

SUPERIOR COURT  
Washington Unit  
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CIVIL DIVISION  
Case No. 22-CV-01843

Robert Plante v State of Vermont et al

Opinion and Order on Motion to Dismiss

Defendant State of Vermont seeks dismissal under Vt. R. Civ. P. 12(b)(1) and (6), arguing that the Court has no jurisdiction to review whether Plaintiff is receiving appropriate medical care while incarcerated and that the Complaint fails to state a claim. Plaintiff opposes the motion, relying on the averments of the Amended Complaint.

In reviewing a motion under Rule 12(b)(1), “all uncontroverted factual allegations of the complaint [are] accepted as true and construed in the light most favorable to the nonmoving party.” *Mullinnex v. Menard*, 2020 VT 33, ¶ 8, 212 Vt. 432, 438 (2020) (quoting *Conley v. Crisafulli*, 2010 VT 38, ¶ 3, 188 Vt. 11, 13)). The Rule 12(b)(6) motion is analyzed on a similar, if not more exacting, standard: “Dismissal under Rule 12(b)(6) is proper only when it is beyond doubt that there exist no facts or circumstances consistent with the complaint that would entitle Plaintiff to relief.” *Bock v. Gold*, 2008 VT 81, ¶ 4, 184 Vt. 575, 576 (mem.) (quoting *Union Mut. Fire Ins. Co. v. Joerg*, 2003 VT 27, ¶ 4, 175 Vt. 196, 198)).

Here, Plaintiff’s Amended Complaint asserts that he is incarcerated by Defendant -- specifically, the Department of Corrections (DOC)) -- and has been

placed at an out-of-state facility, in Mississippi. He maintains that he is currently in pain and has difficulty opening his mouth following cancer treatments. He asserts that the care he is receiving falls below the appropriate standard of medical care.

Defendant's primary arguments are that: (1) the Court lacks jurisdiction under Vt. R. Civ. P. 75 to review the medical care being provided to inmates; (2) 28 V.S.A. § 801 does not create a private cause of action that can be enforced in the courts; (3) care being provided through an out-of-state prison cannot be enforced through a Vermont action; and (4) Plaintiff's allegations are too vague to allow Defendant to formulate a meaningful response.<sup>1</sup> The Court makes the following determinations.

First, the Court has only recently rejected the argument that Rule 75 does not provide jurisdiction to review the medical care provided to inmates who are in the care and custody of the DOC. In *Burke v. Deml*, 23-CV-236, slip op. (Wncv May 9, 2023), the Court concluded that Rule 75 permits such oversight as it falls within the outer bounds of the common-law writ of mandamus. In words that apply with equal force here, the *Burke* Court held as follows:

Plaintiff's only possible avenue of review is pursuant to a writ of mandamus. Mandamus is a remedy wherein the Court "require[s] a public officer to perform a simple and definite ministerial duty imposed by law." *Sagar v. Warren Selectboard*, 170 Vt. 167, 171 (1999). For it to apply, there must some statutory limitation on the Department's

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<sup>1</sup> Defendant also asserted that Plaintiff's claims for failure to provide medical care in the past are moot as he has now received such care. Plaintiff does not contest this point. Accordingly, the Court proceeds on the Complaint's allegation of ongoing failure to provide appropriate medical care.

discretion. *See Rheau*, 2011 VT 72, ¶¶ 9–10, 190 Vt. at 250. Here, Plaintiff argues that Defendant is statutorily required to “provide health care for inmates in accordance with the prevailing medical standards.” 28 V.S.A. § 801(a). He contends that law provides the lens through which to evaluate Defendant’s duties for purposes of mandamus. The Court agrees.

Section 801(a) requires the Defendant to assure that prisoners are provided with appropriate medical care in accord with “prevailing medical standards.” *Id.* While the Court does not take issue with Defendant’s point that it is vested with considerable discretion in determining how to provide such care, its assertion that the provision of medical care is “purely discretionary” is overbroad, to say the least. Section 801(c) provides a clear legal and medical standard that can be applied to how the Defendant carries out its discretion. Its exercise of discretion in the provision of medical care must stay at or above that standard. Stated another way, the DOC simply does not have the discretion to provide inadequate medical care to prisoners. A writ of mandamus is available to enforce that plain duty.

*Id.*, slip op. at 3-4.

The Court adheres to that ruling in this action, and Defendant’s contentions do not persuade the Court to alter its conclusions. Defendant cites *Ala v. Pallito*, No. 2013-434, 2014 WL 3714892, at \*1 (Vt. June 12, 2014), as support for its view that Rule 75 does not allow review of medical care. *Ala* cannot be read so broadly, however.

In *Ala*, an inmate argued he was discriminated against because the DOC allowed other inmates to cut the medication line. He wanted the ability to do so as well. He never claimed, though, that the failure allow him to “cut” the line somehow violated the DOC’s duty to provide him appropriate medical care. As a result, he was unable to point to any mandatory standard that

might cabin the DOC's broad discretion in how to hand out medications. As noted above, this case is different.

Defendant also argues that Section 801 does not create a private right of action. While it is true that some trial courts have concluded that portions of Section 801 do not create rights enforceable through private litigation by prisoners, *see, e.g., McGee v. Pallito*, No. 1:10-CV-11, 2011 WL 6291954, at \*28 (D. Vt. Aug. 3, 2011), report and recommendation adopted, No. 1:10-CV-11-JGM-JMC, 2011 WL 6294202 (D. Vt. Dec. 15, 2011), the cause of action in this case is not brought directly under Section 801. Instead, Plaintiff asserts his claim pursuant to Rule 75. The Court has found that Section 801(a) sets a legislatively mandated floor for medical care that the DOC may not fall below and that mandamus review is available under Rule 75 to enforce that mandatory duty. Whether Section 801(a) could provide an independent cause of action on its own is irrelevant under such circumstances. Its provisions can be policed through Rule 75.

It is unclear whether Defendant is also asserting that review is somehow unavailable because Defendant has chosen to incarcerate Plaintiff at an out-of-state facility. If it is, the defense is rejected. While Defendant's role is supervisory under such circumstances, it is plain that the ultimate responsibility to assure that Vermont prisoners are provided with adequate medical care lies squarely with the Vermont Department of Corrections, regardless where the particular prisoner is housed. *See Nichols v. Hoffman*,

2010 VT 36 ¶¶ 6, 12, 188 Vt. 1, 4, 8 (prisoners lodged out-of-state are DOC “inmates” under Vermont law and have same statutory rights to stamps as Vermont-housed inmates); *see also HRDC v. Correctional Care Solutions, LLC*, 2021 VT 63, ¶¶ 18-19, 215 Vt. 362, 371-72 (discussing DOC’s duty to provide medical care for prisoner).

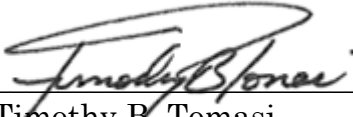
Lastly, Defendant maintains that the complaint fails to state a claim under Rule 12(b)(6) because its allegations are too vague. This argument founders on the shoals of the high standard required for dismissal under that Rule. The Supreme Court has instructed that dismissal under Rule 12(b)(6) is appropriate only where “it is beyond doubt that there exist no facts or circumstances consistent with the complaint that would entitle Plaintiff to relief.” *Bock*, 2008 VT 81, ¶ 4, 184 Vt. at 576.

Here, the Amended Complaint alleges that Plaintiff is experiencing ongoing pain and difficulty opening his jaw in conjunction with/following cancer treatment. He claims the medical care he is receiving for that condition falls below “prevailing medical standards.” 28 V.S.A. § 801(a). No more is required to state a claim under Vt. R. Civ. P. 8 and to provide “fair notice” to Defendant of the claim against it. Vt. R. Civ. P. 8, Reporter’s Notes. No doubt, greater factual detail would be beneficial. In the context of Rule 12(b)(6) motions, however, the Civil Rules anticipate that such clarity can be obtained via the discovery process.

Conclusion

In light of the foregoing, the motion to dismiss is denied.

Electronically signed on Wednesday, June 7, 2023, pursuant to V.R.E.F. 9(d).

  
Timothy B. Tomasi  
Superior Court Judge