

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

Jedadiah D. Elliott,)
)
Plaintiff,)

C.A. No.: 13C-01-095 JRJ

v.)

Carl C. Danberg, individually;)
Cpl. Rogers, individually;)
William Oettel, individually;)
Ernest McBroom, individually;)
Sussex Violation of Probation)
Center; Sussex Community)
Corrections Center; and, Town of)
Georgetown,)

Defendants.)

ORDER

AND NOW, TO WIT, this 6th day of December, 2013, the Court having heard and duly considered Defendants’ Motion to Dismiss and Plaintiff’s response thereto, **IT IS HEREBY ORDERED THAT** Defendants’ Motion to Dismiss is **GRANTED** for the following reasons:

1. In January 2011, while committed to Sussex Violation of Probation Center, Plaintiff was a member of the road crew detail responsible for cutting down trees at Trapp Pond State Park.¹ Under the supervision of Defendant Cpl. Rogers, Plaintiff

¹ Compl., Trans. ID 48879856, ¶¶ 7-8.

was required to utilize a chainsaw to complete his tree-cutting duties.² While cutting a tree with the chainsaw, a tree snapped and hit Plaintiff in the head, resulting in severe head injuries.³ Plaintiff alleges he was forced to wait until the road crew completed its work before Cpl. Rogers allowed him to seek medical attention.⁴

2. In July 2012, Plaintiff filed suit against the State of Delaware, Department of Correction (“DOC”), and Sussex Violation of Probation Center (“SVOP”), on general claims of “wanton, reckless [and] gross” negligence.⁵ Defendants moved to dismiss on sovereign immunity grounds, which the Court granted with prejudice on December 5, 2012.⁶

3. On January 11, 2013, Plaintiff filed the instant action against several DOC employees in their individual capacities and two DOC entities,⁷ claiming violations of his Eighth Amendment rights under 42 U.S.C. § 1983.⁸ Defendants moved to dismiss under Superior Court Civil Rule 12(b)(6), arguing that: (1) Plaintiff failed to allege each individual defendant’s personal involvement as required for a § 1983 claim;⁹ (2) Defendants are entitled to qualified immunity because Plaintiff failed to

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Elliot v. State, et al.*, 12C-07-301 JRJ, Trans. ID 45537293.

⁶ Trans. ID 48167505.

⁷ At oral argument, Plaintiff conceded that Sussex County Violation of Probation Center and Sussex County Community Corrections Center are the same entity. Plaintiff also acknowledged he mistakenly named the Town of Georgetown as a defendant.

⁸ Compl. ¶ 2.

⁹ Defts.’ Mot. to Dismiss (“Mot.”), Trans. ID 51373277, ¶ 1.

allege an established constitutional claim;¹⁰ (3) SVOP, as a state agency, is not a “person” under § 1983;¹¹ and (4) this action is barred by *res judicata*.¹²

4. On a motion to dismiss, Plaintiff’s burden is low.¹³ The Court considers only the four-corners of the complaint and grants dismissal only when “it appears with reasonable certainty that the plaintiff could not prove any set of facts that would entitle him to relief.”¹⁴ The Court accepts all well-pleaded allegations as true, drawing all factual inferences in the non-moving party’s favor.¹⁵ Under notice pleading, even a vague complaint can be well-pleaded so long as it puts the defendant on notice of the claim brought against it.¹⁶

5. The Court agrees that SVOP cannot be liable under § 1983. A § 1983 claim prohibits deprivations of constitutional rights by persons acting under the color of law.¹⁷ The term “person” has been defined to exclude a state entity.¹⁸ Because Plaintiff cannot recover against SVOP under any circumstances, SVOP is dismissed.

6. As for the named DOC officials, Plaintiff has failed to allege their personal involvement or knowledge. A § 1983 suit requires personal involvement, therefore,

¹⁰ *Id.* ¶ 2.

¹¹ *Id.* ¶ 3.

¹² *Id.* ¶ 4.

¹³ *Doe v. Cahill*, 884 A.2d 451, 458 (Del. 2005).

¹⁴ *Id.* (internal citations omitted).

¹⁵ *Tews v. Cape Henlopen Sch. Dist.*, 2013 WL 1087580, at *1 (Del. Super. Feb. 14, 2013) (Jurden, J.).

¹⁶ *Cahill*, 884 A.2d at 458.

¹⁷ *Monell v. Dept. of Soc. Svcs. Of City of N.Y.*, 436 U.S. 658 (1978).

¹⁸ *Estate of Williams v. Correctional Medical Svcs., Inc.*, 2010 WL 2991589, at *4 (Del. Super. July 23, 2010) (Carpenter, J.) (citing *Will v. Michigan Dept. of State Police*, 491 U.S. 58 (1989)).

liability based on *respondeat superior* is insufficient.¹⁹ As a threshold matter, Plaintiff must allege a named defendant “played an affirmative role in the deprivation of plaintiffs’ rights”²⁰ through personal involvement or actual knowledge.²¹ Plaintiff alleges Defendant Cpl. Rogers was the party directly responsible for Plaintiff.²² Further, Plaintiff conceded that apart from Cpl. Rogers, the other named Defendants are implicated solely in their “supervisory capacity.”²³ Because Plaintiff cannot allege personal involvement or actual knowledge on behalf of Defendants Carl C. Danberg, William Oettel, and Ernest McBroom, they are dismissed.

7. Moreover, Plaintiff’s action is barred by *res judicata*. *Res Judicata* is a bar to subsequent actions brought on the same claim, against the same parties or their privies, on all theories which were or could have been litigated in a prior action.²⁴ The *res judicata* bar applies when: “(1) the original court had jurisdiction over the subject matter and the parties; (2) the parties to the original action were the same as those parties, or in privity, in the case at bar; (3) the original cause of action or the issues decided was the same as the case at bar; (4) the issues in the prior action must have been decided adversely to the appellants in the case at bar; and, (5) the

¹⁹ *Smith v. First Correctional Medical, LLC*, 2005 WL 1953118, at *2 (Del. Super. July 14, 2005) (Witham, J.) (citing *Hyson v. Correctional Medical Services, Inc.*, 2003 WL 292085, at *3 (D.Del. Feb. 6, 2003) (Robinson, J.)).

²⁰ *Pennsylvania v. Porter*, 659 F.2d 306, 336 (3d Cir. 1981).

²¹ *Estate of Williams*, 2010 WL 2991589, at *3 (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009)).

²² Compl. ¶ 4.

²³ Pltf.’s Resp. to Defts.’ Mot. to Dismiss (“Ans.”), Trans. ID 52142705, ¶ 6.

²⁴ *LaPoint v. AmerisourceBergen Corp.*, 970 A.2d 185, 191-92 (Del. 2009).

decree in the prior action was a final decree.”²⁵ Plaintiff contests that the parties are in privity, but otherwise concedes *res judicata* applies.²⁶

8. Privity is a legal question for the Court, requiring a determination of “whether the relationship between the parties is sufficiently close to support preclusion.”²⁷ Privity lies where the relationship “between two or more persons is such that a judgment involving one [...] may justly be conclusive on the others.”²⁸

Citing to a Fourth Circuit Court of Appeals case, Plaintiff argues for a distinction between parties in their individual and official capacities, and maintains that a party sued in an individual capacity is not in privity with a previously sued government agency.²⁹ While a state official sued in their individual capacity is not automatically in privity with their government agency employer, the Third Circuit Court of Appeals recognizes that privity “should be flexible enough to acknowledge the realities of parties’ relationships.”³⁰

9. The Court finds that the individual defendants here have a sufficiently close relationship to the State agencies in Plaintiff’s prior suit to amount to privity, requiring preclusion under *res judicata*. The facts in both suits are the same, with Plaintiff alleging in the 2012 suit that “the conduct of the agents, servants and/or

²⁵ *Id.* at 192.

²⁶ Ans. ¶ 7.

²⁷ *Higgins v. Walls*, 901 A.2d 122, 138 (Del. Super. 2005).

²⁸ *Id.*

²⁹ Ans. ¶ 7 (citing *Brooks v. Arthur*, 626 F.3d 194, 201 (4th Cir. 2010)).

³⁰ *First Options of Chicago, Inc. v. Kaplan*, 913 F.Supp. 377, 384 (E.D.Pa. 1996); accord, *Kohls v. Kenetech Corp.*, 791 A.2d 763, 767-69 (Del. Ch. 2000), *aff’d*, 794 A.2d 1160, 2002 WL 529908, at *1 (Del. *En banc* 2002) (TABLE).

employees,” of DOC caused his injuries. The named individuals here are being sued for the actions alleged in Plaintiff’s prior suit. Plaintiff cannot sue DOC on allegations that its “employees” allegedly failed to act, then after dismissal of that suit, sue the employees individually. To permit such successive litigation would circumvent the public policies behind *res judicata*.³¹

IT IS SO ORDERED.

Jan R. Jurden, Judge

Cc: Prothonotary
Michael D. Bednash, Esquire
Ryan P. Connell, Deputy Attorney General

³¹ See *Jones v. Holvey*, 29 F.3d 828, 830 (3d Cir. 1994); *Williams v. City of Allentown*, 25 F.Supp.2d 599, 604 (E.D. Pa. 1998) (finding privity between two correctional officers and the previously sued prison, the court noted “any other holding would reward litigants who failed, intentionally or not, to include all relevant parties in action and would permit two [...] attempts to try the same cause of action.”).