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United States District Court, N.D. Illinois, Eastern Division.

WILLIAM KLEIN, LARRY BRADLEY, DENNIS MC KINESS, PAT BREEN, MIKE HOLLINGSWORTH, CARL VON KOEPPEN, JIM TAURISANO, and all others similarly situated, Plaintiffs,
v.
DU PAGE COUNTY, EDWARD LUNDMARK, RICHARD DORIA, EDWARD BURDETT and R. D. RICKETT, Defendants.

No. 85 C 3430. | October 11, 1985.

Opinion

MEMORANDUM

LEIGHTON, District Judge.

***1** Plaintiffs are former inmates of DuPage County jail. They have brought a six-count complaint against DuPage County, its jail superintendent Edward Lundmark, its sheriff Richard Doria, and its chief deputy Edward Burdett. Plaintiff Bradley's personal physician, Dr. R. D. Rickett, is also named as a defendant in Count VI.

Count I is brought under 42 U.S.C. § 1983 and alleges defendants Lundmark, Doria, and Burdett conducted arbitrary strip searches of DuPage County jail inmates without probable cause or reasonable suspicion. This count also asserts the existence of a class of present and former DuPage County Jail inmates who were allegedly subjected to this practice.[1] Count II alleges the strip search practice was a custom or policy of the county. Count III is brought by plaintiff Klein and alleges his eighth and fourteenth amendment rights were violated when he was kept chained to his infirmary bed while he was there for treatment of a gunshot wound. He also alleges defendants failed to provide him with proper medical care during this time. Count IV alleges that the practices complained of in Count III were a policy or custom of DuPage County. Count V is a pendent state law claim for negligence brought by plaintiff Klein against Lundmark, Doria, Burdett and DuPage County for the failure to provide reasonable medical care. Count VI is also a pendent state law claim for negligence, brought by plaintiff Bradley against DuPage County and Dr. R. D. Rickett, his personal physician who had been treating him prior to his incarceration. Bradley alleges that Dr. Rickett, or one of his agents, misinformed the DuPage County jail as to the type of medication he was to receive; and that he was injured as a result of this misinformation.

All defendants have moved to dismiss the complaint. Defendant DuPage County argues, inter alia, that it cannot be liable under a respondeat superior theory, and that plaintiffs have failed to state a claim under Monell. Defendants Lundmark, Burdett, and Doria contend that plaintiff Klein has failed to state a claim in Counts III and V because a claim of medical mistreatment rises to the level of a constitutional violation only when a refusal to provide essential medical care is alleged. Defendant Rickett has moved to dismiss contending this court lacks personal jurisdiction over him because he is a Michigan resident and has had no contacts with the state, and that this court lacks subject matter jurisdiction over the pendent claim because it does not arise out of a common nucleus of operative facts.

Count I

Although the federal rules allow liberal notice pleading, a plaintiff must include the operative facts upon which he bases his § 1983 claim. Rodgers v. Lincoln Park towing Service Inc., No. 84–2823 slip op. at 4 (7th Cir. Aug. 15, 1985). Plaintiffs' conclusory and contradictory allegations of 'routine, arbitrary' strip searches fail to allege sufficient facts to show the possibility of a constitutional violation. Strip searches of persons in custody can be conducted on less than probable cause; the standard is one of reasonableness. Bell v. Wolfish, 441 U.S. 520, 560 (1979). Under Wolfish, the prison's need for security must be balanced against the invasion of the prisoner's privacy rights. Although Wolfish does not validate all strip searches in prisons as a matter of law, it does not necessarily invalidate them either. Roscom v. City of Chicago, 570 F. Supp. 1259, 1262 (N.D. Ill. 1983). Because plaintiffs' claim is wholly devoid of any facts that would indicate the strip searches were unreasonable, the complaint fails to state a claim under § 1983 and must be dismissed.

Counts II and IV

***2** Both Counts II and IV allege claims against DuPage County contending practices complained of in Counts I and III constituted a policy or custom of the county. Under Monell, municipalities can be liable under § 1983 for constitutional violations caused by their official policies or unwritten customs. Monell v. Department of

Social Services of the City of New York, 436 U.S. 658, 690–91 (1978). However, a plaintiff must allege he was injured in some way and that the municipal custom or policy proximately caused his injury. Powe v. City of Chicago, 664 F.2d 639, 643 (7th Cir. 1981). The addition of boilerplate allegations to fulfill Monell's requirement of an official policy will not suffice. Strauss v. City of Chicago, 760 F.2d 765, 767 (7th Cir. 1985). The existence of a policy causing plaintiff's injury is eesential to municipal liability under § 1983 and facts indicating the existence of such policies must be pled. Id. at 768. Plaintiffs here have alleged no facts to support their claims of municipal liability. Cf. Wellman v. Faulkner, 715 F.2d 269, 272 (7th Cir. 1983) (evidence of repeated instances of negligent medical treatment plus evidence of general systemic deficiencies established deliberate indifference of state to medical needs of prisoners); John Does 1–100 v. Boyd, 613 F. Supp. 1514, 1526 (D. Minn. 1985) (practice of strip searches was written policy promulgated by County Sheriff's office). Plaintiffs' failure to allege any facts indicating an official policy or unwritten custom, other than tacking on boilerplate Monell language is fatal to their claims against the county. Accordingly, Counts II and IV are dismissed.

Count III

The failure to provide adequate medical care for prisoners violates the eighth amendment. Wellman, 715 F.2d at 271. However, to state a cognizable claim a plaintiff must allege acts or omissions harmful enough to demonstrate deliberate indifference to a prisoner's serious medical needs. Benson v. Cady, 761 F.2d 335, 341 (7th Cir. 1985) citing Estelle v. Gamble, 429 U.S. 97, 106 (1976). Inadvertent failures to provide adequate care or negligence in treating a particular condition do not rise to the level of a constitutional violation. Id. Here, plaintiff does not allege defendants refused his request for medical treatment. His conclusory allegation that defendants failed to provide adequate medical care does not show a deliberate indifference to medical needs from which a constitutional violation can be inferred. Similarly, plaintiff's claim that he was handcuffed while in the infirmary, although it may evidence a deliberate policy, does not in and of itself demonstrate a deliberate indifference to plaintiff's medical needs. Benson, 761 F.2d at 341 n.1. Plaintiff has alleged no injury resulting from this practice that would show the type of callous indifferences that would implicate his eighth amendment rights. Count III must therefore be dismissed.

Counts V and VI

Counts V and VI are pendent state law claims for negligence. The court in its discretion can dismiss pendent state law claims when the claims under federal law are dismissed. Strack v. Donahue, 535 F. Supp. 772, 775 (N.D. Ill. 1981). Accordingly, the court in its discretion dismisses Counts V and VI.

***3** In summary, plaintiffs' complaint is dismissed in its entirety. This ruling is without prejudice to plaintiffs' filing an amended complaint consistent with this ruling, if they can do so within the dictates of Rule 11, Fed.R.Civ.P.

So ordered,

[1] Plaintiffs have not yet sought class certification. The court will reserve ruling on this question until such time as class certification is sought.