

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)	

**DECISION RECOMMENDING THAT THE COURT REFUSE
DEFENDANT MAGNUSSON'S APPLICATION FOR SUMMARY JUDGMENT**

Martin Magnusson is the Commissioner of Corrections for the State of Maine. He is one of the defendants in this civil rights action filed by Michael Chapman. Chapman alleges that he was given inadequate medical care at the Bolduc Correctional Facility where he was an inmate. Specifically, after Chapman's right hand was seriously injured in a table saw accident the staff for the health care provider at Bolduc, Prison Health Services, prematurely removed a splint and sutures resulting in permanent deformity and loss of mobility. Magnusson, having had a motion to dismiss denied on September 10, 2004, now moves for summary judgment. (Docket No. 24.) Chapman has responded with pleadings objecting to the motion. He has also filed a motion pursuant to Federal Rule of Civil Procedure 56(f) seeking this court's refusal of the summary judgment application. (Docket No. 28.) I recommend that the Court **GRANT** Chapman's motion and refuse Magnusson's motion for summary judgment.

Discussion

In my decision on the defendants' motion to dismiss I addressed Chapman's motion to amend to name Magnusson in his individual capacity as a supervisor. I allowed the amendment because Magnusson could theoretically be held accountable on his own acts or omission if Chapman could demonstrate that the behavior of one of his subordinates resulted in a constitutional violation and that Magnusson's action or inaction was affirmatively linked to that behavior. Chapman v. Maine Dept. of Corrections, Civ. No. 04-103-B-H, 2004 W L 2011448, *3 -4 (D. Me. Sep. 10, 2004).

In his affidavit in support of his motion asking the court to refuse the application for summary judgment, Chapman's attorney states:

Without the ability to conduct formal discovery regarding DOC [Department of Corrections] Policies and Procedures, DOC policy guidelines, the activities of the Medical Audit Committee responsible for the medical program, the degree of Commissioner Magnusson's oversight and policy design, the number of other cases for which complaints have been filed by inmates related to the adequate provision of healthcare, authorization practices for off-site utilization, cost containment initiatives and incentives, clinical decision making, and other practices that impact the provision of health services, proper and effective response in opposition to Defendant's Motion for Summary Judgment will be significantly more burdensome than justice should allow.

(Mot. Refusal Summ. J. ¶ 10.)¹

With respect to Magnusson's supervisory responsibilities, in his statement of additional facts, Chapman includes the following factual statements. The contract between the DOC and Prison Health Services (PHS) defines a Medical Audit Committee

¹ Although Chapman continues to focus on what policy was in place vis -à-vis inmate health care, I take him to be seeking this information to establish the scope of Magnusson's supervisory responsibilities for the provision of healthcare at Bolduc. Magnusson cannot be sued in an official capacity on a custom and policy theory because such a claim is really a claim against the State of Maine which, in turn, is immune from such suits because of its sovereign status. See Wisconsin Dept. of Corr. v. Schacht, 524 U.S. 381, 384 (1998) (citing Kentucky v. Graham 473 U.S. 159, 165-167 & n.14 (1985)).

whose responsibility it is for recommending, within DOC guidelines, policies and procedures that are necessary for the operation of the medical program, and are not to be implemented unless and until approved by Magnusson. This oversight necessarily creates a role for Magnusson in the provision of health care to the inmates and supervision of the medical providers. Under the contract, reports are to be submitted to the DOC on a monthly basis addressing utilization review of health care service and costs. Under the contract, when complaints are raised by the inmates or anyone, PHS is to deal with them in accordance with DOC regulations. A quality assurance program is required of PHS, which oversight is the responsibility of the DOC.

Some of Chapman's factual statements suggest that Magnusson had actual notice that PHS was not providing adequate healthcare to inmates. For instance, Leonard Sherwood is a physician assistant who worked for PHS until April of 2001. Sherwood notified Magnusson, among many other people, that he was resigning for being asked to practice in an unsafe manner among many other observations and concerns. Sherwood's letter makes clear that Magnusson had, at a minimum, knowledge that inmates faced a substantial risk of serious harm. In Chapman's view Magnusson's inaction is affirmatively linked to the allegedly unconstitutional conduct of PHS employees Dr. Englander and Matthew Turner.

As for Magnusson, in his statement of material fact, he states that he relied on Prison Health Services to meet the terms of the contract it entered into with the Department of Corrections to provide medical services. A physician assigned by PHS provided or supervised medical services to prisoners at each correctional facility and that the overall responsibility for insuring the training of medical personnel and the provision

of medical services for DOC prisoners belonged to the Contract Administrator for Prison Health Services. The record support for these propositions is Magnusson's affidavit. In his opposing statement of material fact Chapman states that he believes these statements to be untrue but that he is unable to refute them because the discovery process has not begun and that Magnusson's affidavit is not the best available evidence on these points.

Federal Rule of Civil Procedure 56(f) provides:

(f) When Affidavits are Unavailable. Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

Fed. R. Civ. P. 56(f). The First Circuit explained in Velez v. Awning Windows, Inc."

To benefit from the protections of Rule 56(f), a litigant ordinarily must furnish the nisi prius court with a timely statement--if not by affidavit, then in some other authoritative manner--that (i) explains his or her current inability to adduce the facts essential to filing an opposition, (ii) provides a plausible basis for believing that the sought-after facts can be assembled within a reasonable time, and (iii) indicates how those facts would influence the outcome of the pending summary judgment motion. See Vargas-Ruiz [v. Golden Srch Dev., Inc.], 368 F.3d [1.] 4 [(1st Cir. 2004)]; Paterson-Leitch Co. v. Mass. Mun. Wholesale Elec. Co., 840 F.2d 985, 988 (1st Cir.1988). Such a litigant also must have exercised "due diligence both in pursuing discovery before the summary judgment initiative surfaces and in pursuing an extension of time thereafter." Resolution Trust Corp. v. N. Bridge Assocs., Inc., 22 F.3d 1198, 1203 (1st Cir.1994).

375 F.3d 35, 40 (1st Cir. 2004).

Chapman's attorney has submitted an affidavit that sets forth the areas he wants to explore in discovery and indicates that the facts would relate to Magnusson's liability as a supervisor. There is not yet a scheduling order in this case, and Magnusson has not yet

answered this complaint.² Magnusson has decided to take an early offensive with his preemptive dispositive motion. These motions have required the attention of Chapman's counsel and I can not fault Chapman for a want of due diligence.

Under the circumstance, I believe that it is fair to refuse the motion for summary judgment filed by Magnusson. Given the fact that the parties really have yet to lock horns I do not think holding the motion in abeyance would be an efficient solution as the complexion of the facts in dispute may change considerably after discovery commences.

Conclusion

For these reasons, I recommend that the Court **GRANT** Chapman's Rule 56(f) motion (Docket No. 28) and refuse Magnusson's motion for summary judgment (Docket No. 24) striking it without prejudice. A scheduling order should issue forthwith to control the resolution of this case, as the Prison Health Services defendants have answered.

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.

² Magnusson claims that Chapman could have filed a request through the Freedom of Information Act and instigated formal discovery upon filing his complaint on June 16, 2004. They also claim that the motion for refusal is mute because Chapman has filed a statement of material facts supported by affidavits. In Magnusson's view, Chapman cannot on the one hand claim to be unable to obtain affidavits to detail his opposition and then a week later file the opposing pleadings.

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.

January 31, 2005.

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

CHAPMAN v. MAINE DEPARTMENT OF
CORRECTIONS et al
Assigned to: JUDGE D. BROCK HORNBY
Cause: 42:1983 Prisoner Civil Rights

Date Filed: 06/15/2004
Jury Demand: Both
Nature of Suit: 550 Prisoner: Civil
Rights
Jurisdiction: Federal Question

Plaintiff

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V.

Defendant

**MAINE DEPARTMENT OF
CORRECTIONS**
TERMINATED: 10/12/2004

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Defendant

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MAINE DEPARTMENT OF
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TERMINATED: 10/12/2004

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ATTORNEY TO BE NOTICED

Defendant

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Defendant

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Defendant

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TERMINATED: 10/12/2004

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ATTORNEY TO BE NOTICED

Defendant

**PRISON HEALTH SERVICE
INC**

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ATTORNEY TO BE NOTICED

Defendant

MARTIN A MAGNUSSON
in his individual capacity only

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