



PC-AL-011-004

FILED

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE

MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

APR 29 2003

CLERK
U. S. DISTRICT COURT
MIDDLE DIST. OF ALA.

LINDA LAUBE, et al.,)
)
 Plaintiffs,)
)
 v.)
)
 DONAL CAMPBELL, et al.,)
)
 Defendants.)

CIVIL ACTION NO. 02-T-957-N

ORDER

The plaintiffs in this case are 33 female prisoners incarcerated at two facilities in the Alabama state prison system: the Julia Tutwiler Prison for Women and the Birmingham Work Release Center.¹ Defendant MHM Correctional Services, Inc., has subcontracted with the Alabama correctional system's main medical care provider, NaphCare, Inc., to provide mental-health care services to inmates incarcerated in the Alabama correctional system. On January 7, 2003, the plaintiffs filed a second amended complaint which alleged, among other things,

1. In previous opinions and orders in this case, the court has stated that this litigation involves three facilities: the Julia Tutwiler Prison for Women, the Edwina Mitchell Work Release Center, and the Birmingham Work Release Center. The parties have informed the court that Mitchell is no longer an independent facility, but rather is considered a part of Tutwiler.

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that MHM failed to provide adequate mental-health care to inmates, violating their rights under the Eighth and Fourteenth Amendments as enforced through 42 U.S.C.A. § 1983. Jurisdiction is proper pursuant to 28 U.S.C.A. § 1331 (federal question), and 28 U.S.C.A. § 1343 (civil rights).

This cause is now before the court on MEM's motion to dismiss. For the reasons that follow below, the motion to dismiss will be denied.

I. MOTION-TO-DISMISS STANDARD

In considering the defendants' motions to dismiss, the court must accept the plaintiffs' allegations as true, Fed. R. Civ. P. 12(b); Andreu v. Sapp, 919 F.2d 637, 639 (11th Cir. 1990), and must construe the complaint liberally in the plaintiffs' favor. See Scheuer v. Rhodes, 416 U.S. 232, 236, 94 S. Ct. 1683, 1686 (1974). The lawsuit may not be dismissed unless it is "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Estelle v. Gamble, 429 U.S. 97, 106, 97 S. Ct. 285, 292 (1976) (citations omitted). "The threshold of sufficiency that a complaint must meet to survive a motion to dismiss for failure to state a claim is ... 'exceedingly low.'" Ancata v.

Prison Health Servs., Inc., 769 F.2d 700, 703 (11th Cir. 1985)
(citations omitted).

II. DISCUSSION

MHM moves this court to dismiss all claims raised against it on the grounds that the plaintiffs have failed to state a § 1983 claim against MHM. Specifically, MHM contends that the plaintiffs' allegations are insufficient in three ways: first, that the plaintiffs "do not allege matters for which MHM was responsible but instead which were under the control of NaphCare as the principal contractor or the Department of Corrections itself"; second, that the plaintiffs have not alleged facts establishing that MHM acted under color of state law; and, third, that the plaintiffs have failed to allege any deliberate indifference on the part of MHM.

A. Sufficiency of the plaintiffs' factual allegations

The Eighth Amendment prohibits deliberate indifference to an inmate's serious medical needs. Estelle, 429 U.S. at 104-05, 97 S. Ct. at 291. "Failure to provide basic psychiatric and mental-health care states a claim of deliberate indifference to the serious medical needs of prisoners."

Rogers v. Evans, 792 F.2d 1052, 1058 (11th Cir. 1986). "Thus, a prison inmate has the right under the Eighth Amendment to be free from deliberate indifference to serious physical or psychiatric needs." Waldrop v. Evans, 871 F.2d 1030, 1033 (11th Cir. 1989).

MHM argues that the plaintiffs' claims are factually insufficient because the bulk of the plaintiffs' mental-health claims are not within MHM's powers.² The plaintiffs make

2. MHM asks this court to consider its contract with NaphCare in ruling on this motion. Under Federal Rule of Civil Procedure 12(c), the court may consider matters outside the pleadings, but the motion to dismiss must then be treated as a motion for summary judgment. MHM contends that the court may nevertheless consider the contract in deciding its motion to dismiss because the contract was mentioned by the plaintiffs in their complaint and because it is central to their claim. Brooks v. Blue Cross and Blue Shield of Florida, Inc., 116 F.3d 1364, 1369 (11th Cir. 1997) ("[W]here the plaintiff refers to certain documents in the complaint and those documents are central to the plaintiff's claim, then the Court may consider the documents part of the pleadings for purposes of Rule 12(b)(6) dismissal, and the defendant's attaching such documents to the motion to dismiss will not require conversion of the motion into a motion for summary judgment."). While the plaintiffs do refer to MHM's contract in their complaint, they do so only in passing and the contract is far from "central" to their claim. Thus, the court cannot properly consider MHM's contract with NaphCare without treating the motion to dismiss as a motion for summary judgment.

Even if the court were to find that the contract was central to the plaintiffs' complaint, however, consideration of the contract would not assist the court in its inquiry. MHM

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various mental-health claims in their complaint. Among other things, the plaintiffs claim that most mentally ill inmates who enter the system with prescription medication are denied these medications, and, instead, are prescribed less expensive, less effective medication; they further contend that medication prescriptions are frequently allowed to lapse and inmates often go weeks or months without their medication. The plaintiffs also allege that inmates are improperly screened and referred for mental-health conditions at intake, and that mentally ill inmates are often denied access to mental-health care.

Taking all of the plaintiffs' allegations as true, and construing the complaint liberally in the plaintiffs' favor, the plaintiffs have stated mental-health claims as to MHM. MHM has contracted to be the exclusive provider of mental-health care in the Alabama correctional system and the plaintiffs' claims lie within the province of MHM's powers as the exclusive provider of mental-health care.

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offers the contract as proof of its limited realm of authority. However, the contract specifies that MHM shall provide mental-health services as detailed in other documents. These documents were not provided to the court, and, hence, even considering the contract, the court has no sense of MHM's realm of authority.

In some situations, withholding or changing an inmate's psychiatric medication can constitute an Eighth Amendment violation. Waldrop, 871 F.2d at 1035 (finding that doctor's decision to remove inmate from his psychiatric medications presented jury issue as to whether Eighth Amendment violation had occurred); see also Greason v. Kemp, 891 F.2d 829, 835 (11th Cir. 1990) (defendant psychiatrist's discontinuation of inmate's medication constituted issue of fact to be heard by jury). MEM does not deny its responsibility for inmates' prescriptions and changes in prescriptions. Rather, MEM tries to characterize the plaintiffs' medication claims as mere instances of improper dispensation by the prison staff or as the prison staff's failure to fill the inmates' prescriptions. While some prescription lapses may, in fact, have been due to the failures of the prison staff, it is also possible that some prescription lapses were due to the failure of MEM's staff. Furthermore, changes and discontinuation of prescription medications are within the realm of MEM's powers.³ Because

3. MEM also argues that the side effects inmates may have experienced from medication changes are normal medical occurrences which do not constitute constitutional claims. This argument is of no relevance at this stage, where the plaintiffs' burden is merely to state a claim. For purposes
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these are claims of serious medical needs within MHM's control, the court finds that the plaintiffs have met their minimal burden of stating facts which could support relief on this claim.

The failure to properly screen an inmate's mental-health condition at intake could also constitute deliberate indifference to a serious medical need. When an inmate enters the correctional system with a well-documented and obvious mental illness, a deliberate indifference claim is conceivable should a mental-health provider ignore the inmate's condition. See, e.g., Greason, 891 F.2d at 831-35 (finding that when inmate entered prison system with well-documented history of suicidal behavior, and inmate's treating psychiatrist sent letter to prison physicians detailing the condition and urging the continuation of inmate's medication, discontinuation of medication could constitute deliberate indifference to inmate's serious medical need). Because mental-health screening and follow-up care is within the control of MHM, the court cannot

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of a motion to dismiss, the plaintiffs need not demonstrate they will be successful on their claim. Because medication changes may constitute Eighth Amendment violations, the magnitude or effect of these changes is of no consequence for a motion to dismiss.

say it is "beyond doubt" that the plaintiffs can prove no set of facts entitling them to relief from MEM as to mental-health screening and referrals. Estelle, 429 U.S. at 106, 97 S. Ct. at 292.

Finally, MEM maintains that the plaintiffs' claims regarding access to mental-health care do not involve MEM. MEM contends that the plaintiffs' access claims implicate the failure of prison staff, not MEM, to respond to the plaintiffs' requests for mental-health care. MEM notes that the plaintiffs never name MEM itself as the entity responsible for denying them access to mental-health care. Although the plaintiffs never name MEM specifically, it is clear that MEM is referred to regularly throughout the complaint, as the plaintiffs often discuss actions taken by the mental-health staff. Furthermore, construing the complaint liberally in favor of the plaintiffs, they have stated a set of facts which could support their request for relief: they were denied access to mental-health care, which is within the province of MEM. While the plaintiffs sometimes specifically refer to prison staff in making these claims, they also mention the mental-health staff, who are employed by MEM. Moreover, even if the prison staff relayed information to inmates that they would not receive

mental-health treatment, it is conceivable that this denial turned on MHM's decisions or actions. Ultimately, it may turn out that MHM was, in fact, not responsible for this denial of access. However, at this stage of the litigation, it is inappropriate for the court to participate in that kind of fact-finding. The plaintiffs have stated facts which could support relief as to MHM; thus, the court rejects MHM's contention that the plaintiffs' claims are factually insufficient.

B. State action

To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution, and must demonstrate that the person who committed the violation was acting under color of state law. West v. Atkins, 487 U.S. 42, 48, 108 S. Ct. 2250, 2255 (1988). MHM argues that because it received its contract from a private company, NaphCare, it was not acting under color of state law. The Eleventh Circuit has clearly stated, however, that "where a function which is traditionally the exclusive prerogative of the State is performed by a private entity, state action is present." Ancata v. Prison Health Servs., Inc., 769 F.2d 700, 703 (11th

Cir. 1985); see also West, 487 U.S. at 56, 108 S. Ct. at 2259 (finding that medical doctor who contracted with the State to provide medical care was a state actor). The mental-health treatment of female inmates is unmistakably a function that is "traditionally the exclusive prerogative of the State." The State delegated its medical duties to NaphCare; NaphCare, in turn, delegated the mental-health portion of these duties to MHM. MHM "voluntarily assumed that obligation by contract." West, 487 U.S. at 56, 108 S. Ct. at 2259.

The fact that MHM is a subcontractor, rather than an entity directly contracting with the State, is not determinative of its status as a state actor. Because a State prevents inmates' access to normal resources when they are imprisoned, the State has corresponding duties to incarcerated individuals. Estelle, 429 U.S. at 104, 97 S. Ct. at 291 ("[I]t is but just that the public be required to care for the prisoner, who cannot by reason of the deprivation of his liberty, care for himself.") (citations omitted); Farmer v. Brennan, 511 U.S. 825, 833, 114 S. Ct. 1970, 1977 (1994) ("having stripped [inmates] of virtually every means of self-protection and foreclosed their access to outside aid, the government and its officials are not free to let the state of

nature take its course."). If the State delegates those duties to an outside entity, that entity is a state actor. See West, 487 U.S. 42, 108 S. Ct. 2250.

It is clear that these duties have been delegated to MHM. Like the inmates in West and Ancata, the inmates here must rely on the State to treat their medical needs; if the authorities fail to do so, those needs will not be met. West, 487 U.S. at 54, 108 S. Ct. at 2258. Moreover, like the physician in West, MHM is authorized and obligated to treat inmates, and mentally ill inmates' only mental-health care option is treatment by MHM physicians. Id. at 56, 108 S. Ct. at 2258-59. If MHM misuses its power by "demonstrating deliberate indifference to [inmates'] serious medical needs, the resultant deprivation [is] caused, in the sense relevant for the state-action inquiry, by the State's exercise of its right to punish [inmates] by incarceration and to deny [them] a venue independent of the State to obtain needed medical care." Id. Therefore, MHM is a state actor for the purposes of § 1983, regardless of its status as a subcontractor.

MHM also argues that it is not a state actor because it has limited powers in fulfilling its duties. MHM contends that, unlike the doctor in West, it does not have "virtually

unfettered discretion under a state regulation which mandate[s] that 'matters of medical health involving clinical judgment are the prison physicians' sole province.'" West, 287 U.S. at 57 n. 15, 108 S. Ct. at 2260 n. 15. This argument is without merit. The Supreme Court's decision in West did not turn on the existence of a state regulation giving prison physicians the sole power to decide medical matters. Rather, this state regulation was mentioned in a footnote to demonstrate the differences between the provision of medical care in the private sector and in a correctional facility; the Court noted that, despite the fact that prison physicians were solely responsible for medical decisions by state regulation, their decisions were limited by another state regulation requiring their care to comply "with the security regulations of the facility." Id. MEM is the sole provider of mental-health care and the sole decisionmaker, whether by state regulation or agreement, in determining the mental-health care an inmate will receive. MEM is, thus, analogous to the doctors discussed in West, and it acts under color of state law when it provides mental-health care to inmates.

C. Deliberate Indifference

MHM also contends that the plaintiffs failed to allege that MHM was deliberately indifferent to their mental-health needs. In order to state a § 1983 cause for inadequate medical care, a plaintiff must allege that the defendant has been deliberately indifferent to her serious medical needs. Estelle v. Gamble, 429 U.S. at 104, 97 S. Ct. at 291 (finding deliberate indifference to serious medical needs constitutes the unnecessary and wanton infliction of pain). MHM maintains that the plaintiffs have not stated any serious mental-health needs which were untreated by MHM. As discussed above, though, an inmate's dependence on psychiatric medication can constitute a serious medical need for Eighth Amendment purposes, Waldrop, 871 F.2d at 1035; Greason v. Kemp, 891 F.2d 829, 835 (11th Cir. 1990), and it is also conceivable that inmates may enter the correctional system with serious mental-health needs that must be addressed and recognized at intake. Furthermore, the lack of access to basic mental-health care may also constitute a denial of a serious medical need. Therefore, the court rejects this argument.

Finally, MHM contends that the plaintiffs have failed to state that MHM was deliberately indifferent to any serious

mental-health needs, as the plaintiffs have not claimed that MHM was even aware of any such serious mental-health needs. This argument, too, is without merit. The plaintiffs specifically state in their complaint that:

"The medical contractors know that there is a substantial risk of serious harm to prisoners who do not receive timely medication, diagnosis, and prescribed treatment for chronic and acute illnesses; and failure to respond reasonably to those risks on an individual or systemic basis. In addition to the obviousness of this risk of harm, especially to medical professionals, the medical contractors have been made aware of the risk of harm by the numerous formal and informal complaints and grievances about health care by prisoners, their families, and their lawyers."

MHM is one of the medical contractors named in the plaintiffs' second amended complaint; thus, the plaintiffs have sufficiently plead that MHM was aware of the risks posed to inmates by their failure to address the inmates' serious mental-health needs.

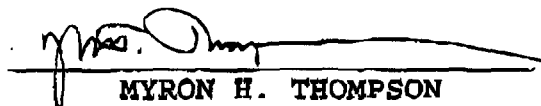
III. CONCLUSION

Accepting the plaintiffs' allegations as true, and construing the complaint liberally in the plaintiffs' favor, the court finds the lawsuit may not be dismissed against MHM

because it does not "appear[] to a certainty" that the plaintiffs can prove no set of facts supporting the relief requested. Ancata, 769 F.2d at 703. "The threshold of sufficiency that a complaint must meet to survive a motion to dismiss for failure to state a claim is ... 'exceedingly low,'" id. (citations omitted), and the plaintiffs have met this threshold.

Accordingly, it is ORDERED that defendant MHM Correctional Services, Inc.'s motion to dismiss, filed on March 14, 2003 (Doc. no. 168), is denied.

DONE, this the 29th day of April, 2003.


MYRON H. THOMPSON
UNITED STATES DISTRICT JUDGE