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**MARY ELLEN OWENS, et al., Plaintiffs v. CITY OF PHILADELPHIA, et al.,
Defendants.**

CIVIL ACTION NO. 94-4654

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

1997 U.S. Dist. LEXIS 17281

**October 29, 1997, Decided
October 30, 1997, Filed**

DISPOSITION: [*1] Wainwright's motion for summary judgment GRANTED and the City's cross-claims against Wainwright DISMISSED with prejudice. All direct claims by the plaintiffs against Wainwright DISMISSED with prejudice.

COUNSEL: For MARY ELLEN OWENS, PATRICK R GAUDREAU, JR, INDIVIDUALLY AND AS TRUSTEE AD-LITEM, PLAINTIFFS: KENNETH M. DUBROW, GOLDSTEIN, FRIEDBERG, KELLY, DI VITO & DUBROW, P.C., KEVIN P. KELLY, KELLY, DUBROW & HERRON, P.C., PHILADELPHIA, PA USA.

For HAHNEMANN UNIVERSITY SCHOOL OF MEDICINE, DEFENDANT: CHARLES E. MC CLAFFERTY, KELLY, MC LAUGHLIN & FOSTER, PHILA, PA USA.

For SHARON WAINRIGHT, M.D., DEFENDANT: SEAN ROBINS, MARGOLIS, EDELSTEIN AND SCHERLIS, JOSEPH GOLDBERG, PHILA, PA USA.

For THE CITY OF PHILADELPHIA, ERIC LEWIS, WAYNE ROBINSON, LIEUTENANT RUSSELL, A. WHITE, S. MURPHY, P. MCDANIEL, SERGEANT MORRIS, N. BROWN, JOSEPH PATRICK GALLAGHER, JOHN D. DAUGHEN, WILHELMINA SPEACH, THOMAS COSTELLO, DEFENDANTS: LEON A. KING, II, CITY OF PHILA, LAW DEPT., PHILA, PA USA.

JUDGES: LOUIS H. POLLAK, UNITED STATES

DISTRICT JUDGE.

OPINION BY: LOUIS H. POLLAK

OPINION

MEMORANDUM/ORDER

October 29, 1997

This civil rights action concerns the suicide of Patrick Gaudreau, who was incarcerated at [*2] the Philadelphia Detention Center at the time of his death. Plaintiffs brought § 1983 and state-law claims against the City of Philadelphia (hereinafter "the City"), various correctional officers, Hahnemann University Hospital, and several members of Hahnemann's medical staff, including Wainwright. In its answer, the City brought cross-claims against the hospital and the medical staff named in the complaint.

Before the court is defendant Sharon Wainwright's motion for summary judgment on cross-claims asserted by the City. Wainwright is a psychiatrist who treated Gaudreau at the Hahnemann Psychiatric Unit and discharged him therefrom. By stipulation--entered into by counsel for plaintiffs, for Wainwright, and for codefendants Hahnemann University, James F. Sheffer, and Emil Matula--all of plaintiffs' direct claims against Wainwright were dismissed, leaving the City's cross-claims as the only claims against Wainwright in this action. On July 29, 1997, Wainwright filed this motion. In a letter dated July 31, 1997, plaintiffs' counsel

stated that plaintiff would not oppose the motion. No response has been filed by defendant City of Philadelphia.

Wainwright argues, persuasively, that [*3] (1) the City's cross-claims assert only negligence and therefore state no claim under § 1983, and (2) the City has failed to meet its burden to show, by expert evidence, deviation from the standard of care on the part of Wainwright. These two arguments will be taken in turn.

To state a civil rights claim involving the adequacy of medical assistance, the complaint must allege "deliberate indifference to serious medical needs of prisoners." *Estelle v. Gamble*, 429 U.S. 97, 104, 50 L. Ed. 2d 251, 97 S. Ct. 285 (1976). Furthermore, not every claim of inadequate treatment will suffice: "Medical malpractice does not become a constitutional violation merely because the victim is a prisoner." *Id. at 106*. Thus the requirement is two-fold. The allegations must indicate: (1) a culpable state of mind on the part of the officials, *viz.*, deliberate indifference, and (2) a serious medical need. *See West v. Keve*, 571 F.2d 158, 161 (3d Cir. 1978). Assuming that the medical need at issue here was serious, the City nonetheless has failed to allege, let alone make any showing of, the state of mind required for recovery. In its answer to the complaint, the City stated its cross-claim thus: [*4] "The answering defendants aver that if the plaintiffs suffered the injuries averred in the complaint, said injuries were caused by the negligence, recklessness, and carelessness of the defendants, Hahnemann University, Sharon Wainwright, M.D., Edward Guy, M.D., James F. Sheffer, E. Matula, and Dadvand, M.D." Because the City has alleged only negligence and recklessness on the part of Dr. Wainwright, the City has failed to state a claim cognizable under the civil rights laws. Therefore, to the extent that the City's cross-claim purports to bring civil rights claims against Wainwright, summary judgment for Wainwright will be granted.

Accordingly, left for decision are the City's state-law claims of negligence or recklessness in Wainwright's medical care of Gaudreau. Summary judgment is

appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Fed. R. Civ. P. 56(c)*. The party moving for summary judgment has the initial burden of showing the basis for its motion. *Celotex Corp. [*5] v. Catrett*, 477 U.S. 317, 323, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986). However, once the movant has supported the motion adequately, the burden shifts to the nonmoving party to present evidence through affidavits, depositions, or admissions on file to show that there is a genuine of material fact. *Id. at 324*.

In this case, Wainwright has sufficiently supported her motion by means of an expert report by Dr. Jacobs, opining that Dr. Wainwright met the standard of care when treating Gaudreau. The City, however, has made no showing, consistent with its burden, that there is a material issue of fact regarding Wainwright's treatment of Gaudreau. *Cf. Brannan v. Lankenau Hospital*, 490 Pa. 588, 595, 417 A.2d 196 (Pa. 1980)(in medical malpractice actions, plaintiff has burden of showing deviation from standard of care by means of expert testimony). In fact, as Wainwright points out, the only record evidence submitted by the City that even mentions Wainwright tends to indicate the contrary. *See* Expert Witness Report of James E. Murphy at 6. Therefore, there is no issue of material fact precluding summary judgment.

Accordingly, it is hereby ORDERED that Wainwright's motion for [*6] summary judgment is GRANTED and the City's cross-claims against Wainwright are hereby DISMISSED with prejudice. It is further ORDERED, in conformance with the plaintiffs' stipulation of dismissal, that all direct claims by the plaintiffs against Wainwright are hereby DISMISSED with prejudice.

LOUIS H. POLLAK

UNITED STATES DISTRICT JUDGE