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

BENJAMIN TEAGUE	**:**	**CIVIL ACTION**
Plaintiff,	**:**	
	:	
v.	**:**	
	:	
S.C.I. MAHANOY MEDICAL	**:**	
DEPARTMENT, MARVA CERULLO,	**:**	
Health Care Administrator, and MARTIN	**:**	
L. DRAGOVICH, Superintendent	**:**	
Defendants.	**:**	**NO. 97-2589**

M E M O R A N D U M

Reed, J. **March 24, 1999**

Plaintiff, an inmate at the State Corrections Institution at Mahanoy, filed this pro se civil rights complaint against Marva Cerullo, Health Care Administrator , Martin L. Dragovich, Superintendent and the Mahanoy Medical Department ("Mahanoy Defendants") pursuant to 42 U.S.C. § 1983. Plaintiff claims that the Mahanoy Defendants subjected him to cruel and unusual treatment in violation of the Eighth Amendment for inadequate treatment of a knee injury sustained while he was playing basketball in the prison yard in September 1996. Presently before the Court is the motion of Mahanoy Defendants for summary judgment (Document No. 15) and no response of plaintiff Benjamin Teague thereto.[1] For the reasons stated below, the motion will be granted.

I. Background

[1]By agreement of the parties this Court ordered that plaintiff shall file and serve his response to the motion by March 19, 1999. Plaintiff has not filed a response.

The following facts are based on the evidence of record viewed in the light most favorable to plaintiff Benjamin Teague, the nonmoving party, as required when considering a motion for summary judgment. See Carnegie Mellon Univ. v. Schwartz, 105 F.3d 863, 865 (3d Cir. 1997).

On September 30, 1996, Teague was injured while playing basketball. Later that evening he was seen by a nurse in the Medical Department at Mahanoy. He was given tylenol, ice and crutches. On October 1, 1996, Teague was seen twice more at Mahanoy and received an ace bandage, tylenol and warm compresses. On October 2, 1996, Teague was seen by Dr. Peter Baddick, the orthopedic specialist at Mahanoy. Dr. Baddick aspirated Teague's knee and withdrew fluid to relieve the pain and swelling. Teague was given an antibiotic and Motrin. On two occasions in October, X-rays were taken of Teague's knee which showed a fracture through the proximal third patella. Dr. Baddick told Teague that a knee immobilizer would correct the problem. The immobilizer was ordered and arrived in November. Teague was told to wear it for six to eight weeks. The knee did not heal and Teague was told to wear it for another six weeks and to begin physical therapy.

In February and March of 1997, Teague consulted with another physician who recommended surgery. The surgery was approved by Dr. Baddick and performed on April 9, 1997. The staff at Mahanoy have continued to treat Teague with physical therapy and medication. Teague did not file an internal grievance with respect to the medical treatment he has received.

II. Standard for Summary Judgment

Defendants have moved pursuant to Federal Rule of Civil Procedure 56 for summary judgment. Under Federal Rule of Civil Procedure 56(c), summary judgment may be granted when, "after considering the record evidence in the light most favorable to the nonmoving party, no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law." Turner v. Schering-Plough Corp., 901 F.2d 335, 340 (3d Cir. 1990). For a dispute to be "genuine," the evidence must be such that a reasonable jury could return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). If the moving party establishes the absence of a genuine issue of material fact, the burden shifts to the non-moving party to "do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). The non-moving party may not rely merely upon bare assertions, conclusory allegations, or suspicions. Fireman's Ins. Co. of Newark v. DuFresne, 676 F.2d 965, 969 (3d Cir. 1982).

III. Discussion

The Eleventh Amendment prohibits suits by individuals against a state and its agencies in federal court absent express consent by the state to such suits. See e.g., Alabama v. Pugh, 438 U.S. 781, 782 (1978) (concluding that "[t]here can be no doubt . . . that suit against the [State of Alabama] and its Board of Corrections is barred by the Eleventh Amendment, unless Alabama consented to the filing of such a suit."). Pennsylvania has not consented to such suits. See 42 Pa. Cons. Stat. Ann. § 8521(b); Lasarkis v. Thornburgh, 661 F.2d 23, 25 (3d Cir. 1981).

Congress may abrogate the states' immunity by making "its intention [to abrogate]

unmistakably clear in the language of the statute." Atascadero State Hospital v. Scanlon, 473 U.S. 234, 242 (1985). Section 1983, however, does not abrogate the Eleventh Amendment. Quern v. Jordan, 440 U.S. 332, 340-345 (1979). Nor is a state a "person" within the meaning of Section 1983. Will v. Michigan Dept. of State Police, 491 U.S. 58, 64 (1989).

The Pennsylvania Department of Corrections is a state agency and the Mahanoy Medical Department is an arm of that agency. See 71 Pa. Stat. Cons. Ann. §§ 61, 66, 67.1, 310-1. Accordingly, the Eleventh Amendment bars Teague's claim against the Mahanoy Medical Department.[2]

In order for an individual defendant to be liable under Section 1983, he or she must have participated in or had personal knowledge of and acquiesced in the actions which deprived plaintiff of his constitutional rights. Pierce v. Pennsylvania Dept. of Corrections, 1992 WL 131882 (E.D. Pa. June 5, 1992);see also , Robinson v. City of Pittsburgh, 120 F.3d 1286, 1294 (3d Cir. 1997). The mere fact that a defendant holds a supervisory position is insufficient to find liability, because there is no vicarious liability or respondeat superior in Section 1983 cases. Durmer v. O'Carroll, 991 F.2d 64, 69 n.14 (3d Cir. 1993).

Defendants Cerullo and Dragovich did not participate in Teague's medical treatment and lacked the requisite involvement to subject them to liability under Section 1983. Cerullo could not and did not make any medical decisions regarding the course of treatment for plaintiff's knee. Dragovich serves as Superintendent and was also not involved in making decisions regarding

[2]It is unclear whether Cerullo and Dragovich are being sued in their official capacities. Nevertheless, because a suit against a person in his or her official capacity is deemed to be a suit against the state, the Eleventh Amendment bars any such claim Teague may be asserting against Cerullo and Dragovich in their official capacities. Channell v. Lehman, 1992 WL 333604, at *1 (E.D. Pa. Nov. 9, 1992) (citing Kentucky v. Graham, 473 U.S. 159, 165 (1985)).

Teague's medical care.

Moreover, although prison systems have a duty to provide prisoners with adequate medical care, a claim of simple medical malpractice by a prisoner is insufficient to present a constitutional violation. Estelle v. Gamble, 429 U.S. 97, 106 (1976); Durmer, 991 F.2d at 67. "In order to succeed in an action claiming inadequate medical treatment, a prisoner must show more than negligence; he must show 'deliberate indifference' to a serious medical need." Durmer, 991 F.2d at 67. There is no evidence that either Cerullo or Dragovich was "deliberately indifferent" to Teague's injury or medical needs. Teague was not denied immediate medical care following his injury. In addition, this Court has reviewed voluminous medical records showing the extensive care given to Teague. He has received regular medical care for his knee from September 1996 to the present including medication, physical therapy, unlimited visits to the Mahanoy Medical Department, surgery and other treatment for his knee. Thus, there is no evidence that Teague's Eighth Amendment rights were violated.

IV. Conclusion

Based upon the foregoing analysis, I have concluded that as a matter of law the plaintiff has presented no evidence or argument which demonstrates that the Mahanoy Defendants are liable to him.[3] Thus, I will grant the motion. An appropriate Order follows.

[3]On July 28, 1998, Teague filed an application for the appointment of counsel (Document No. 14). It is clear from the foregoing that this case is straightforward. The record is clear regarding the treatment he did or did not receive. Castro v. Johnson, 1994 WL 386385, at *4 (D.N.J. July 21, 1994). In addition, Teague's claim against the S.C.I. Mahanoy Medical Departmen is moribund as a matter of law. Therefore, Teague's request for the appointment of counsel will be denied. Tabron v. Grace, 6 F.3d 147, 155-58 (3d Cir. 1993), cert. denied, 510 U.S. 1196 (1994).

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O R D E R

AND NOW this 24th day of March, 1999, upon consideration of the motion of Marva Cerullo, Health Care Administrator, Martin L. Dragovich , Superintendent, and the Mahanoy Medical Department for summary judgment (Document No. 15), the plaintiff Benjamin Teague having failed to file a response, and the supporting memoranda, pleadings, exhibits and affidavits in the record, and for the reasons set forth in the foregoing memorandum, it is hereby

ORDERED that the motion is **GRANTED** and judgment is entered in favor of the defendants S.C.I. Mahanoy Medical Department, Marva Cerullo and Martin L. Dragovich and against Benjamin Teague.

IT IS FURTHER ORDERED that the request of plaintiff Benjamin Teague for appointment of counsel (Document No. 14) is **DENIED**.

This is a final Order.

LOWELL A. REED, JR., J.