.2d 1364 (3rd Cir. 1992), for a particularly comprehensive analysis of this issue.

DeShaney, 489 U.S. at 201. The Court does not agree, however, that the acts alleged by Plaintiffs increased the risk to Jamie. *See Middle Bucks*, 972 F.2d at 1375 ("In both cited cases [to which plaintiffs referred], the states' acts in withholding vital information served to increase the risks of harm"). Jamie was apparently at risk by virtue of the rape, her participation in the subsequent criminal trial, and perhaps her involvement with other students who had recently attempted suicide. The school officials did not increase that risk by failing to inform her parents of the rape; indeed, Jamie testified at the criminal trial, so her parents obviously learned of the rape prior to her suicide attempt. Nor can it be said Defendant Kempton contributed to it by dismissing Jamie from gym class. There is no evidence he knew of Jamie's emotional state from his wife, who had counselled Jamie following the rape. Finally, Defendant Knowles' alleged publication of the suicide attempt did not increase the risk; the suicide attempt had already occurred.

As was true in *DeShaney*, "[t]he most that can be said of the state functionaries in this case is that they stood by and did nothing when suspicious circumstances dictated a more active role for them." *DeShaney*, 489 U.S. at 203. Indeed, Plaintiffs specifically allege that the acts they assert render Defendants liable were done "pursuant to failures of the Town and its Board of Education to implement a teenage suicide prevention policy or program and failure to train its employees in the same,

and a policy of ignoring or not responding to each successive suicide attempt." Pltfs. Memo. at 10. Plaintiffs have asserted claims under state law which may well address the alleged failure to act, but the Constitution simply does not do so. The School Defendants' Motion to Dismiss Plaintiffs' Federal Claims pursuant to Federal Rule of Civil Procedure 12(b)(6) is appropriately granted.

2. *The Town of Winthrop's Motion to Dismiss.*

The Town of Winthrop moves to dismiss on the slightly different theory that Plaintiffs have failed to allege a violation of a "clearly established constitutional right." If, in fact, there is no "clearly established constitutional right" to protection from school officials, Defendants are entitled to qualified immunity.

Qualified immunity shields government officers "'from civil damages liability as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated.'" *Hegarty v. Somerset County*, 53 F.3d 1367, 1373 (1st Cir. 1995) (quoting *Anderson v. Creighton*, 483 U.S. 635, 638 (1987)).

The qualified immunity inquiry has two prongs. It is the first prong with which we are concerned in this case, which requires us to determine whether the right asserted by Plaintiffs was clearly established at the time of the contested events. *Id.* at 1373. In light of our conclusion on the School Defendants' Motion to Dismiss that there is no constitutional right to protection from school officials, the Court concludes

that such a right is not clearly established for purposes of qualified immunity analysis. Defendant Town of Winthrop's Motion to Dismiss should also be granted.

Conclusion

For the foregoing reasons, I hereby recommend Defendants' Motions to Dismiss Plaintiffs' Federal Claims (Docket Nos. 2 & 3) be GRANTED in their entirety. I further recommend Plaintiffs' remaining Counts, which arise under state law, be DISMISSED for lack of jurisdiction. *Astrowsky v. First Portland Mort. Corp.*, 887 F. Supp. 332, 337 (D. Me. 1995).

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 on July 23, 1998.