

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

RICHARD SCHULGEN : CIVIL ACTION  
 :  
 v. :  
 :  
 STETSON SCHOOL, et al. : NO. 99-4536

**MEMORANDUM AND ORDER**

HUTTON, J.

April 3, 2000

Presently before the Court is Defendants Stetson School, Richard J. Robinson, Kathleen Lovenberry, Curtis Ruby, William Stone, Curtis Ruby, and Thomas O'Neil's (hereinafter "Stetson School" or "Defendants") Motion to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. For the following reasons, Defendants' motion is **DENIED** in part and **GRANTED** in part.

**I. BACKGROUND**

The facts as demonstrated in Plaintiff's Complaint state that this action arises out of certain alleged incidents of psychological abuse which occurred at the Stetson School from on or about October 25, 1993, through on or about January 14, 1997. The Stetson School is a treatment and special education facility located in Massachusetts which specializes in the restrictive treatment, care, and supervision of emotionally at-risk children. Plaintiff, a resident of Pennsylvania, was involuntarily placed at

said institution by the Philadelphia Department of Human Services as a result of Plaintiff's sexual acting-out behavior, in addition to issues concerning sexual abuse.

Plaintiff alleges that as a result of this contractual relationship between Stetson School and the City of Philadelphia, the abusive actions allegedly undertaken at the treatment facility were perpetrated under the "color of state law," thereby supporting a claim under 42 U.S.C. § 1983 for Civil Rights violations. Plaintiff also alleges several state tort law claims which arise under the Court's pendent jurisdiction.

In response to Plaintiff's Complaint, Defendants have filed this Motion to Dismiss. Said motion raises three distinct issues. First, Stetson School asserts that it is not a state actor for the purposes of a Section 1983 action. Second, Defendants assert that Massachusetts law, and not Pennsylvania law, must be applied to the extent that Plaintiff's Complaint asserts state law claims. Third, Defendants maintain that Plaintiff impermissibly lumped together his state law claims without alleging the requisite facts.

## **II. STANDARD OF REVIEW**

Federal Rule of Civil Procedure 8(a) requires that a plaintiff's complaint set forth "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Accordingly, the plaintiff does not have to "set out in detail the facts upon which he bases his claim." Conley v.

Gibson, 355 U.S. 41, 47 (1957). In other words, the plaintiff need only to "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Id.

When considering a motion to dismiss a complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6),<sup>1</sup> this Court must "accept as true the facts alleged in the complaint and all reasonable inferences that can be drawn from them." Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990). The Court will only dismiss the complaint if "'it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.'" H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 249-50 (1989) (quoting Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)).

### **III. DISCUSSION**

#### **A. State Actor Analysis**

With regard to Stetson School's assertion that it is not a state actor, and considering the facts as alleged in Plaintiff's Complaint, such determination is not amenable to a motion to dismiss as it requires the Court to look beyond the Complaint and

---

<sup>1</sup> Rule 12(b)(6) states as follows:

Every defense, in law or fact, to a claim for relief in any pleading . . . shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: . . . (6) failure to state a claim upon which relief can be granted . . . .

Fed. R. Civ. P. 12(b)(6).

into the nature of the relationship between Stetson School and the State. Nevertheless, Defendants cite American Mfr. Mutual Ins. Co. v. Sullivan, 526 U.S. 40 (1999), as controlling the state actor analysis. The Court finds that Sullivan is not analogous or controlling in the instant action as Sullivan examined the state actor analysis in the context of a private insurer's decision to withhold payment for treatment in a Workers Compensation action. Such circumstance is wholly distinguishable from the facts of this matter. Plaintiff's Complaint facially alleges facts that could form the basis of a "color of state law" claim, in as much as the Complaint states that Defendants, acting through a contractual obligation with the City of Philadelphia, provided placement and rehabilitative services to persons with sexually related behavioral problems. As a result, it is alleged that Defendants, on behalf of the City of Philadelphia, were directly entrusted with the care and control of said persons. Further, Plaintiff clearly alleges his confinement was involuntary when he was placed within Defendants' care and control. (See Compl. at 16).

Given the above factual allegations it cannot be said that as a matter of law no relief could be granted under any set of facts that could be proved consistent with these allegations. See e.g., Roberts v. City of Philadelphia, No. CIV.A. 97-6710, 2000 WL 288111, at \*1 (E.D. Pa. Mar. 17, 2000) (stating that the Supreme Court has adopted three principle modes of analysis to determine if

an otherwise private entity is a state actor - symbiotic relationship test, close nexus test, or the public function test - each test being designed to show that the alleged constitutional violation is "fairly attributable to the state"). On the alleged facts of this matter, it is apparent that the "state actor" determination is more appropriately considered in the context of a Motion for Summary Judgment, rather than a Motion to Dismiss.

#### **B. Choice of Law**

Defendants next assert that Massachusetts law must apply to State Tort claims asserted against them. As a general rule, a court exercising pendent jurisdiction applies the choices of law rules of the forum state. See Nice Man Merchandising Inc. v. Logocroft Ltd., No. 91-7475, 1992 WL 59133, at \*5 (E.D. Pa. Mar. 18, 1992). Pennsylvania's choice of law approach employs a two-part analysis comprising both the "significant relationship" test and the "governmental analysis" test. See Kenney v. Deere & Co., No. 98-602, 2000 WL 254316, at \*2 (E.D. Pa. Mar. 7, 2000). First, the Court must determine if said conflict is true or false in nature. Id. A false conflict exists where "only one jurisdiction's governmental interest would be impaired by the application of the other jurisdictions' law," thereby requiring the application of the law of the state whose interest would be harmed if its law were not applied. Id. When both jurisdictions' governmental interests would be harmed a true conflict exists and

the court will determine which state has the greater interest by considering (1) the place the injury occurred, (2) the place where the conduct occurred, (3) the domicile, residence, nationality, place of incorporation and place of business of the parties, (4) and the place where the relationship is centered. In making this analysis the court should consider the quality of these contacts over their quantity. Id.

Massachusetts General Law, chapter 231, § 85K, limits the tort liability for charitable organizations engaged in a charitable purpose to a maximum of twenty thousand dollars. Further, Massachusetts law does not permit the recovery of punitive unless there is malicious, intentional, egregious, or outrageous conduct that reflects "the Defendant's evil motive or his reckless indifference to others." See Dartt v. Browning Ferris Indus. Inc., 691 N.E.2d 526, 536-37 (Mass. 1988).

As an initial matter, the Court finds no conflict between Massachusetts and Pennsylvania law with respect to the availability of punitive damages. In Pennsylvania, like Massachusetts, punitive damages "will lie only in cases of outrageous behavior, where defendant's egregious conduct shows either an evil motive or reckless indifference to the rights of others." See Bannar v. Miller, 701 A.2d 232, 241 (Pa. Super. 1997) (citation omitted); cf. Dartt, 691 N.E.2d at 537. Defendants, however, cite several cases as standing for the blanket proposition that absent express

statutory authorization punitive damages are not permissible in Massachusetts. See UMS v. Marson, 467 N.E.2d 1271 (Mass. 1984); see also Pine v. Rust, 535 N.E.2d 1247 (Ma. 1989). While the Court acknowledges that authority directly on point with the issue before the Court is scant at best, Defendants' assertion regarding punitive damages is misplaced. The cases cited by Defendants stand only for the proposition that punitive damages are not available unless authorized by statute, only when the underlying claim is statutorily derived. See Pine, 535 N.E.2d at 1249-50. Such a circumstance is not applicable to the situation currently before the Court as the underlying claims are grounded in common law. (See Def.'s Mot. to Dismiss at 24).

Further, it is evident from a review of Massachusetts General Law, chapter 231, § 85K that it does not create a statutory cause of action, but rather serves to limit recovery against a charitable organization engaged in a charitable activity.<sup>2</sup> Therefore, in the

---

<sup>2</sup> Massachusetts General Law, chapter 231, § 85K, provides that:

It shall not constitute a defense to any cause of action based on tort brought against a corporation, trustees of a trust, or members of an association that said corporation, trust, or association is or at the time the cause of action arose was a charity; provided, that if the tort was committed in the course of any activity carried on to accomplish directly the charitable purposes of such corporation, trust, or association, liability in any such cause of action shall not exceed the sum of twenty thousand dollars exclusive of interest and costs. Notwithstanding any other provision of this section, the liability of charitable corporations, the trustees of charitable trusts, and the members of charitable associations shall not be subject to the limitations set forth in this section if the tort was committed in the course of activities primarily commercial in character even though carried on to obtain revenue to be used for charitable purposes.

No person who serves as a director, officer or trustee of an educational institution which is, or at the time the cause of action arose was, a

event that punitive damages should lie against Defendants, and Defendants are entitled to Section 85K protection, said liability protection will simply serve to limit Plaintiff's aggregate recovery. As such, Plaintiff's punitive damages claim presents no conflict of law, and the Court finds no basis to conclude that the application of Massachusetts punitive damages law is required.

Nevertheless, Pennsylvania does not impose a monetary cap on damages against a charitable institution. To this extent, the Court must resolve the conflict between the jurisdictions as a conflict is readily apparent. The determination of a true or false conflict, however, has little effect on the outcome of this resolution. Assuming there is a false conflict, given the apparent harm that would result from Massachusetts' articulated governmental interest in limiting charitable liability, the Court would be required to apply Massachusetts law. However, a true conflict would require the Court to proceed further in order to evaluate which state has a greater interest in the application of its law.

---

charitable organization, qualified as a tax-exempt organization under 26 USC 501(c)(3) and who is not compensated for such services, except for reimbursement of out of pocket expenses, shall be liable solely by reason of such services as a director, officer or trustee for any act or omission resulting in damage or injury to another, if such person was acting in good faith and within the scope of his official functions and duties, unless such damage or injury was caused by willful or wanton misconduct. The limitations on liability provided by this section shall not apply to any cause or action arising out of said person's operation of a motor vehicle.

Massachusetts General Law, chapter 231, § 85K (emphasis added).



In engaging in such "greater interest" analysis, it is clear that Massachusetts law concerning limitations on charitable liability should be applied to this action. It is evident from Plaintiff's Complaint that the claimed injury and the surrounding conduct occurred only in Massachusetts while Plaintiff resided in Massachusetts. Further, although the contractual relationship between the City of Philadelphia and Stetson School splits their relationship equally between Pennsylvania and Massachusetts, the nature of the relationship between the two parties was clearly centered in Massachusetts as this was where Plaintiff resided, received treatment, and where the incidents giving rise to Plaintiff's claim against Defendants occurred.

Although the quantity of the above mentioned contacts with Massachusetts are overwhelming, the quality of these contacts are also substantial given the nature of Defendants' responsibilities in caring for and rehabilitating Plaintiff. Thus, the Court finds that to the extent state law claims are present in Plaintiff's Complaint the Court shall apply Massachusetts' limitation on charitable liability. See e.g., Gillian v. Gillian, 345 A.2d 742, 745-47 (Pa. Super. 1975) (applying the law of different states in the same case); see also Kathryn v. City of Philadelphia, et al., No. CIV.A. 97-6710, 1999 WL 391492, at \*2 (E.D. Pa. May 27, 1999).

Although the Court finds Massachusetts law concerning charitable liability applicable, the Court makes no determination concerning Defendants' entitlement to such protection.<sup>3</sup> As such, Plaintiff is not precluded from arguing on Motion for Summary Judgment that Defendants fail to satisfy the "charitable purpose" requirements of Massachusetts General Law, chapter 231, § 85K, assuming that such argument is appropriately supported by the facts and evidence before the Court.

### **C. Grouping of Claims**

Lastly, Defendants assert that Plaintiff's claims of invasion of privacy, assault, and battery, fail to meet the notice pleading requirements of Federal Rule of Civil Procedure 8(a). As an

---

<sup>3</sup> The Supreme Court of Massachusetts in Harlow v. Chin, 545 N.E.2d 602, 612-13 (1989), reaffirmed the applicability of charitable immunity in cases of malpractice against doctors and hospitals. The burden is on the defendant to prove entitlement to the statutory cap, thereby demonstrating that "the tort complained of 'was committed in the course of any activity carried on to accomplish directly the charitable purpose of such corporation.' . . . If a hospital's objective in treating a patient, however, is merely to generate revenue, the hospital's activity must be analyzed as 'commercial' rather than 'charitable.'" Id. See also Bonnano v. Harvard Pilgrim Health Care, Inc., No. CIV.A. 966155F, 2000 WL 49639, at \*2 (Mass. Super. Jan. 7, 2000) (stating that the Massachusetts charitable liability cap, while it is unjust, is nevertheless controlling, causing persons who are seriously injured by medical professionals to effectively have no remedy at law beyond twenty thousand dollars); cf. Jarry v. Medical Malpractice Professional Insurance Assoc., No. CIV.A. 930110, 1995 WL 1304261, at \*2 (Mass. Super. May 16, 1995) (holding that defendant did not qualify as a charity and thus did not enjoy the statutory liability cap).

In this matter, Defendants raise the charitable immunity issue in the context of a 12(b)(6) motion to dismiss. Thus, at this early stage of the proceedings, the record is inadequately developed to make the required factual determinations concerning Defendants' charitable status. As such, this determination is more appropriately decided upon motion for summary judgment.

initial matter, Plaintiff concedes that his assault and battery claims are insufficient and should be dismissed. (See Pl.'s Resp. to Def.'s Mot. to Dismiss at 65). As such, the Court will dismiss said assault and battery claims in Plaintiff's Complaint.

Plaintiff, however, maintains that the invasion of privacy claim should not be dismissed. Upon reviewing Plaintiff's Complaint, the Court disagrees. Plaintiff's Complaint fails to give Defendants fair notice of the basis of its invasion of privacy claim.<sup>4</sup> There are simply no facts alleged which attempt to demonstrate that Plaintiff's right to privacy was violated through an unreasonable intrusion upon Plaintiff's seclusion, that Plaintiff's name or likeness was appropriated, that Plaintiff's private life was unreasonably publicized, or that Plaintiff was placed in a false light before the public; nor can any such occurrences be inferred.

---

<sup>4</sup> The Restatement (Second) of Torts § 652A states that:

- (1) One who invades the right of privacy of another is subject to liability for the resulting harm to the interests of the other.
- (2) The right of privacy is invaded by
  - (a) unreasonable intrusion upon the seclusion of another, . . . ;
  - or
  - (b) appropriation of the other's name or likeness, . . . ; or
  - (c) unreasonable publicity given to the other's private life, . . . ; or
  - (d) publicity that unreasonably places the other in a false light before the public . . . .

Restatement (Second) of Torts § 652A (1977).

Rather, said invasion of privacy claim is simply inserted into a litany of claims in one paragraph of Plaintiff's Complaint. (See Compl. ¶ 51). As such, the Court will dismiss the invasion of privacy claim in Plaintiff's Complaint, and grant Plaintiff leave to file an Amended Complaint containing the requisite factual allegations which provide Defendants with fair notice of the basis of Plaintiff's invasion of privacy claim as required by Federal Rule of Civil Procedure 8(a).

An appropriate Order follows.

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

RICHARD SCHULGEN : CIVIL ACTION  
 :  
 v. :  
 :  
 STETSON SCHOOL, et al. : NO. 99-4536

O R D E R

AND NOW, this 3<sup>rd</sup> day of March, 2000, upon consideration of the Defendants' Motions to Dismiss (Docket No. 9) and the Responses thereto, IT IS HEREBY ORDERED that Defendants' motion is **DENIED** in part and **GRANTED** in part.

IT IS HEREBY FURTHER ORDERED that:

(1) Defendants' Motion to Dismiss Plaintiff's Section 1983 Claim is **DENIED**;

(2) Defendants' Motion to Apply Massachusetts Law is **GRANTED** in part and **DENIED** in part. Massachusetts General Law, chapter 231, § 85K will be considered in assessing the amount of monetary damages recoverable, if any, upon Defendants' demonstration of entitlement to such statutory protection;

(3) Plaintiff's Assault and Battery Counts are hereby **DISMISSED**; and

(4) Plaintiff's Invasion of Privacy Count is hereby **DISMISSED**. Plaintiff may file an Amended Complaint to state a claim of Invasion of Privacy in conformance with Federal Rule of Civil Procedure 8(a) within ten (10) days of the date of this Order.

BY THE COURT:

---

HERBERT J. HUTTON, J.