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United States District Court, District of Columbia.

Jane DOE, et al., Plaintiffs,
v.
DISTRICT OF COLUMBIA, Defendant.

Civ. A. No. 92–635–LFO. | April 13, 1993.

Opinion

MEMORANDUM AND ORDER

OBERDORFER, District Judge.

***1** This case alleges that the District of Columbia has breached the medical confidentiality of prisoners in various District of Columbia correctional facilities who are infected with the Human Immunodeficiency Virus ("HIV"). The case originally came before the Court on defendant's motion to dismiss, or in the alternative, for summary judgment.[1] At a hearing on that motion on November 12, 1992, defendant agreed that the motion should be treated as a motion for summary judgment, and subsequently filed a statement of material facts not in dispute. Defendant did not, however, support the motion for summary judgment with an affidavit or other evidentiary material. Plaintiffs opposed the motion, supporting their pleading with affidavits and other evidentiary exhibits. *See* Plaintiffs' Opposition to Defendant's Motion for Summary Judgment. Because the material facts proffered by defendant do not address the core allegations of the suit, because discovery is not yet complete, and because the record contains material facts in dispute, defendant's motion for summary judgment is denied, without prejudice to defendant's ability to move for summary judgment again upon the close of discovery.

Plaintiffs are eight inmates in District of Columbia correctional facilities who sue under pseudonyms for physical and emotional injuries suffered when their HIV status was revealed, without their consent, by prison officials to inmates and other correctional staff. Plaintiffs assert claims under 42 U.S.C. § 1983, alleging violations of their Fifth Amendment right to privacy and their Eighth Amendment rights. They further assert violations of the Rehabilitation Act, 29 U.S.C. § 794, pendent state law tort claims of invasion of privacy, breach of confidential relationship, intentional infliction of emotional distress, and claims under the District of Columbia's Freedom of Information Act, D.C.Code § 1–1521 *et seq.* Plaintiffs seek damages, declaratory relief, and a permanent injunction.

In its motion for summary judgment, defendant argues that no material facts are in dispute and that the Complaint should be dismissed. In support of this motion, defendant relies solely on explicit policies and procedures of the District of Columbia Department of Corrections that are designed to protect the confidentiality of inmate medical records. *See* Defendant's Statement of Material Facts to Which There is no Genuine Dispute.

Defendant argues that in order to prevail on a § 1983 claim, plaintiffs must demonstrate that any breaches of medical confidentiality that have occurred resulted from an official policy of the District of Columbia government. *See Monell v. Department of Social Services,* 436 U.S. 658 (1978). Defendant states that the D.C. government's express policies regarding medical confidentiality establish "a very strict policy and training program regarding the treatment of prisoners with AIDS," Def.Mem. at 19, thus precluding the existence of any contrary policy. Defendant argues that plaintiffs, once failing on the § 1983 claim, cannot proceed on the pendent municipal and common law claims.

***2** Plaintiffs concede that the D.C. Department of Corrections has formal policies prohibiting breaches of medical confidentiality for HIV positive inmates. *See* Plaintiffs' Statement of Material Facts for which a Genuine Dispute Exists at 1–3. They correctly point out, however, that under *Monell,* local governments

> may be sued for constitutional deprivations visited pursuant to governmental "custom" even though such a custom has not received formal approval through the body's official decisionmaking channels ... "Although not authorized by written law, such practices of state officials could well be so permanent and well settled a to constitute a 'custom or usage' with the force of law."

Monell, 436 U.S. at 690–91 (citation and footnote omitted). *See also Garcia v. Salt Lake City,* 768 F.2d 303, 310 (10th Cir.1985) ("combined acts or omissions of several employees acting under a governmental policy or custom may violate an individual's constitutional rights.")

The mere existence of contrary formal policies by the D.C. government, therefore, cannot conclusively establish defendant's actual policy and practice regarding the treatment of HIV positive inmates. Plaintiffs' pleadings and the supporting record allege that the medical confidentiality of eight different inmates has been breached at five different D.C. correctional facilities. Defendant has presented no evidence that the alleged incidents did not occur. Plaintiffs argue that, once discovery is completed, they will be able to establish

conclusively that such breaches are not isolated incidents, as defendant suggests, but constitute a *de facto* policy on the part of the D.C. government, reflected in custom, pattern, and practice, inadequate training, and the decisions of final decisionmakers.

Plaintiffs have alleged sufficient facts and offered sufficient evidence to establish that plaintiff may be able to prevail on this claim once discovery is completed. Because it is apparent that material facts remain in dispute, therefore, defendant's motion for summary judgment is denied, without prejudice to defendant's ability to renew the motion once discovery is completed.

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Footnotes

1 *See* Memorandum of Points in Support of Defendant's Motion to Dismiss Plaintiff's [sic] Complaint at 10.

Accordingly, for the foregoing reasons, it is this 13th day of April, 1993, hereby

ORDERED: that Defendant's Motion to Dismiss Plaintiff's Complaint shall be treated as Defendant's Motion for Summary Judgment; and it is further

ORDERED: that Defendant's Motion for Summary Judgment should be, and is hereby, DENIED, without prejudice to defendant's ability to renew the motion once discovery is completed.