

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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TODD A. LODHOLZ,

Plaintiff,

v.

WISCONSIN DEPARTMENT OF  
CORRECTIONS, STEPHEN M. PUCKETT,  
CORRECTIONS CORPORATION OF  
AMERICA, KAY HIGGINS, JOHN DOE(S),

Defendants.  
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ORDER

03-C-350-C

This is a proposed civil action for monetary relief, brought under 42 U.S.C. § 1983. Plaintiff Todd A. Lodholz is a state prisoner who is presently confined at the Fox Lake Correctional Institution in Fox Lake, Wisconsin. Although plaintiff has paid the full \$150 filing fee, because he is a prisoner the court must screen his complaint, identify the claims and dismiss any claim that is frivolous, malicious or is not a claim upon which relief may be granted. 28 U.S.C. §§ 1915A(a), (b). In addressing any pro se litigant's complaint, the court must construe the complaint liberally. See Haines v. Kerner, 404 U.S. 519, 521 (1972). This court will not dismiss plaintiff's case on its own motion for lack of

administrative exhaustion, but if defendants believe that plaintiff has not exhausted the remedies available to him as required by § 1997e(a), they may allege his lack of exhaustion as an affirmative defense and argue it on a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). See Massey v. Helman, 196 F.3d 727 (7th Cir. 1999); see also Perez v. Wisconsin Dept. of Corrections, 182 F.3d 532 (7th Cir. 1999).

In his complaint, plaintiff alleges the following facts.

#### ALLEGATIONS OF FACT

Plaintiff Todd A. Lodholz is a Wisconsin prisoner presently confined at the Fox Lake Correctional Institution in Fox Lake, Wisconsin. Defendant Wisconsin Department of Corrections is a government agency located in Madison, Wisconsin. Defendant Stephen Puckett is the director of offender classification. Defendant Corrections Corporation of America is a private prison corporation that was a party to a contract with defendant Wisconsin Department of Corrections for the transfer and housing of convicted felons at the North Fork Correctional Facility in Sayre, Oklahoma. Defendant Kay Higgins is employed by defendant Corrections Corporation of America as a social worker at the North Fork prison. The John Doe defendants are employees of defendant Wisconsin Department of Corrections and Corrections Corporation of America.

On September 1, 1999, plaintiff was incarcerated at the Kettle Moraine Correctional Institution. He was seen by the Program Review Committee and told he would be transferred to the North Fork Correctional Facility in Oklahoma. Plaintiff objected to being transferred out of state because he had serious medical needs requiring neurological and orthopedic surgery. Plaintiff appealed the Program Review Committee's decision on the grounds that his medical needs made transfer inadvisable and his criminal record was limited to misdemeanors. Plaintiff saw a psychiatrist because of extreme emotional distress resulting from the decision to transfer him out of state and was put on medication. Once plaintiff arrived in Oklahoma, his medication was increased because of his emotional distress.

Officials at defendant Wisconsin Department of Corrections should have submitted a pre-transfer application to officials at defendant Corrections Corporation of America before plaintiff was transferred. Officials of defendant Corrections Corporation of America should have refused plaintiff's transfer because Oklahoma law provides that a private prison contractor cannot accept an inmate from another state if the inmate is serving time for a misdemeanor conviction. Nevertheless, plaintiff was transferred to Oklahoma. Once plaintiff was at the North Fork Correctional Facility in Oklahoma, plaintiff objected to his transfer but officials of defendants Wisconsin Department of Corrections and Corrections Corporation of America ignored him. Plaintiff's serious medical needs were never met while he was in Oklahoma. When plaintiff told his social worker (presumably defendant Higgins)

about his situation, she recommended that he remain confined in Oklahoma and defendant Puckett agreed. Plaintiff remained confined in Oklahoma despite his medical needs and the fact that he had been convicted only of misdemeanors.

## OPINION

First, I note that plaintiff has named the Wisconsin Department of Corrections as a defendant in this case. The Supreme Court has held that "neither a State nor its officials acting in their official capacities are 'persons' under § 1983." Will v. Michigan Department of State Police, 491 U.S. 58, 71 (1989); see also Wynn v. Southward, 251 F.3d 588, 592 (7th Cir. 2001) (The Eleventh Amendment bars suits against states in federal court for money damages); Billman v. Indiana Department of Corrections, 56 F.3d 785, 788 (7th Cir. 1995) (state Department of Corrections is immune from suit by virtue of Eleventh Amendment). Plaintiff may not proceed against defendant Wisconsin Department of Corrections as an entity in this case.

As for plaintiff's transfer, an out-of-state prison transfer to a privately run prison does not by itself violate plaintiff's constitutional rights. See Olim v. Wakinekona, 461 U.S. 238 (1983); Stanley v. Litscher, 213 F.3d 340, 343 (7th Cir. 2000); Pischke v. Litscher, 178 F.3d 497, 500-01 (7th Cir. 1999). However, plaintiff alleges that at the time of his transfer, he had serious medical needs involving neurological and orthopedic surgery and that his

medical needs were never addressed while he was in Oklahoma. Specifically, in a document that plaintiff filed with prison officials objecting to his transfer, which is attached to plaintiff's complaint, he states that he has

medical problems documented in my file and I saw Dr. Horn on 10-6-99 and she put in paperwork for me to have appointments scheduled in Madison to see orthopedic specialists and neurosurgeons. I have shrinking cartilage around my L2 and L5 back vertebrae which causes a pinched nerve which causes an agonizing pain and throb down the back of my left leg and when the leg is moved or bent it only magnifies the pain.

The question is whether plaintiff's allegations are sufficient to state an Eighth Amendment claim that defendants were deliberately indifferent to his serious medical needs.

The Eighth Amendment requires the government "to provide medical care for those whom it is punishing by incarceration." Snipes v. Detella, 95 F. 3d 586, 590 (7th Cir. 1996) (quoting Estelle v. Gamble, 429 U.S. 97, 103 (1976)). To state an Eighth Amendment claim of cruel and unusual punishment, a prisoner must show that (1) he had a serious medical need and (2) the defendants were deliberately indifferent to it. Garvin v. Armstrong, 236 F.3d 896, 898 (7th Cir.2001); see also Estelle, 429 U.S. at 106 ("a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs"). The Court of Appeals for the Seventh Circuit has defined "serious medical needs" as encompassing not only conditions that are life-threatening or that carry risks of permanent, serious impairment if left untreated, but also those in which the

deliberately indifferent withholding of medical care results in needless pain and suffering. Gutierrez v. Peters, 111 F.3d 1364, 1371 (7th Cir. 1997). Deliberate indifference entails more than "mere negligence," Farmer v. Brennan, 511 U.S. 825, 836 (1994), and requires the prisoner to show that the prison official was aware of the prisoner's serious medical needs and disregarded an excessive risk that a lack of treatment posed to the prisoner's health or safety. Id. at 837.

Construing plaintiff's complaint liberally as I must, I find that he has stated an Eighth Amendment claim. Plaintiff alleges that he had a pinched nerve that caused him agonizing pain. This allegation is sufficient to suggest that plaintiff had a serious medical need. As for the deliberate indifference component of the Eighth Amendment analysis, plaintiff alleges that defendant Puckett approved his transfer despite knowledge of the plaintiff's medical condition. This is insufficient to show that Puckett acted with deliberate indifference. Plaintiff suggests no reason why defendant Puckett should have known or otherwise assumed that plaintiff's medical needs would go untreated at the Oklahoma prison. However, plaintiff alleges that once he was at the Oklahoma prison, plaintiff alleges his medical needs did indeed go untreated, that he informed defendants Puckett and Higgins of this situation and that Puckett and Higgins did nothing in response. At this early stage of the proceedings, these allegations are sufficient to suggest that defendants Puckett and Higgins may have been deliberately indifferent to plaintiff's serious medical needs.

Moreover, I understand plaintiff to allege that he complained to numerous officials of defendant Corrections Corporation of America that his medical needs were going untreated, but to no avail. To state a claim for relief under 42 U.S.C. § 1983, a plaintiff must allege that he was deprived of a constitutional right and that a person acting under color of state law deprived him of such right. See Gomez v. Toledo, 446 U.S. 635, 640 (1980). Courts have determined that defendant Corrections Corporation of America and its employees are "state actors" under § 1983. See Street v. Corrections Corp. of America, 102 F.3d 810, 814 (6th Cir. 1996) (firm operating prison is state actor because firm performed "traditional state function" of operating a prison); Giron v. Corrections Corp. of America, 14 F. Supp. 2d 1245, 1249 (D.N.M. 1998) (privately employed correction officer is state actor because he performed state function of incarcerating citizen). Plaintiff does not allege that it is defendant Corrections Corporation of America's policy to deny all medical treatment to inmates at its Oklahoma prison, an allegation that in any case would be incredible. Moreover, it is well established that defendant Corrections Corporation of America cannot be held liable under a theory of respondeat superior under § 1983. See Hearne v. Board of Education of City of Chicago, 185 F. 3d 770, 776 (7th Cir. 1999). In other words, defendant Corrections Corporation of America cannot be held liable solely on the basis of its employees' actions or inaction. "Section 1983 creates a cause of action based on personal liability and predicated upon fault; thus, liability does not attach unless the

individual defendant caused or participated in a constitutional deprivation." Vance v. Peters, 97 F. 3d 987, 991 (7th Cir. 1996) (quoting Sheik-Abdi v. McClellan, 37 F.3d 1240, 1248 (7th Cir.1994)); see also Wolf-Lillie v. Sonquist, 699 F.2d 864, 869 ( 7th Cir. 1983) ("A causal connection, or an affirmative link, between the misconduct complained of and the official sued is necessary."). However, I understand plaintiff to allege that he complained about his lack of medical treatment to various officials employed by defendant Corrections Corporation of America and that these officials were unresponsive to plaintiff's needs. Presumably, this is why plaintiff has named Doe defendants in his complaint. I will grant plaintiff leave to proceed against the Doe defendants who allegedly ignored his requests for medical treatment while he was incarcerated in Oklahoma. Plaintiff will also be granted leave to proceed against defendant Corrections Corporation of America for the sole purpose of discovering the identities of the prison officials who refused to provide him medical treatment.

One issue remains to be addressed. Plaintiff alleges that his transfer to the Oklahoma prison violated an Oklahoma statute that prohibits private prisons in that state from housing out-of-state prisoners being held on misdemeanor convictions. As noted earlier, by itself, plaintiff's transfer to a private, out-of-state prison does not violate the Constitution. The only claims plaintiff will be allowed to proceed on involve his allegation that defendants were deliberately indifferent to his serious medical needs. Therefore, I will decline to exercise



supplemental jurisdiction over plaintiff's state law claim that his transfer was illegal by itself.  
See 28 U.S.C. § 1367(a).

## ORDER

IT IS ORDERED that

1. Plaintiff Todd A. Lodholz is GRANTED leave to proceed on his claim that defendants Stephen M. Puckett, Kay Higgins and John Doe(s) were deliberately indifferent to his serious medical needs in violation of the Eighth Amendment. Plaintiff is GRANTED leave to proceed against defendant Corrections Corporation of America for the sole purpose of discovering the identities of the Doe defendants;

2. Plaintiff's claims against defendant Wisconsin Department of Corrections are DISMISSED as legally frivolous pursuant to 28 U.S.C. § 1915A;

3. Plaintiff is responsible for serving his complaint on defendants Puckett, Higgins and Corrections Corporation of America. Memoranda describing the procedure to be followed in serving a complaint on state officials and a corporation are attached to this order, along with three copies of plaintiff's complaint and blank waiver of service of summons forms.

4. Plaintiff should be aware of the requirement that he send defendants a copy of every paper or document that he files with the court. Once plaintiff has learned the identity

of the lawyer who will be representing defendants, he should serve the lawyer directly rather than defendants. Plaintiff should retain a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents. The court will disregard any papers or documents submitted by plaintiff unless the court's copy shows that a copy has gone to defendants or to defendants' attorney.

Entered this 16th day of July, 2003.

BY THE COURT:

BARBARA B. CRABB  
District Judge