

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

MICHAEL L. CHASSE,)
)
 Plaintiff)
)
 v.) Civil No. 99-0119-B
)
 DAVID CLEWLEY, et al.,)
)
 Defendants)

RECOMMENDED DECISION

Defendant Jennings moves for dismissal of Plaintiff’s Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). Specifically, Defendant argues that Plaintiff may not maintain an action against him under 42 U.S.C. section 1983 solely on the basis of Defendant’s supervisory position with Allied Resources for Correctional Health. Defendant is correct in this assertion. There is no *respondeat superior* liability under section 1983. *Monell v. Department of Soc. Serv.*, 436 U.S. 658, 691 (1978). “Liability in damages can only be imposed upon officials who were involved personally in the deprivation of constitutional rights.” *Ramirez v. Colon*, 21 F. Supp. 2d 96, 98 (D.P.R. 1997) (citing *Pinto v. Nettleship*, 737 F.2d 130, 132 (1st Cir. 1984)). In the case of inadequate medical care, for example, “[t]he requisite personal involvement of a prison official may be established by showing that the official knew of the prisoner’s need for medical care yet failed to provide the same.” *Id.*

Plaintiff's Complaint alleges simply that Defendant Jennings has a supervisory position with Allied Resources for Correctional Health, but that the scope of his duties is not known to Plaintiff. Plaintiff clearly is not alleging that Defendant Jennings was in any way personally involved in decisions regarding Plaintiff's health care at the Penobscot County Jail. Plaintiff's Motion to Amend Complaint, filed in apparent response to the pending Motions to Dismiss, still contains no assertion that liability should attach to Defendant Jennings by virtue of his own acts or omissions.

In addition, Plaintiff has not responded to the Motion to Dismiss. In this District, a failure to respond within the time period provided by the local rules is construed to waive objection to a motion. D. Me. R. 7(b). While the Court might construe Plaintiff's Motion to Amend Complaint as a response to the Motion to Dismiss, in this case amendment would appear to be futile. Accordingly, the Motion to Dismiss is appropriately granted for Plaintiff's failure to object.

Conclusion

I hereby recommend Defendant Jennings' Motion to Dismiss be GRANTED.

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: January 12, 2000