IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RAYMOND McCULLUM	:	CIVIL ACTION
v.	:	
CITY OF PHILADELPHIA, et al.	:	NO. 98-5858

MEMORANDUM AND ORDER

BECHTLE, J. MARCH , 2000

Presently before the court are defendant Aramark Services, Inc.'s ("Aramark") Motion for Summary Judgment, defendants City of Philadelphia's (the "City"), Earl Hatcher's ("Hatcher") and Gerald Price's ("Price") (collectively, the "City Defendants") Motion for Summary Judgment and plaintiff Raymond McCullum's ("Plaintiff") responses thereto. For the reasons set forth below, the court will grant Aramark's motion and will grant in part and deny in part the City Defendants' motion.

I. BACKGROUND

Pursuant to a contract with the City, Aramark provided food services to inmates at the Curran-Fromhold Correctional Facility ("CFCF").[1] Plaintiff alleges that on December 12, 1996, he was assaulted by Keith Smith, an Aramark employee and co-defendant in this action. Plaintiff brings this action against Aramark pursuant to 42 U.S.C. § 1983 and various state law claims

[1] The court has already determined that Aramark acted under color of state law for purposes of 42 U.S.C. § 1983 by performing the traditional government function of providing food services at a prison. McCullum v. City of Philadelphia, No. 98-5858, 1999 WL 493696 (E.D. Pa. July 13, 1999).

including intentional infliction of emotional distress,[2] assault and battery, negligence, and civil rights violations.

Additionally, Plaintiff alleges that on May 19, 1997, he sustained injuries as a result of being kneed in the back and side by defendant Price, a corrections officer at CFCF. Plaintiff alleges the assault was unprovoked and was in retaliation for Plaintiff's assertions against Smith which ultimately led to his termination. As a result of this incident, Plaintiff brings section 1983 and various state law claims against the City, Earl Hatcher (the warden at CFCF) and corrections officer Price.

II. DISCUSSION

The court will address Aramark's motion and the City Defendants' motion separately.

A. Aramark's Motion for Summary Judgment

Plaintiff's Complaint alleges that Aramark, as a matter of policy or practice: failed to adequately discipline, train, supervise and/or otherwise direct its employees concerning the rights of inmates; failed to establish a system which properly identifies, reports and/or investigates instances of improper conduct; and failed to adequately sanction and/or discipline its employees. Compl. ¶¶ 33-37. Plaintiff seeks to impose direct

[2] Plaintiff has withdrawn his claim for intentional infliction of emotional distress against Aramark. (Opp. to Aramark's Mot. for Summ. J. at 23.)

liability upon Aramark, through its associated policies or customs which were allegedly violative of Plaintiff's constitutional rights. See City of Canton v. Harris, 489 U.S. 378, 388 (1989) (stating that state actor "can be liable under § 1983 for inadequate training of its employees"); Monell v. Department of Soc. Servs., 436 U.S. 658, 690-91 (1978) (discussing imposition of § 1983 liability on state actors when a custom or policy causes injury).

In order for Aramark to be liable under section 1983, Plaintiff must show that Smith was acting in accordance with either (1) an officially adopted policy of Aramark or (2) an officially adopted custom of Aramark. See Monell, 436 U.S. at 691 (stating that doctrine of respondeat superior may not be employed to impose § 1983 liability); Blanche Road Corp. v. Bensalem Township, 57 F.3d 253, 263 (3d Cir. 1995) (same). Proof of a single incident by a lower level employee acting under color of state law does not suffice to establish either an official policy or custom. City of Oklahoma v. Tuttle, 471 U.S. 808, 823 (1985). For the purposes of section 1983, a policy or custom includes practices that are so permanent and well established as to constitute a custom or usage with the force of law. See Monell, 436 U.S. at 691.

Aramark may be liable for a failure to train or supervise only where it amounts to deliberate indifference to the rights of Plaintiff. City of Canton, 489 U.S. at 388. Plaintiff must establish that Aramark policymakers were aware of similar

unlawful conduct in the past and tolerated it. See Wakshul v. City of Philadelphia, 998 F. Supp. 585, 591 (E.D. Pa. 1998) (citing Bielevicz v. Dubinon, 915 F.2d 845, 851 (3d Cir. 1989) (holding that plaintiffs must establish a municipal custom coupled with causation in order to sustain section 1983 action)).

Plaintiff has presented no evidence to show that Aramark's policies or practices regarding the provision of food services at CFCF were deficient. In fact, Plaintiff has not provided the court with any evidence from a policymaker of Aramark in order to prove the existence of some policy or practice which allegedly exists within Aramark. In addition, Plaintiff has failed to show any evidence that Aramark deviated from any policy which would trigger liability under section 1983.

In sum, Plaintiff has presented evidence supporting nothing more than a single unfortunate incident. This alone cannot constitute a basis for section 1983 liability of a state actor. Tuttle, 471 U.S. at 823. Thus, the court will grant Aramark's motion for summary judgment with respect to Plaintiff's section 1983 claims.

Plaintiff's state law claims are based on his allegations that Aramark failed to properly train or supervise Smith. As discussed above, Plaintiff has failed to show any evidence in support of these allegations. In addition, Plaintiff has presented no evidence to show that any action or inaction on the part of Aramark caused or increased the chances of causing

Plaintiff's alleged December 12, 1996 assault.[3] Thus, the court will also grant Aramark's motion for summary judgment with respect to Plaintiff's state law claims.

B. The City Defendants' Motion for Summary Judgment

The court will address the claims against Hatcher, the City and Price separately.

1. Hatcher

Plaintiff seeks to impose supervisory liability upon Hatcher, the warden at CFCF. A supervisor cannot be liable under § 1983 unless he or she had personal involvement in or knowingly acquiesced in the alleged wrongs. See Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988); Cyprus v. Diskin, 936 F. Supp. 259, 261 (E.D. Pa. 1996). The plaintiff must demonstrate that the supervisor participated in the deprivation by giving an order, setting a policy, or approving or knowingly acquiescing in a subordinate's conduct. Gay v. Petsock, 917 F.2d 768, 771 (3d Cir. 1990). Plaintiff has failed to show any basis for imposing supervisory liability on Hatcher in this instance. Plaintiff has set forth no evidence that Hatcher knew of any specific unlawful actions or acquiesced in such actions either directly or indirectly. In fact, Plaintiff did not depose Hatcher or take any other discovery which might establish that Hatcher knew or should have known of Plaintiff's alleged assault. Thus, the

[3] Indeed, assuming that Plaintiff was assaulted by Smith, his actions would likely fall outside the scope of his employment.

court will grant summary judgment in favor of Hatcher.

With respect to any state law claims asserted against Hatcher, Plaintiff has presented no evidence of Hatcher's involvement in any of the actions alleged in the Complaint. Thus, the court will grant summary judgment in Hatcher's favor.

2. The City

In order for the City to be liable under section 1983, Plaintiff must show that Price was acting in accordance with either (1) an officially adopted policy of Aramark or (2) an officially adopted custom of Aramark. See Monell, 436 U.S. at 691 (stating that doctrine of respondeat superior may not be employed to impose § 1983 liability); Blanche Road Corp. v. Bensalem Township, 57 F.3d 253, 263 (3d Cir. 1995) (same).[4]

As in the case of defendant Aramark, Plaintiff has presented no evidence to show that the City's policies or customs here were deficient in any way. In fact, Plaintiff did not depose a policymaker of the City to prove the existence of some policy or practice that he alleges may exist. Consequently, Plaintiff has not shown that the City deviated from any policy in a manner that would trigger municipal liability. Thus, the court will grant summary judgment in favor of the City.

With respect to Plaintiff's state law claims, the City is immune pursuant to the Political Subdivision Tort Claims Act. 42

[4] See supra section II.A. of this Memorandum.

Pa. Con. Stat. Ann. § 8541.[5]

3. Price

As discussed above, Plaintiff has failed to show any Monell-type evidence of a policy or custom which caused the constitutional violation which he complains of. Thus, the court will grant summary judgment in favor of Price in his official capacity. With respect to Price's liability in his individual capacity, the court will deny the motion for summary judgment. Plaintiff's deposition testimony states that Price assaulted him without provocation. Price denies that this incident occurred. Because a genuine issue of material fact exists, the court will deny the motion for summary judgment as it respects Price in his individual capacity.

With respect to Plaintiff's state law claims, the court finds that Plaintiff alleges claims that amount to willful misconduct against Price. Price is not immune from suit with respect to such conduct. 42 Pa. Con. Stat. Ann. § 8550. Thus, the court will deny the motion for summary judgment with respect to these claims.

IV. CONCLUSION

For the foregoing reasons, the court will grant Aramark's motion for summary judgment and will grant in part and deny in

[5] None of the exceptions to the general grant of immunity afforded to the City, enumerated at 42 Pa. Con. Stat. Ann. § 8542(b) of the Act, apply in this case.

part the City Defendants' motion for summary judgment.

An appropriate Order follows.

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ORDER

AND NOW, TO WIT, this day of March, 2000, upon consideration of defendant Aramark Services, Inc.'s Motion for Summary Judgment, defendants City of Philadelphia's, Earl Hatcher's and Gerald Price's Motion for Summary Judgment and plaintiff Raymond McCullum's responses thereto, IT IS ORDERED that:

1. defendant Aramark Services, Inc.'s Motion for Summary Judgment is GRANTED. Judgment is entered in favor of defendant Aramark Services, Inc. and against plaintiff Raymond McCullum;
2. defendants City of Philadelphia's, Earl Hatcher's and Gerald Price's Motion for Summary Judgment is GRANTED IN PART and DENIED IN PART as follows. With respect to defendants the City of Philadelphia and Earl Hatcher, the motion is GRANTED. Judgment is entered in favor of defendants the City of Philadelphia and Earl Hatcher and against plaintiff Raymond McCullum. With respect to defendant Gerald Price, the motion is GRANTED with regard to plaintiff Raymond McCullum's claims under 42 U.S.C. § 1983 against Price in his official capacity

and DENIED with regard to his liability with regard to plaintiff Raymond McCullum's claims under 42 U.S.C. § 1983 against Price in his individual capacity and under state law;

3. defendant Aramark Services, Inc.'s Objections to Plaintiff's Trial Exhibits is DENIED AS MOOT; and

4. defendant Aramark Services, Inc.'s Motion to Submit Deposition Transcripts of Trial Witnesses is DENIED AS MOOT.

LOUIS C. BECHTLE, J.