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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

FILED



MAR 11 2008

CLERK, DISTRICT COURT, W.D.N.Y.

CHRISTOPHER YOUNG, #91-B-2542

Plaintiff,

ANSWERING MEMORANDUM

07-cv-6312

-vs-

DR. ALAN SMITH, DR. GERALD CONIGLIO,
THOMAS EAGEN C.O.R.C Director, and
JAMES T. CONWAY (Supt. A.C.F),
Defendants,

FACIS

Defendant on motion pursuant to Rule 12(B)(6) of the Federal Rules of Civil Procedure, dated October 10, 2007 alleges that an order of dismissal should be granted in their favor for several reasons.

On March 4, 2008 defendant and plaintiff received a Court order from the Honorable Charles J. Siragusa of this court, giving permission for the plaintiff to file to this court responding papers on or before March 28, 2008.

ARGUMENT

Defendants motion should not survive for the following stated reasons.

1.) Defendant contends in it's motion that medical malpractice is not grounds to bring a claim under section 42 U.S.C § 1983, however the Plaintiffs claim was directed to move forward as a Deliberate Indifference claim (see Decision and Order of the Honorable William M. Skretny, dated August 13, 2007). Further Plaintiff only reason for citing Medical Malpractice was because that is how it is written on the Civil Cover Sheet.

2.) Defendant contends that Dr. Alan Smith should not be a part of the Plaintiff claim because he was not a state actor/employee, and that the Plaintiff merely alleging negligence will not give rise to a constitutional violation.

On the contrary, Dr. Smith was acting on behalf of the state since his employer has a contract to treat inmates at their hospital with the N.Y.S Department of Correctional Services in this hub.

42 U.S.C § 1983 states in part: " **Every person who, under the color of any statute, ordinance, regulation, custom, or usage, of any state... subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and Laws, shall be liable to the party injured.**"

In regard to the claim of negligence, Plaintiff did not state a claim of mere negligence, I did however show in my complaint how Dr. Smiths actions were Deliberately Indifferent to the Plaintiffs medical needs, "**he chose a easier and less effective method of treatment.**"

In fact Dr. Smith didn't actually treat the Plaintiff, but rather put an immobilizer on the Plaintiffs dislocated knee thereby causing the knee-cap to press into the thigh muscle to the point that it left the Plaintiff with muscle damage. Defendant Smith then sent the Plaintiff back to the facility with his original injury in the same condition.

3.) Defendant Dr. Coniglio, was by the defendants own submission is under contract with the N.Y.S Department of Correctional Services, thereby acted under the color of the state. His choice of treatment ultimately caused the Plaintiff to lose a portion of his knee-cap.

4.) In regards to Defendants Eagen and Conway, they both denied the Plaintiff further medical treatment that could have made the Plaintiff whole again. After Dr. Coniglio realized the damage that he had caused the Plaintiff, he recommended that the Plaintiff be taken to another hospital to see a different Orthopedic Surgeon for a possible knee-cap replacement. A recommendation/request that both defendant Eagen and Conway denied.

On page 7 of the defendant(s) motion, the defendant gave a quote that the Plaintiff would contend validates his point in regard to these two defendants. The Defendant states: "(It is not alleged that (the Superintendent) is a doctor, or that he personally provided, (or was capable of providing) Plaintiff with medical care. Rather it is alleged that he affirmed the denial of a grievance against the two doctors for failing to provide care. (BUT A PRISON ADMINISTRATOR IS PERMITTED TO RELY UPON AND BE GUIDED BY THE OPINION OF MEDICAL PERSONNEL CONCERNING THE PROPER COURSE OF TREATMENT ADMINISTERED TO PRISONERS, AND CANNOT BE HELD TO HAVE BEEN PERSONALLY INVOLVED IF HE DOES SO)".

___ In this case both defendants refused to follow the recommendation, request, or opinion of the very doctor who destroyed my knee-cap.

5.) Defendant(s) in their motion cited several cases on (pgs.3-4), that would seem to favor the Plaintiff, in that they support the Plaintiffs position as a Pro-Se litigant and his contentions.

6.) Finally the defendant(s) in their attempt to get the Plaintiffs claim dismissed, filed a 12(b) Notice of Motion and Memorandum of Law to this Court with a copy being served on the Plaintiff. At the direction of the Honorable Charles J. Siragusa in his (Motion Scheduling Order dated, February 27, 2008), the Plaintiff did refer to the Local Rules of Civil Procedure for the Western District, and Rule 7.1(e) states in pertinent part, "absent leave of Court or as otherwise specified in this rule, upon any Motion filed pursuant to Federal Rules of Civil Procedure 12, 56 or 65(a), the moving party shall file and serve with the Motion papers a

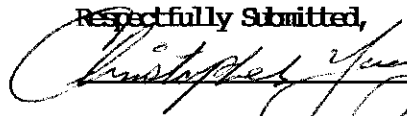
a Memorandum of Law and Affidavit in support of the Motion."

I am by no means a legal professional, but it would appear to me that the defendant filing according to the Rules of this Court are incomplete.

CONCLUSION

For the above stated reasons the defendants motion should be denied with prejudice, and this case should be ordered by his Honorable Justice to go forward in the pre-trial stages.

Respectfully Submitted,

 (pro-se)

Christopher Young #91-B-2542

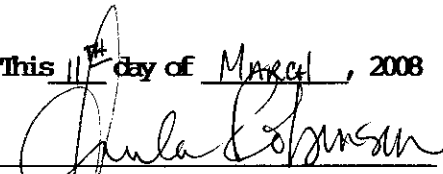
Attica Correctional Facility

639 Exchange St. Blvd.

Attica, New York 14011-0149

Subscribed and Sworn to Before Me

This 11th day of March, 2008



Notary Public

ANULA ROBINSON
NOTARY PUBLIC, STATE OF NEW YORK
01RO5033026
QUALIFIED IN WYOMING COUNTY
COMMISSION EXPIRES SEPT. 6, 2010

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



FILED

NOV 20 2008

U.S. DISTRICT COURT

CHRISTOPHER YOUNG, #91-B-2542

Plaintiff,

SUPPORTING AFFIDAVIT

07-cv-6312

~~-vs-~~

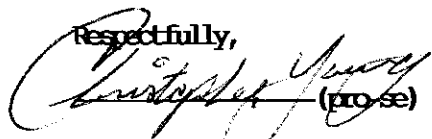
DR. ALAN SMITH, DR. GERALD CONIGLIO,
THOMAS EAGEN C.O.R.C Director, and
JAMES T. CONWAY (Supt. A.C.F)

I, Christopher Young am the Plaintiff in this action, being duly sworn deposes and says:

- 1.) That all information contained within the Answering Memorandum is true and exact to the best of my knowledge.

- 2.) The instant memorandum is made as a result of a (Motion to Dismiss) under 12(b)(6) of the Federal Rules of Civil Procedure filed to this court by the defendants, and direction of the Honorable Charles J. Siragusa, dated February 27, 2008.

- 3.) The Supporting Affidavit and Answering Memorandum is made in accordance with Rule 7.1(e) of the Local Rules of Civil Procedures for the U.S. District Court of the Western District of New York.

Respectfully,

(pro se)

Christopher Young #91-B-2542

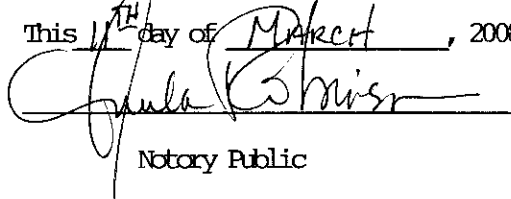
Attica Correctional Facility

639 Exchange St. Blvd.

Attica, New York 14011-0149

Sworn to before me

This 11th day of March, 2008

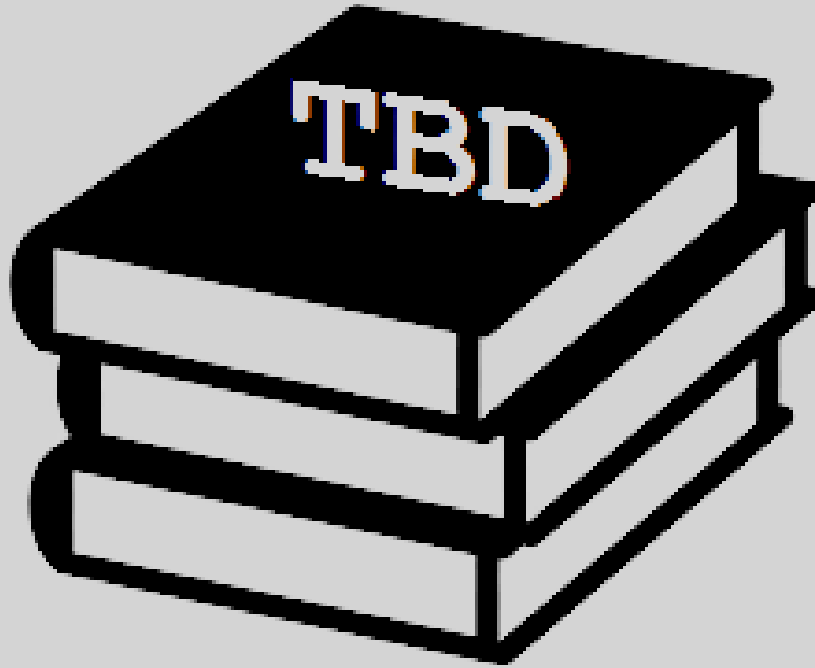

Notary Public

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