NNH CV23-5056934 S

SCOTT SMITH

V.

ANGEL QUIROS, ET AL

: SUPERIOR COURT

: JUDICIAL DISTRICT OF
: NEW HAVEN

: AT NEW HAVEN

: MAY 16, 2024

Judicial District of New Haven
SUPERIOR COURT
FILED
MAY 16 2024
CHIEF CLERK'S OFFICE

MEMORANDUM OF DECISION ON MOTIONS TO DISMISS Nos. 103.00, 105.00 AND 111.00

The plaintiff, Scott Smith, is an inmate at Cheshire Correctional Institution. He brings this action against the defendants, Angel Quiros, Jennifer Reis, Debbie Cruz, Ricardo Ruiz, Deborah Broadley and Sandra Charles, in their official and individual capacities.[1] The plaintiff alleges that Ruiz, Broadley and Charles were deliberately indifferent to his medical needs by refusing to provide him with proper care for his arm and back pain. He alleges that Quiros, Reis and Cruz were deliberately indifferent to his medical needs by failing to ensure that he received proper care and failing to punish the health department workers who refused to treat him. He claims that this deliberate indifference constituted cruel and unusual punishment, denial of equal protection and deprivation of due process, in violation of the plaintiff's rights under the first, eighth, ninth and fourteenth amendments to the United States constitution. All of the defendants except for Charles were Connecticut state employees at the time of the events alleged in the complaint. Charles was an employee of a state contractor at that time.

All of the defendants move to dismiss claims against them in their official capacities for damages and declaratory relief. They do not, however, seek to dismiss the claims against them

[1] The plaintiff also brought this action against one other defendant, Erin Doe, a/k/a Erin Ahearn-Leger. At oral argument on April 1, 2024, the plaintiff indicated that he was withdrawing his claims against her. This court has dismissed her as a defendant. No. 115.00.

in their official capacities for injunctive relief. Those motions to dismiss are based on the immunity conferred by the eleventh amendment to the United States constitution.

Defendants Quiros, Reis and Charles also move to dismiss the claims against them in their individual capacities. Quiros, who was the Connecticut Commissioner of Correction, and Reis, who was the warden of Cheshire Correctional Institution, argue that they are protected by federal qualified immunity. Charles, an employee of a contractor with the state, also argues that she is protected by federal qualified immunity. The remaining defendants, Cruz, Ruiz and Broadley, are not seeking to dismiss the individual capacity claims against them.

The plaintiff opposes the motions to dismiss. This court held a remote oral argument on April 1, 2024 at which the self-represented plaintiff and counsel for the defendants all participated.

This court has no subject matter jurisdiction over claims that are barred by immunity. *Markley* v. *Dept. of Public Utility Control*, 301 Conn. 56, 64, 23 A.3d 668 (2011). "Subject matter jurisdiction is the power of the court to hear and determine cases of the general class to which the proceedings in question belong." (Internal quotation marks omitted.) *Tolly* v. *Dept. of Human Resources*, 225 Conn. 13, 29, 621 A.2d 719 (1993). Once subject matter jurisdiction has been raised, the court must determine whether it has jurisdiction "before it can move one further step in the cause; as any movement is necessarily the exercise of jurisdiction." (Internal quotation marks omitted.) *Schaghticoke Tribal Nation* v. *Harrison*, 264 Conn. 829, 839 n.6, 826 A.2d 1102 (2003).

"[I]t is the burden of the party who seeks the exercise of jurisdiction in his favor ... clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute .... [I]n determining whether a court has subject matter jurisdiction, every presumption favoring

jurisdiction should be indulged." (Citations omitted; internal quotation marks omitted.) *Wilcox* v. *Webster Ins., Inc.*, 294 Conn. 206, 213-14, 982 A.2d 1053 (2009).

"A motion to dismiss properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court .... A court deciding a motion to dismiss must determine not the merits of the claim or even its legal sufficiency, but rather, whether the claim is one that the court has jurisdiction to hear and decide."[2] (Citation omitted.) *Godbout* v. *Attanasio*, 199 Conn. App. 88, 95, 234 A.3d 1031 (2020).

Depending on the record before it, a trial court ruling on a motion to dismiss for lack of subject matter jurisdiction may decide that motion on the basis of: "(1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts .... Different rules and procedures will apply, depending on the state of the record at the time the motion is filed ...." (Citation omitted.) *Conboy* v. *State*, 292 Conn. 642, 650-51, 974 A.2d 669 (2009). Here, the defendants have not provided the court with any additional evidence to consider in addition to the complaint. Therefore, the court will decide these motions based upon the complaint alone. This requires the court to "consider the allegations of the complaint in their most favorable light .... In this regard, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader." (Citation omitted.) Id. at 651.

---

[2] Charles also argues that the allegations against her are not sufficient. In Connecticut state practice, sufficiency is challenged by a motion to strike, not a motion to dismiss. See e.g., *Egri* v. *Foisie*, 83 Conn. App. 243, 247-48, 848 A.2d 1266, cert. denied, 271 Conn. 931, 859 A.2d 930 (2004).

The plaintiff argues in each of his opposition memoranda that the motions to dismiss here are not timely because they were not filed within 30 days of the defendants filing their appearances. Practice Book § 10-30. That rule does apply to motions to dismiss for lack of personal jurisdiction, but subject matter jurisdiction may be challenged at any time. See, e.g., *Fairfield Merrittview Ltd. P'ship* v. *Norwalk*, 320 Conn. 535, 548, 133 A.3d 140 (2016). Therefore, the court will consider the merits of the motion.

I. The Motions to Dismiss the Official Capacity Claims

The plaintiff seeks money damages pursuant to 42 U.S.C. § 1983 and declaratory relief pursuant to 28 U.S.C. § 2201. All of the defendants move to dismiss those claims on the grounds that, in their official capacities, they are protected by the immunity conferred by the eleventh amendment to the United States constitution.

A. The State Employees' Motion to Dismiss

The eleventh amendment states: "[t]he Judicial Power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." The United States Supreme Court has held that the eleventh amendment bars suits against the state by individuals who are citizens of the state itself. *Edelman* v. *Jordan*, 415 U.S. 651, 662-63, 94 S. Ct. 1347 (1974). A state cannot be sued in federal or state court unless the state waives its sovereign immunity or the immunity has been abrogated by Congress under section 5 of the fourteenth amendment. *Virginia Office of Protection and Advocacy* v. *Stewart*, 563 U.S. 247, 253-54, 131 S. Ct. 1632 (2011); *Miller* v. *Egan*, 265 Conn. 301, 311, 828 A.2d 549 (2003). For there to be Congressional abrogation, the intent "must be unmistakably clear in the language of

the statute." (Internal quotation marks omitted.) *Atascadero State Hospital* v. *Scanlon*, 473 U.S. 234, 242, 105 S. Ct. 3142 (1985). Congress did not abrogate the states' sovereign immunities when it enacted 42 U.S.C. § 1983. *Will* v. *Michigan Department of State Police*, 491 U.S. 58, 68-69, 109 S. Ct. 2304 (1989).

Connecticut requires a statutory waiver of sovereign immunity. "In an action against the state in which damages are sought, a plaintiff seeking to circumvent the doctrine of sovereign immunity must show that ... the legislature, either expressly or by force of a necessary implication, statutorily waived the state's sovereign immunity ...." (Citation omitted; internal quotation marks omitted.) *Envirotest Systems Corp.* v. *Commissioner of Motor Vehicles*, 293 Conn. 382, 388, 978 A.2d 49 (2009). The plaintiff has not plead, nor is there any, Connecticut statutory waiver of sovereign immunity for claims for monetary damages pursuant to Section 1983.

This immunity based on the eleventh amendment extends to Section 1983 claims for money damages against state employees in their official capacities. *Pennhurst State School & Hospital* v. *Halderman*, 465 U.S. 89, 121, 104 S. Ct. 900 (1984); *Miller* v. *Egan*, supra, 265 Conn. at 311. Section 1983 provides, in relevant part: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ... subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured ...." The United States Supreme Court has held that "state officials, sued for monetary relief in their official capacities" are not persons under Section 1983. *Will* v. *Michigan Department of State Police*, supra, 491 U.S. at 71. This is because "an official-capacity suit against a state officer "is not a suit against the official but rather is a suit against the official's

office. As such it is no different from a suit against the State itself." Id. "A state, as an entity having immunity under the eleventh amendment to the United States constitution, is not a 'person' within the meaning of § 1983 and thus is not subject to suit under § 1983 in either federal court or State Court .... This rule also extends to state officers sued in their official capacities." (Citations omitted; internal quotation marks omitted.) *Miller* v. *Egan*, supra, 265 Conn. at 311.

The plaintiff also seeks declaratory relief from the state employee defendants in their official capacities. Paragraph 34 of the complaint asks for "[a] declaration that the acts and omissions described herein violated Plaintiff's rights under the constitution and laws of the United States." Because this seeks retroactive declaratory relief, it is barred by the eleventh amendment. Although there is an exception to eleventh amendment immunity for prospective injunctive and declaratory relief, *Ex Parte Young,* 209 U.S. 123, 155-56, 28 S.Ct. 441 (1908); that exception does not apply when the relief relates only to past conduct. *Green* v. *Mansour*, 474 U.S. 64, 68, 106 S. Ct. 423 (1985).

For example, in *Ward* v. *Thomas*, 207 F.3d 114 (2000), the United States Court of Appeals for the Second Circuit held that a court could not grant declaratory relief that the state had violated federal law in the past. Id. at 120. The court explained that a declaration that Connecticut's Aid to Families with Dependent Children policy violated federal law could be "offered in state-court proceedings as res judicata on the issue of liability, leaving to the state courts only a form of accounting proceeding whereby damages or restitution would be computed." Id. The court went on: "a declaratory judgment is not available when the result would be a partial end run around the Eleventh Amendment's bar on retrospective awards of monetary relief." (Citation omitted; internal quotation marks omitted.) Id.

The motion to dismiss no. 105.00, which seeks to dismiss the claims for monetary damages and declaratory relief against Quiros, Reis, Ruiz, Broadley and Cruz in their official capacities, is granted.

B. Charles' Motion to Dismiss

Charles, the employee of the contractor, also moves to have the claims for against her in her official capacity dismissed based on the immunity conferred by the eleventh amendment. During the events alleged in the complaint, she was an APRN who was a contract employee for the Department of Corrections. In response to the court's question at oral argument as to why that immunity would extend to her, she has filed a supplemental brief, no. 117.00, that directs the court's attention to a recent United States District Court decision, *Cunningham* v. *Lupis*, slip op., Docket no. 3:21-cv-00273(SVN) (D. Conn. February 26, 2024) (2024 WL 811849), appeal filed (April 3, 2024). That decision on a motion for summary judgment also involved an inmate bringing claims based on failure to provide health care against various defendants, including an APRN who contracted with the Department of Corrections. Although that court held that the eleventh amendment barred claims against state employees in their official capacities, it did not address the application of the eleventh amendment to the contractor APRN. Id. at *17. The only discussion of immunity for the APRN concerned her immunity conferred by General Statutes § 4-165, which is not the same as eleventh amendment immunity. Id. at *16 n.9.

This court questions whether an employee of an independent contractor can even be sued in her "official" capacity in the first place, but that issue was not briefed. Even if such a suit may be brought, Charles has not briefed whether her employer is an "arm of the state" such that they would be protected by the eleventh amendment. See e.g., *Mancuso* v. *New York State Thruway Authority*, 86 F.3d 289, 292-93 (2d Cir. 1996); *Feeney* v. *Port Authority Trans-Hudson Corp.*,

873 F.2d 628, 630-31 (2d Cir. 1989), aff'd on other grounds, 495 U.S. 299, 110 S. Ct. 1868 (1990); *Mullin* v. *P & R Educational Services, Inc.*, 942 F. Supp. 110 (E.D.N.Y. 1996). The complaint does not allege sufficient facts, and Charles does not provide sufficient facts in an affidavit, for the court to apply that test here. Insofar as Charles argues that she is entitled to eleventh amendment immunity, that motion is denied because the factual record is insufficient and the legal argument is not adequately developed. See e.g., *Connecticut Light & Power Co.* v. *Dept. of Public Utility Control*, 266 Conn. 108, 120, 830 A.2d 1121 (2003); *State* v. *Prosper*, 160 Conn. App. 61, 74-75, 125 A.3d 219 (2015).

II. The Motions to Dismiss the Individual Capacity Claims

A. The State Employees' Motion

Two of the state employee defendants, Quiros and Reis, move to dismiss the Section 1983 claims against them in their individual capacities. The United States Supreme Court has distinguished suits against state officials in their official capacity and individual capacity. "State officers sued for damages in their official capacity are not 'persons' for purposes of the suit because they assume the identity of the government that employs them .... By contrast, officers sued in their personal capacity come to court as individuals. A government official in the role of personal-capacity defendant thus fits comfortably within the statutory term 'person.'" (Citations omitted.) *Hafer* v. *Melo*, 502 U.S. 21, 27, 112 S. Ct. 358 (1991).

The plaintiff claims that Quiros, who was Commissioner of Corrections, and Reis, who was Warden, violated his first, eighth, ninth and fourteenth amendment rights through deliberate indifference to his serious medical needs. Complaint, ¶¶ 32-33. He alleges that they failed to ensure that he received proper medical care for his arm pain and degenerative disc disease, and that they failed to penalize the health care workers who refused to treat him. Id., ¶ 33. He seeks

the following relief from them in their individual capacities: a declaration that these acts and omissions violated his rights under the United States constitution, a preliminary and permanent injunction ordering them to provide proper medical care, compensatory damages, punitive damages, costs and additional relief that the court deems just, proper and equitable. Id., ¶¶ 34-40.

Section 1983 claims are enforceable in state courts. *Sosa* v. *Robinson*, 200 Conn. App. 264, 278, 239 A.3d 1228 (2020). The elements and defenses of those Section 1983 claims, however, must be analyzed according to federal law. Id. at 281-82. Our Supreme Court has recognized that "to employ [a state law] test to divest state courts of jurisdiction to hear otherwise cognizable § 1983 claims would be to erect a constitutionally impermissible barrier to the vindication of federal rights .... Sovereign immunity may [still] bar a plaintiff's claim pursuant to § 1983, but ... federal law must govern that inquiry." *Sullins* v. *Rodriguez*, 281 Conn. 128, 136, 913 A.2d 415 (2007).

The plaintiff's Section 1983 claim is based in part on the eighth amendment. That amendment prohibits the infliction of "cruel and unusual punishments," which "extends to punishments that involve the unnecessary and wanton infliction of pain." (Citation omitted; internal quotation marks omitted.) *Hill* v. *Curcione*, 657 F.3d 116, 122 (2d Cir. 2011). If the claimed violation arises out of inadequate medical care, a prisoner plaintiff must plead and prove a deliberate indifference to his serious medical needs. Id. (citing *Estelle* v. *Gamble*, 429 U.S. 97, 104, 97 S. Ct. 285 (1976)). That standard for deliberate indifference includes both an objective component and a subjective component. Id.; *Cunningham* v. *Lupis*, supra, slip op.

"The first element is objective. The inmate must show that he was actually deprived of adequate medical care by an official's failure to take reasonable measures in response to a

[sufficiently serious] medical condition." *Cunningham* v. *Lupis*, supra, slip op. at *13. "The second element of a deliberate indifference claim is subjective. The inmate must show that the official acted with a culpable state of mind of subjective recklessness, such that the official knew of and consciously disregarded an excessive risk to inmate health or safety." (Citations omitted; internal quotation marks omitted.) Id. See also *Abreu* v. *Lipka*, 778 F. App'x 28, 32 (2d Cir. 2019).

The two moving defendants, Quiros and Reis, were in supervisory positions. "[T]here is no special rule for supervisory liability. Instead, a plaintiff must plead and prove that each Government-official defendant, through the official's own individual actions, has violated the Constitution." *Tangreti* v. *Bachmann*, 983 F.3d 609, 618 (2d Cir. 2020). The plaintiff must plead and prove that these two defendants violated the eighth amendment by their own conduct, not by reason of their supervision of other defendants who allegedly committed the violation. Id. at 619. Furthermore, Section 1983 requires that the defendant have a direct, personal involvement in the alleged deliberate indifference. *Wright* v. *Smith*, 21 F.3d 496, 501 (2d Cir. 1994); *Lusmat* v. *Papoosha*, slip op. Docket No. 3:20-cv-1386 (RMS) (D. Conn. June 28, 2023) (2023 WL 4236012).

The only allegations in the complaint regarding Quiros and Reis are that they failed to ensure that the plaintiff received proper care and treatment and that "others refusing to treat plaintiff was/were penalized ...." Complaint, ¶ 33. They argue that these allegations are not sufficient to allege a Section 1983 claim against them. There are no facts alleged that would establish their direct, personal involvement in the plaintiff's medical care, or lack thereof, or that their own conduct constituted deliberate indifference. In his memorandum and at oral argument, the plaintiff asserted that these defendants knew or should have known of the acts and omissions by the other defendants, but there were no factual allegations in the complaint.

"Qualified immunity protects government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Pearson* v. *Callahan*, 555 U.S. 223, 231, 129 S. Ct. 808 (2009) (quoting *Harlow* v. *Fitzgerald*, 457 U.S. 800, 818, 102 S. Ct. 2727 (1982)). A right is clearly established if it is "sufficiently clear that every reasonable official would have understood that what he is doing violates that right." *Mullenix* v. *Luna*, 577 U.S. 7, 11, 136 S. Ct. 305 (2015). For a right to be clearly established, "existing precedent must have placed the statutory or constitutional question beyond debate." *Ashcroft* v. *Al-Kidd*, 563 U.S. 731, 741, 131 S. Ct. 2074 (2011).

The federal precedent discussed above demonstrates that in 2020 and 2021, during the events alleged in the complaint, Quiros and Reis could not be held liable for violating the constitution merely because they supervised medical personnel who provided inadequate medical care or failed to provide medical care to the plaintiff. Because qualified immunity provides immunity from suit, see, e.g., *Brooks* v. *Sweeney*, 299 Conn. 196, 216, 9 A.3d 347 (2010); the court grants these defendants' motion to dismiss no. 103.00 directed to the claims against them in their individual capacities.

B. Charles' Motion to Dismiss

Charles also moves to dismiss the individual capacity claims against her on the grounds of federal qualified immunity. When the court asked for authority to support the proposition that federal qualified immunity applied to her as an independent contractor employee, her counsel filed a supplemental brief no. 117.00 that cited *Cunningham* v. *Lupis*, supra, slip op. at *16 n.9. In a footnote, that decision held that a prison contractor APRN was a state employee under the "right to control" test of *Hunte* v. *Blumenthal*, 238 Conn. 146, 152, 680 A.2d 1231 (1996). Id.

Based on this, the court held that the nurse could invoke immunity under General Statutes § 4-165 with respect to a common law claim of negligent infliction of emotional distress. Id. As noted above, our Supreme Court has held that federal law controls the immunity analysis for a claim under Section 1983. *Sullins* v. *Rodriguez*, supra, 281 Conn. at 136. Therefore, an individual state employee cannot assert Section 4-165, a state statute, for immunity to a Section 1983 claim. *Jan G.* v. *Semple*, 220 Conn. App. 202, 209 n.12, 244 A.3d 644 (2021).

Returning to the issue of whether Charles has federal qualified immunity, the facts are not alleged in the complaint and she has not set forth additional facts in an affidavit for this court to apply the control test used by the federal district court in *Cunningham* v. *Lupis*, supra. Notably, that decision was on a motion for summary judgment in which the factual evidence had been put before the court.

Finally, the United States Supreme Court held that two individual prison guards who worked for a private prison management firm were not entitled to federal qualified immunity when they were sued under Section 1983. *Richardson* v. *McKnight*, 521 U.S. 399, 412, 117 S. Ct. 2100 (1997). See *Logue* v. *United States*, 412 U.S. 521, 530, 93 S. Ct. 2215 (1973) (holding that prison employees were employees of a contractor with the United States, not employees of a federal agency within the meaning of the Federal Tort Claims Act). But see *Filarsky* v. *Delia*, 566 U.S. 377, 132 S. Ct. 1657 (2012) (citing *Richardson* but holding that private practice lawyer who conducted investigation for city was entitled to qualified immunity). The Supreme Court held that it was inconsistent with history and the purpose of governmental immunity to extend it to the guards. *Richardson*, supra, 521 U.S. at 412. However, it issued its decision with some caveats, including:

> "we have answered the immunity question narrowly, in the context in which it arose. That context is one in which a private firm, systematically organized to

> assume a major lengthy administrative task (managing an institution) with limited direct supervision by the government, undertakes the task for profit and potentially in competition with other firms. The case does not involve a private individual briefly associated with a government body, serving as an adjunct to government in an essential governmental activity, or acting under close official supervision."

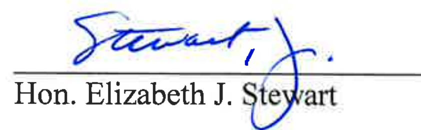
Id. at 413. It may be that Charles' situation is distinguishable from the facts in *Richardson*, but this factual record and the legal briefing is not adequate for this court to make that determination.

Charles' motion to dismiss no. 111.00, insofar as it is based on federal qualified immunity, is denied.

CONCLUSION

The state employees' motions to dismiss nos 103.00 and 105.00 are granted. Specifically, the claims for monetary damages and retrospective declaratory relief against the defendants Quiros, Reis, Cruz, Ruiz and Broadley are dismissed. In addition, the claims against defendants Quiros and Reis in their individual capacities are dismissed. The contractor employee Charles' motion to dismiss no. 111.00 is denied.

BY THE COURT,



Hon. Elizabeth J. Stewart