

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PATRICK KELLY, JR. <i>et al.</i>	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Civil Action No. 03-1213
	:	
COUNTY OF BUCKS, <i>et al.</i>	:	
	:	
Defendants.	:	

MEMORANDUM AND ORDER

Fullam, Sr. J. November , 2004

Defendants have moved for summary judgment in this case in which Plaintiffs, a husband and wife, allege that they contracted a methicillin-resistant *Staphylococcus aureus* (MRSA) infection at the Bucks County Correctional Facility, where Plaintiff husband is employed. For the reasons that follow, the motion will be granted.

Plaintiffs allege that Defendants fraudulently misrepresented the MRSA situation at the facility, violated the federal Family Medical Leave Act, 29 U.S.C. § 2601, *et seq.* and violated Plaintiffs' rights under the federal and state constitutions. Plaintiffs cannot prevail. Their claims under the Fourth and Fourteenth Amendments are foreclosed by the decisions in Collins v. City of Harker Heights, 503 U.S. 115 (1992), and Searles v. Southeastern Pennsylvania Transportation Authority, 990 F.2d 789 (3d Cir. 1993). Their First Amendment

claims cannot prevail because Plaintiffs do not allege any retaliation against them for speaking; instead they allege only that the County's policy prohibiting unauthorized release of information had a censoring effect on them. This is not a basis to recover damages. Curinga v. City of Clairton, 357 F.3d 305 (3d Cir. 2004). The remaining federal claims, including the violation of rights of association, are similarly without merit.

As to the Pennsylvania Constitution, it is debatable whether that document provides a private right of action for damages, but even if it did, Plaintiffs cannot establish a violation for the reasons already discussed.

The FMLA claim cannot be maintained either. The evidence of record shows that Plaintiff was granted FMLA leave several times and not disciplined for the use of such leave. Despite Plaintiffs' efforts to conflate the FMLA policy with the regular leave policy (which is "no fault" and leads to discipline if an employee is absent more than three times in three months), there is no evidence that one affects the other.

Finally, Plaintiffs failed to address the fraudulent misrepresentation claim in their submissions; it appears that the Pennsylvania Tort Claims Act would bar this claim in any event.

An order follows.

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ORDER

AND NOW, this day of November, 2004, upon consideration of Defendants' Motion for Summary Judgment, and the response thereto,

IT IS hereby ORDERED that the Motion is GRANTED. Judgment is entered IN FAVOR OF DEFENDANTS, COUNTY OF BUCKS, MICHAEL FITZPATRICK, CHARLES MARTIN, and SANDRA MILLER, individually and as Bucks County Commissioners; GORDON EHRLACHER, individually and as Director, Bucks County Department Of Health, LEWIS POLK, M.D., individually and as Medical Director, Health Department; HARRIS GUBERNICK, individually and as Director, Bucks County Department of Corrections; and WILLIS MORTON, individually and as Warden, Bucks County Correctional Facility, and AGAINST PLAINTIFFS, PATRICK KELLY, JR. and LAURA KELLY. The Clerk is directed to mark the case CLOSED.

BY THE COURT:

Fullam, Sr. J.