

STATE OF VERMONT
WINDSOR COUNTY, SS

James Ashley
Plaintiff

v.

Prison Health Services, Inc.,
Dr. John Leppman,
Dr Mitch Miller and
Dr. Delores Burroughs-Biron
Defendants

SUPERIOR COURT
Docket No. 396-6-08 Wrcv

DECISION ON MOTION TO DISMISS

In an addendum to his complaint, Plaintiff has brought claims against Dr. Delores Burroughs-Biron. Plaintiff has sued Dr. Burroughs-Biron in her official capacity as Health Services Director of the Vermont Department of Corrections. Plaintiff has alleged violations of the 8th and 14th Amendments to the United States Constitution as well as unspecified violations of the Vermont Constitution arising out of what he claims to be improper medical care while he was incarcerated.¹ Plaintiff's complaint seeks money damages in the amount of \$1,000,000.

Dr. Burroughs-Biron has filed a Motion to Dismiss the claims against her. No pleading in opposition has been filed.

Neither the State of Vermont, nor an employee of the State sued in their official capacity, are "persons" under 42 U.S.C.A. §1983, the statute authorizing claims for deprivation of civil rights under the United States Constitution. *Will v. Michigan Department of State Police*, 491 U.S. 58 (1989); *Heleba v. Allbee*, 160 Vt .283 (1992).

¹ Plaintiff's complaint asserted violations of the 14th Amendment to the Vermont Constitution. As such a provision does not exist, the Court has considered that Plaintiff intended the 14th Amendment to the United States Constitution, which frequently forms a basis for such claims.

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Therefore, when a state official is sued solely in an official capacity, monetary damages are ordinarily unavailable. *Shields v. Gerhart*, 155 Vt. 141 (1990). Such is the case here.

Because the claims against Dr. Burroughs-Biron in her official capacity are treated as claims against the State and because the State is not a "person" for purposes of claims for money damages arising pursuant to 42 U.S.C.A. §1983, those claims must fail. Plaintiff's claims for monetary damages based upon violations of the 8th and 14 Amendments to the United States Constitution are improper as a matter of law.

Remaining for consideration is the reference in Plaintiff's complaint to a cause of action based upon the Vermont Constitution. The Court has liberally construed the Plaintiff's amended complaint, having in mind he is proceeding on a pro se basis. Applying that standard, the Court declines to dismiss the claim on the basis of inadequate pleadings. It bears noting that an open question exists as to whether the Vermont Constitution provides any basis for claims for monetary damages. *Shields v. Gerhart*, 155 Vt.141 (1990). The burden of showing how the Vermont Constitution affords greater protections than its federal counterpart rests with the Plaintiff. *State v. Gleason*, 154 Vt. 205 (1990).

Despite these issues, Plaintiff's state claims must fail for other reasons. Vermont has waived sovereign immunity only for claims based upon negligence. 12 V.S.A. §5601. The Plaintiff here alleges that claims against Dr. Burroughs-Biron arise out of her deliberate indifference, a standard well beyond negligence. Deliberate indifference for alleged civil rights violations against a prisoner concerning medical care is characterized as an unnecessary and wanton infliction of pain on a prisoner. *Estelle v. Gamble*, 429

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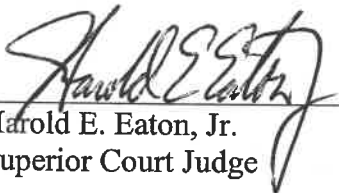
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U.S. 97 (1976). While such deliberate indifference is necessary in order to state a claim for constitutional purposes, the State has not waived sovereign immunity for such claims.

Based upon the foregoing, the claims against Dr. Delores Burroughs-Biron are **DISMISSED.**

Dated at Woodstock this 10th day of February, 2009.


Harold E. Eaton, Jr.
Superior Court Judge

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Superior Court of Vermont
County of Windsor

ENTRY REGARDING MOTION

Ashley vs. Prison Health Services et al
[Hoar]

396-6-08 Wrcv

Title: Dr. Delores Burrougs-Biron's Motion to Dismiss, No. 8
Filed on: January 12, 2009
Filed By: Hoar, Samuel Jr., Attorney for:
Defendant Delores Burroughs-Biron Dr.

Response: NONE

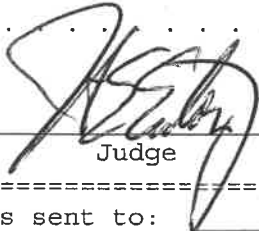
☒ Granted Compliance by _____

☐ Denied

☐ Scheduled for hearing on: _____ at _____; Time Allotted _____

☐ Other

See attached decision.


Judge

2/10/09
Date

Date copies sent to: _____

Clerk's Initials _____

Copies sent to:

Plaintiff James E. Ashley
Attorney Samuel Hoar Jr. for Defendant Prison Health Services
Attorney Samuel Hoar Jr. for Defendant John Leppman Dr.
Attorney Samuel Hoar Jr. for Defendant Mitch Miller Dr.
Attorney Samuel Hoar Jr. for Defendant Delores Burroughs-Biron Dr.

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