

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

MICHAEL R. CHAPMAN)	
)	
Plaintiff)	
)	
v.)	Civil No. 04-103-B-H
)	
MAINE DEPARTMENT OF)	
CORRECTIONS, et. al.,)	
)	
Defendants)	

**RECOMMENDED DECISION ON MOTION TO DISMISS AND
ORDER ON MOTION TO AMEND**

Michael Chapman has filed a 42 U.S.C. §1983 action complaining that correctional and medical personnel at the Maine State Prison were deliberately indifferent in responding to his serious hand injury in contravention of the Eighth Amendment of the United States Constitution. The correctional defendants, who have not yet answered the complaint, have filed a motion to dismiss the complaint as against the Maine Department of Corrections, Martin Magnusson, and Jo-Ann Laggan. (Docket No. 11.) In response, Chapman has filed an objection to that motion (Docket No. 12) and a motion for leave to amend the complaint to clarify that he is suing Commissioner Magnusson in his individual capacity vis-à-vis Count II (Docket No. 13). I now **Grant** the motion to amend and recommend that the Court **Grant in part and deny in part** the motion to dismiss.

Discussion

As the First Circuit has recently held, reading the writing on the wall left by Swierkiewicz v. Sorema N. A., 534 U.S. 506, 508 (2002), to survive a motion to dismiss for failure to state a claim a 42 U.S.C. § 1983 complaint:

need only include "a short and plain statement of the claim showing that the pleader is entitled to relief." This statement must "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Conley v. Gibson, 355 U.S. 41, 47 (1957). State of mind, including motive and intent, may be averred generally. Cf. Fed.R.Civ.P. 9(b) (reiterating the usual rule that "[m]alice, intent, knowledge, and other condition of mind of a person may be averred generally"). In civil rights actions, as in the mine-run of other cases for which no statute or Federal Rule of Civil Procedure provides for different treatment, a court confronted with a Rule 12(b)(6) motion "may dismiss a complaint only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Hishon v. King & Spalding, 467 U.S. 69, 73 (1984).

Educadores Puertorriquenos en Accion v. Hernandez, 367 F.3d 61, 66 (1st Cir. 2004).

With respect to his general allegations, Chapman states that on June 15, 2002, while an inmate at the Bolduc Correctional Facility, Chapman was working with a table saw and experienced a traumatic injury to the second and third digits of his right hand. He was transported to Penobscot Bay Medical Center by security for treatment. His injuries required the following: surgical amputation of the right index finger to the first joint with application of an aluminum volar gutter splint; suture of a deep laceration to right middle finger with application of a stack splint; primary repair of long extensor tendons; and suture of laceration to the right ring finger.

Chapman was transported back to the Bolduc Correctional Facility with instructions to keep the original dressing on until follow-up with Penobscot Bay Orthopaedic Hand and Sports Medicine Associates (PBOH&SMA) in five days. On June

21, 2002, he was seen in follow-up by Dr. Richard Beauchesne, M.D., an orthopedist at PBOH&SMA, who recommended that he should examine the wounds in a few days; that Chapman should have his sutures removed twelve to fourteen days from the date of surgery; that antibiotic therapy should continue for ten days from the date of injury; and that the splint should remain in place for six weeks. A copy of these instructions was provided to Prison Health Services. On June 24, 2002, Chapman was seen in follow-up by Stephen Bennett, PA-C at PBOH&SMA, who recommended that Chapman return for suture removal twelve to fourteen days after the date of surgery.

Laggan

In the motion to dismiss, Laggan claims that allegations against her in her individual capacity fail to state a claim. With respect to Laggan, an L.P.N. at the Bolduc facility, Chapman alleges that Laggan cancelled the PBOH&SMA appointment for suture removal because the sutures had already been removed in-house by defendant Matthew Turner and Prison Health Services would not authorize the visit (Compl. ¶¶18, 19.) The splints, ordered to be maintained for six weeks by PBOH&SMA, were discontinued at the time of the suture removal at Bolduc because Turner failed to order continuation of the splints. Based upon this failure by Turner to order continuation of the splints, Laggan told Chapman that he did not need the splints any longer because his fingers were not broken. (*Id.* ¶ 20.) On August 21, 2002, prison administration called Prison Health Services to request an evaluation of Chapman's finger in response to family concerns regarding a possible infection. Laggan reassured Chapman that an orthopedic consult would occur soon. (*Id.* ¶ 26.) However, prison security did not transport Chapman to the September 10, 2002, appointment at PBOH&SMA and Laggan rescheduled this

appointment from September 10, 2002, to September 30, 2002, which appointment was again rescheduled to October 8, 2002, seventy-six days after the consultation was ordered. (Id. ¶¶ 27, 28.) The complaint goes on to allege the worsened condition of Chapman's finger due to these delays.

In response to the defendants' argument that these allegations pertaining to Laggan do not state a claim under the Eighth Amendment, Chapman responds: "What the Defendants fail to convey in the Motion to Dismiss is that Nurse Laggan is licensed by the State of Maine and required in her capacity as a Licensed Practical Nurse to act on her own accord with regard to patient assessment and clinical intervention. It is in this regard that Nurse Laggan abuses her authority and becomes deliberately indifferent to the seriousness of Mr. Chapman's medical needs." (Pl.'s Obj. Mot. Dismiss at 4.) Chapman argues: "The Complaint states a claim upon which relief may be granted as it demonstrates that Nurse Laggan abused her authority created by the State when she declined to place Mr. Chapman's stack splint on his finger contrary to the instructions of the Orthopaedic Surgeon." (Id.)

Of Eighth Amendment prisoner medical care claims, the United States Supreme Court said in Estelle v. Gamble,

an inadvertent failure to provide adequate medical care cannot be said to constitute "an unnecessary and wanton infliction of pain" or to be "repugnant to the conscience of mankind." Thus, a complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment. Medical malpractice does not become a constitutional violation merely because the victim is a prisoner. In order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs. It is only such indifference that can offend "evolving standards of decency" in violation of the Eighth Amendment.

429 U.S. 97, 105-06 (1976). In Farmer v. Brennan the Court clarified the deliberate indifference standard, holding "that a prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." 511 U.S. 825, 837 (1994).

Even under the liberal pleading standard of Swierkiewicz/ Educadores Puertorriquenos en Accion, I must concur with the defendant that this complaint does not state a claim against Laggan for deliberate indifference. At most, Chapman has stated a claim of negligence on the part of Laggan in acquiescing in Turner's failure to continue the splint order rather than following the order by the doctor at PBOH&SMA and I conclude that no relief could be granted as against Laggan based on these allegations simply because she is licensed by the State and could have taken a more proactive approach vis-à-vis the splints. The complaint simply alleges that Laggan followed the medical orders of her superior. It does not allege that she failed to transport Chapman, failed to schedule or reschedule appointments at his behest, or was in any way deliberately indifferent to his medical needs.

Magnusson

With respect to Magnusson, Chapman states that he wishes to amend his complaint to clarify that he is suing Magnusson in his individual capacity. Leave to amend "shall be freely given when justice so requires." Fed. R. Civ. P. 15(a).

In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to

cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.—the leave sought should, as the rules require, be “freely given.”

Foman v. Davis, 371 U.S. 178, 182 (1962).

The defendants argue that the amendment should not be allowed because it is futile. Chapman indicates, in response, that he is seeking to hold Magnusson accountable under a theory of supervisory liability for the constitutional deprivations worked by the other defendants.

On this score the First Circuit has stated:

A supervisor can be held liable "only on the basis of her own acts or omissions." Figueroa v. Aponte-Roque, 864 F.2d 947, 953 (1st Cir.1989). As we have explained:

[A] state official ... can be held liable ... if (1) the behavior of [a] subordinate[] results in a constitutional violation and (2) the official's action or inaction was "affirmative[ly] link[ed]" to that behavior in that it could be characterized as "supervisory encouragement, condonation or acquiescence" or "gross negligence amounting to deliberate indifference."

Sanchez v. Alvarado, 101 F.3d 223, 227 (1st Cir. 1996); See also Pinto v. Nettleship, 737 F.2d 130, 132 (1st Cir. 1984) (discussing supervisory liability in an Eighth Amendment prison case). The "affirmative link" requirement contemplates proof that the supervisor's conduct led inexorably to the constitutional violation. Hegarty v. Somerset County, 53 F.3d 1367, 1379 -80 (1st Cir. 1995).

As well as faulting Magnusson for his responsibility for an unconstitutional policy and custom, Chapman relies on his allegation that Magnusson was deliberately indifferent in supervising and training subordinates who committed the wrongful acts described and that these acts and omissions proximately caused Chapman's suffering, injuries, and deformity. (Compl. ¶¶ 42, 43.) He alleges that Magnusson failed to ensure

the provision of constitutionally adequate medical care to Chapman and that Magnusson knowingly disregarded an excessive risk to Michael's health and extremity, and knowingly subjected him to pain, further physical injury and deformity, and emotional injury. (Id. ¶ 45.) These allegations must be read in the context of Chapman's overall complaint setting forth allegations of the correctional and medical staff's inappropriate response to his hand injury. Although bare-bone with respect to Magnusson, Chapman meets this pleading burden under Swierkiewicz/ Educadores Puertorriquenos en Accion; he has given the defendants notice of the nature of his claim against Magnusson and it is not clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.¹ Accordingly, I do not view the amendment as futile and will allow Chapman leave to file an amended complaint to reflect he is suing Magnusson in his individual capacity apropos Count II.

With respect to the Department of Corrections and the official capacity claims, Chapman does not contest dismissal of these claims.

¹ The defendants argue that in Pelletier v. Magnusson, 195 F. Supp.2d 214 (D. Me. 2002) this Court "indicated that failure to train and policy claims are not available against state officials." (Def.'s Obj. Mot Amend at 3.) In that case I did observe that the plaintiff was trying to hold Magnusson and others "liable in their individual capacities for what is really a policy and failure to train claim best articulated in City of Canton v. Harris, 489 U.S. 378 (1989) and relating to municipal liability, not the liability of state supervisory officials. 195 F. Supp. 2d at 240 n. 26 (citing Sanville v. McCaughtry, 266 F.3d 724, 739-40 (7th Cir.2001)). See also Farmer v. Brennan, 511 U.S. 825, 840-42 (1994). In Pelletier I did not mean to suggest that a state official can never be held individually responsible as a supervisor when the supervisor's action or inaction leads to an Eighth Amendment violation like the one alleged by Chapman if the appropriate evidence can be generated.

Chapman's pleading is so sparse that it is impossible for me to imagine what specific facts could possibly underlay this assertion vis-à-vis Commissioner Magnusson. It remains clear to me that Magnusson individually could not be held liable under a policy and failure to train City of Canton theory. However, under a notice pleading standard Chapman still might demonstrate that Magnusson was somehow affirmatively linked to the conduct described and that his action or inaction led inexorably to the constitutional violations alleged; he has put Magnusson on notice that this is his intent. It may seem ironic that as to Laggan -- about whom Chapman has offered specific facts -- I am recommending dismissal for failure to state a claim, yet I am not recommending that result as to Magnusson, about whom only the most bare bone fact of his responsibility as supervisor has been pled. However, Chapman's response to Laggan's motion makes it crystal clear that these specific facts are the only allegations upon which he relies in attempting to state a claim against Laggan.

Conclusion

For these reasons, I **GRANT** the motion to amend and recommend that the Court **GRANT** the motion to dismiss as to Laggan and the Department of Corrections and the official capacity claims against any defendant and **DENY** the motion dismiss with respect to Magnusson.

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) 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.

/s/ Margaret J. Kravchuk
U.S. Magistrate Judge

Dated September 10, 2004

CHAPMAN v. MAINE DEPARTMENT OF
CORRECTIONS et al

Assigned to: JUDGE D. BROCK HORNBLY

Referred to:

Demand: \$

Lead Docket: None

Related Cases: None

Case in other court: None

Cause: 42:1983 Prisoner Civil Rights

Date Filed: 06/15/04

Jury Demand: Both

Nature of Suit: 550 Prisoner: Civil
Rights

Jurisdiction: Federal Question

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