

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

COMPLAINT UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983

JAMES J. JARDINA, #418-567

JERSEY RUN CORRECTIONAL FACILITY (JRCF)

2020 TOULSON ROAD

JESSUP, MARYLAND 20794

VS.

DEPARTMENT OF PUBLIC SAFETY AND

CORRECTIONAL SERVICES (DPSCS), EMPLOYEE(S)

AT WESTERN CORRECTIONAL INSTITUTION (WCI)

13800 MCMULLEN HIGHWAY, S.W.

CUMBERLAND, MARYLAND 21502

RICHARD J. GRAHAM Jr., WARDEN, (WCI)

DENISE GELSINGER, ASST. WARDEN, (WCI)

B. ZILLER COIT, (WCI), and

WEXFORD HEALTH SOURCES, INC., EMPLOYEE(S)

AT WESTERN CORRECTIONAL INSTITUTION (WCI)

ROBUSTIANO BARRERA, Doctor, (WCI)

BEVERLY McLAUGHLIN, RNP, medical provider, (WCI),

and
DEFENDANT(S) included but not limited to.

FILED
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APR 27 2016

CLERK U.S. DISTRICT COURT
DISTRICT OF MARYLAND

BY

DEPUTY

CIVIL ACTION NO. _____

JKB-16-1255

JURY TRIAL DEMANDED

I. JURISDICTION AND VENUE

(1) This is a civil action authorized by 42 U.S.C. 1983 to redress the deprivation, under the color of state law, of rights secured by the constitution

of the United States. The court has jurisdiction under 28 U.S.C. section 1331 and 1343 (a)(3). Plaintiff seeks declaratory relief pursuant to 28 U.S.C. section 2201 and 2202.

(2) The United States District Court for the District of Maryland is an appropriate venue under 28 U.S.C. Section 1391 (b)(2) because it is where the event(s) given rise to this claim occurred.

II. PLAINTIFF

(3) Plaintiff, James J. Jardina ("Jardina"), is and was, at all times mentioned herein, a prisoner of the state of Maryland in the custody of the Maryland Department of Public Safety and Correctional Services (DPSCS). I am currently confined at Dorsey Run Correctional Facility (DRCF), Jessup, Maryland.

III. DEFENDANTS

(4) Defendant, Richard J. Graham Jr. ("Graham Jr."), is the Warden of the institution, who works for the Maryland Department of Public Safety and Correctional Services who, At all times mentioned in this complaint, Held the authority as warden of the institution at WCI, And has a legal duty to care for me, as well as the daily operation(s) of the institution.

(5) Defendant, Denise Gelsinger ("Gelsinger"), is the assistant Warden of the institution, who works for the Maryland Department of Public Safety and Correctional Services who, At all times mentioned in this complaint, Held the authority as assistant warden at WCI, And has a legal duty to care for me, and operation(s) of the institution as the warden has directed.

(6) Defendant, B. Ziller CO II ("Ziller"), First name unknown (FNU) is a correctional officer CO II, who works for the Department of Public Safety and

Correctional Services and works as a tier officer in Housing unit 3.

(7) Defendant, Robustiano Barrera ("Barrera"), is the medical physician who works for, and under, the contract of Wexford Health Sources, Inc., for the Maryland Department of Public Safety and Correctional Services (DPSCS) who, at all times mentioned in this complaint, held the authority as a doctor and is legally responsible for the administration of medical care for the welfare of all inmates of ~~this~~ prison's hospital.

(8) Defendant, Beverly McLaughlin ("McLaughlin"), is a Registered Nurse Practitioner (RNP) who works for, and under, the contract of Wexford Health Sources, Inc., for the Maryland Department of Public Safety and Correctional Services (DPSCS), and delegated authority as the RNP, and is legally responsible for the administration of medical care and for the welfare of all inmates of ~~this~~ prison's hospital.

(9) Each Defendant is sued individually and in his /or her official and unofficial capacity. At all times mentioned in this complaint each Defendant acted under the color of state law.

IV. ADMINISTRATIVE PROCEEDINGS

Plaintiff has no prior lawsuits pending, state or federal, regarding the facts herein presented.

On MAY 6th, 2015, Jordina filed an ~~ARP~~ ^(ARP) Administrative Remedy Procedure Complaint to the warden of the institution WCI. The ARP was dismissed without merit.

On MAY 28th, 2015, Jordina filed an Appeal to the commissioner of Correction. The Appeal was dismissed without merit.

On September 28th, 2015, Jordina filed an appeal to the Inmate Grievance Office ("IGO"). January 5th, 2016, Jordina had a hearing in front of Administrative Law Judge ("ALJ") MARLEEN B. MILLER, and she having concluded that the grievance is meritorious.

VI. STATEMENT OF CLAIM

James J. Jordina is a six foot five two Hundred and eighty pound wheelchair bound handicap inmate. Md. DPSCS WCI Medical and Administrative staff have been grossly negligent regarding the safety of Jordina in violation of the Maryland Tort Claims Act (MTCA). RODRIGUEZ V. MARYLAND, 218 Md. App. 573 (2014). Md. DPSCS WCI Medical and Administrative staff have knowingly failed to provide reasonable accommodations to Jordina in violation of the American with Disabilities Act (ADA). Davidson V. Wexford, 2014 Lexis 82459 (D. Maryland); German V. Easley, 257 F.3d 738 (8th cir. 2001). Md. DPSCS WCI Medical and Administrative staff have been deliberately indifferent to the safety of Jordina in violation of the Eighth Amendment to the United States Constitution. Helling V. McKinney, 509 U.S. 25 (1993). Md. DPSCS WCI Medical and Administrative staff's actions have caused Jordina significant injuries. Hall V. Moore, 2015 Lexis 79861 (N.D. Florida); Waggoner V. Comanche County Detention Center, 2007 WL 2068661*4 (W.D. Oklahoma 2007).

Inmate Russell Marks, #402775 will testify that Md. DPSCS WCI Medical and Administrative staff knew: (1) five or more wheelchairs are being stored at the front of every building; (2) these wheelchairs are not personalized to the inmates using them; (3) inmates not trained as wheelchair attendants are using these wheelchairs to push wheelchair bound inmates down the sidewalks to eat and receive their medications; (4) Untrained wheelchair attendants are pushing wheelchair bound inmates through the rain and snow on side walks full of ruts and depressions; (5) water causes the wheelchair to rust from the inside making it unsafe for us.

md. DPCS WCI medical provider Beverly McLaughlin ordered that Jordina be provided with a wheelchair. On 4th May, 2015 md. DPCS WCI medical Doctor Barrera ordered that Jordina be provided with a wheelchair. See Exhibits 3 & 4 (md. DPCS WCI medical Report(s)). Barrera and McLaughlin knew Jordina weighed over 220 pounds and the impact of a fall or crash on a hard surface may represent a force in excess of 260 pounds. Despite this knowledge, Barrera and McLaughlin did not ensure that the wheelchair was personalized to Jordina. Id. Barrera and McLaughlin did not ensure that the wheelchair was fine tuned by a technician so that the real wheel axles were properly positioned and fitted for optimum balance. Id.

On 6th May 2015 md. DPCS WCI Housing Unit 3 Ziller instructed Inmate Shannon Cline to get a wheelchair from the front of the unit to push Jordina to the WCI medication line. WCI Ziller knew the sidewalk from WCI Housing Unit 3 to the WCI medication line was wet from the rain and full of ruts and depressions; knew inmate Cline was not trained as a wheelchair attendant; and knew the wheelchair was too small and not personalized to Jordina. Id.

Inmate Cline pushed Jordina through the rain down the sidewalk full of ruts and depressions from Housing Unit 3 to the medication line. On the way back from the medication line, inmate Cline hit one of the ruts on the sidewalk and the right front wheelchair wheel broke off. Id. Inmate Cline lost his footing on the wet and slippery sidewalk and Jordina was thrown from the wheelchair. Id. Jordina hit his head, lost consciousness, and injured his back, neck, left hand/wrist. Id.

Doctor Barrera admits that Jordina sustained a bump over his left forehead and injured his left hand. Jordina specifically informed Barrera

that he hit his head, lost consciousness, and injured his back, neck, and left hand. Jardina did not appreciate Barrera's conflict of interest: Barrera caused the accident and then evaluated my injuries. Id.

WCI Assistant Warden Gelsinger states "[t]he crack in the pavement was not the cause of the malfunction, but normal wear and tear of the wheelchair". (Md. DPSCS ARP WCI-0751-15). Gelsinger knew: (1) five or more wheelchairs were being stored at the front of every building; (2) these wheelchairs were not personalized to the inmates using them; (3) inmates not trained as wheelchair attendants were using these wheelchairs to push wheelchair bound inmates down the sidewalks to eat and receive their medications; (4) untrained wheelchair attendants were pushing wheelchair bound inmates through the rain and snow on sidewalks full of ruts and depressions; and (5) water causes the wheelchair to rust from the inside out making it unsafe for use.

WCI Warden Graham Jr., knew: (1) five or more wheelchairs were being stored at the front of every building; (2) these wheelchairs were not personalized to the inmates using them; (3) inmates not trained as wheelchair attendants were using these wheelchairs to push wheelchair bound inmates down the sidewalks to eat and receive their medications; (4) untrained wheelchair attendants were pushing wheelchair bound inmates through the rain and snow on sidewalks full of ruts and depressions; and (5) water causes the wheelchair to rust from the inside out making it unsafe for use.

Jardina seeks a jury trial, compensatory, and punitive damages. Jardina also seeks injunctive relief: Jardina has been transferred to Dorsey Run Correctional Facility (DRCF). Md. DPSCS DRCF medical and

Administrative Staff : (1) continue to allow untrained wheelchair attendants to push wheelchair bound inmate to eat and medication ; (2) md. DPCS Deaf medical and Administrative staff : allow untrained wheelchair attendants to push wheelchair bound inmates through the snow and rain ; (3) exposing the wheelchair to snow or rain will seep into the parts of the wheelchair, causing the chair to rust from the inside out making it unsafe for use.

VI. ARGUMENT

Jardina claims that the Incident and his personal injuries were caused by WCI's, ~~WCI's~~ arbitrary and capricious failure to : (1) assign him a wheelchair that was properly adjusted to his size and weight ; (2) assign a trained / certified wheelchair pusher to transport him ; (3) properly maintain the path for wheelchair traffic ; and/or (4) properly maintain the wheelchair. AS a result of these allegedly negligent or grossly negligent acts and/or omissions. Negligence requires a duty, a breach of that duty, and an injury proximately caused by that breach. See State v. Johnson 108 Md. App. 54 (1996). Premises liability is based on actual or constructive knowledge of the dangerous condition. See Zillichnikhis v. Mont. Co., 223 Md. App. 159 (2015). Jardina relies on the Eighth Amendment in support of his claim. The Supreme Court has concluded that the Eighth Amendment prohibits prison officials from being deliberately indifferent in their care of inmates. See, e.g. Helling v. McKinney, 509 U.S. 25 (1993). The court nevertheless recognized that this constitutional prohibition does not mandate comfortable prisons and that routine discomfort is part of the penalty that criminal offenders pay. Hudson v. McMillan, 503 U.S. 2 (1992). To establish an Eighth Amendment claim, an inmate must show "a serious deprivation of a basic human need" and "deliberate indifference to prison conditions" by prison officials. Strickler v. Waters, 989 F.2d 1375, 1379 (4th Cir. 1993).

Moreover, the Supreme Court has held that the Americans with Disabilities Act (the ADA) applies to state prisons. Penn. Dept. of Corrections v. Yeskey, 524 U.S. 206 (1998). Except as otherwise provided, the ADA states, "A qualified individual with a disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any public entity". 28 USC § 35.149; see Baribeau v. City of Minneapolis, 596 F.3d 465, 484 (8th Cir. 2010).

One need not reach Eighth Amendment Standards to recognize the validity of Jardina's claim. The Doc Inmate Handbook states that an inmate may not be subject to personal injury. Inmate Handbook 2007, Section IV.B; see DCD 200-1A.1. It is the Doc's policy that all its facilities "be maintained in a manner that provides for... proper physical plant safety and security for staff and inmates. Division of Correction Directive (DCD) 70-4.V. To accomplish this goal, the Doc's Plant Maintenance and Operations Organization "must operate, maintain, repair, replace, preserve and provide services necessary for existing buildings, equipment, utilities and surrounding ground areas". Id. at § A.1. Accordingly, DCD 185.000.V.A.8 provides that inmates may seek relief through ARP's for institutional conditions affecting their health, safety and welfare.

VII. LEGAL CLAIM(S)

JARDINA relies on the Eighth Amendment; Deliberate Indifference; Americans with Disabilities Act ("ADA"); and include but not limited to.

VIII. RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully prays that this Honorable Court enter judgment granting plaintiff:

(1) A declaration that the acts and omissions described herein violated plaintiff's rights under the constitution and laws of the United States.

(2) A preliminary and permanent injunction ordering the defendant's at WCI and/or DRCF, and DPCS medical and Administrative staff to adhere and enforce the wheelchair's Instruction and Maintenance Manual(s).

(3) Compensatory damages in the amount of (to be added later) against each Defendant, jointly and severally.

(4) Punitive damages in the amount of (to be added later) against each Defendant.

(5) A daily disability compensation in the amount of \$ 90.00 dollars against each Defendant, jointly and severally.

(6) A jury trial on all issues triable by jury.

(7) All court's cost in this suit.

(8) Any additional relief this court deems just, proper, and equitable., and

(9) RELEASED ON MEDICAL PAROLE, and/or PAROLE

I, JAMES J. JARDINA, do solemnly declare and affirm under the penalties of perjury the above caption is true and correct to the best of my knowledge.

This 25th day OF APRIL, 2016

Respectfully Submitted


James J. Jardina, # 418-567
Dorsey Run Correctional Facility,
(DRCF)
2020 Toulson Road
JESSUP, MARYLAND 20794.