

U.S. District Court
Southern District of Florida (Ft. Lauderdale)
CIVIL DOCKET FOR CASE #: 0:12-cv-60494-KMW

Stevenson v. Armor Correctional Health
Assigned to: Judge Kathleen M. Williams
Referred to: Magistrate Judge Patrick A. White
Cause: 28:1983 Civil Rights

Date Filed: 03/19/2012
Jury Demand: Defendant
Nature of Suit: 550 Prisoner: Civil Rights
Jurisdiction: Federal Question

Petitioner

Lance Stevenson
Prisoner ID: 251101172

represented by **Lance Stevenson**
251101172
Joseph V. Conte Facility
P.O. Box 407016
Fort Lauderdale, FL 33340-7016
PRO SE

V.

Defendant**S Frankowitz**

represented by **Daniel Lee Losey**
Kelley, Kronenberg, Gilmartin, Fichtel,
Wander, et al., P.A.
8201 Peters Road
Suite 4000
Ft. Lauderdale, FL 33324
954-370-9970
Fax: 954-333-3763
Email: dlosey@kelleykronenberg.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant**Karen Zoahy**

represented by **Daniel Lee Losey**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Respondent

Armor Correctional Health
TERMINATED: 10/17/2012

Date Filed	#	Docket Text
03/19/2012	<u>1</u>	COMPLAINT against Armor Correctional Health. Filing fee \$ 350.00. IFP Filed, filed by Lance Stevenson.(mb) (Entered: 03/19/2012)
03/19/2012	2	Judge Assignment to Judge Kathleen M. Williams (mb) (Entered: 03/19/2012)
03/19/2012	3	Clerks Notice of Magistrate Judge Assignment to Magistrate Judge Patrick A. White. Pursuant to Administrative Order 2003-19 for a ruling on all pre-trial, non-dispositive matters and for a Report and Recommendation on any dispositive matters. (mb) (Entered: 03/19/2012)
03/19/2012	<u>4</u>	MOTION for Leave to Proceed in forma pauperis by Lance Stevenson. (mb) (Entered: 03/19/2012)

03/28/2012	<u>5</u>	MOTION to Appoint Counsel by Lance Stevenson. Responses due by 4/16/2012 (cbr) (Entered: 03/29/2012)
03/29/2012	<u>6</u>	Clerk's Notice of Filing Deficiency Re: <u>5</u> MOTION to Appoint Counsel filed by Lance Stevenson. Document(s) missing required signature(s) (Fed.R.Civ.P. 11(a)). (cbr) (Entered: 03/29/2012)
03/29/2012	<u>7</u>	ORDER OF INSTRUCTIONS TO PRO SE LITIGANT. Signed by Magistrate Judge Patrick A. White on 3/29/2012. (ls) (Entered: 03/30/2012)
03/29/2012	<u>8</u>	ORDER granting <u>4</u> Motion for Leave to Proceed in forma pauperis. Signed by Magistrate Judge Patrick A. White on 3/29/2012. (ls) (Entered: 03/30/2012)
03/30/2012	<u>9</u>	ORDER denying <u>5</u> Motion to Appoint Counsel. Signed by Magistrate Judge Patrick A. White on 3/30/2012. (ls) (Entered: 03/30/2012)
04/05/2012	<u>10</u>	Request/MOTION for Production of Documents by Lance Stevenson. (cbr) (Entered: 04/05/2012)
04/05/2012	<u>11</u>	Clerk's Notice of Filing Deficiency Re: <u>10</u> MOTION to Produce filed by Lance Stevenson. Document(s) missing required signature(s) (Fed.R.Civ.P. 11(a)). (cbr) (Entered: 04/05/2012)
04/11/2012	<u>12</u>	NOTICE of filing a copy of jail account by Lance Stevenson (ail) (Entered: 04/11/2012)
04/26/2012	<u>13</u>	ORDER denying <u>10</u> Motion to Produce, discovery requests must be sent directly to defendants once they have been served and responded.. Signed by Magistrate Judge Patrick A. White on 4/26/2012. (cz) (Entered: 04/26/2012)
05/01/2012	<u>14</u>	ORDER REQUIRING AMENDED COMPLAINT. (Amended Pleadings due by 5/21/2012.) Signed by Magistrate Judge Patrick A. White on 5/1/2012. (Attachments: # <u>1</u> Supplement 1983) (tw) (Entered: 05/01/2012)
05/29/2012	<u>15</u>	AMENDED COMPLAINT against Armor Correctional Health, S Frankowitz, Karen Zoahy, filed by Lance Stevenson.(cbr) (Entered: 05/30/2012)
07/24/2012	<u>16</u>	ORDER REQUIRING PLAINTIFF TO VERIFY COMPLAINT. Due on or before August 30, 2012. Signed by Magistrate Judge Patrick A. White on 7/23/2012. (Attachments: # <u>1</u> Affidavit Verification Form) (tw) (Entered: 07/24/2012)
07/26/2012	<u>17</u>	Verification of Complaint by Lance Stevenson re <u>16</u> Order (cbr) (Entered: 07/27/2012)
10/04/2012	<u>18</u>	ORDER RE SERVICE OF PROCESS REQUIRING PERSONAL SERVICE UPON AND INDIVIDUAL.The United States Marshal shall serve a copy of the complaint and appropriate summons upon:Dr. S. Frankowitz, Broward County Jail, 555 S.E. First Avenue, Fort Lauderdale, FL and Nurse Karen Zoahy, Broward County Jail, 555 S.E. First Avenue, Fort Lauderdale, FL. Signed by Magistrate Judge Patrick A. White on 10/3/2012. (tw) (Entered: 10/04/2012)
10/09/2012	<u>19</u>	REPORT AND RECOMMENDATIONS on 42 USC 1983 case re <u>1</u> Complaint filed by Lance Stevenson. Recommending. The claim of denial of medical treatment should proceed against Nurse Zoahy and D. O. Frankowitz. 2. Service will be ordered by separate order. Objections to RRdue by 10/26/2012 Signed by Magistrate Judge Patrick A. White on 10/9/2012. (tw) (Entered: 10/09/2012)
10/10/2012	<u>20</u>	Summons Issued as to S Frankowitz, Karen Zoahy. (cbr) (Entered: 10/10/2012)
10/17/2012	<u>21</u>	ORDER ADOPTING REPORT AND RECOMMENDATIONS for <u>15</u> Amended Complaint filed by Lance Stevenson ; adopting Report and Recommendations re <u>19</u> Report and Recommendations. Certificate of Appealability: No Ruling. Armor Correctional Health should be terminated. Signed by Judge Kathleen M. Williams on 10/17/2012. (ls) (Entered: 10/17/2012)
10/29/2012	<u>22</u>	SUMMONS (Affidavit) Returned Executed on <u>15</u> Amended Complaint with a 21 day response/answer filing deadline S Frankowitz served on 10/26/2012, answer due 11/16/2012. (cbr) (Entered: 10/31/2012)

11/01/2012	<u>23</u>	SUMMONS (Affidavit) Returned Executed on <u>1</u> Complaint, <u>15</u> Amended Complaint with a 21 day response/answer filing deadline Karen Zoahy served on 10/30/2012, answer due 11/20/2012. (gp) (Entered: 11/02/2012)
11/15/2012	<u>24</u>	Corporate Disclosure Statement by Karen Zoahy, S Frankowitz (Losey, Daniel) (Entered: 11/15/2012)
11/15/2012	<u>25</u>	ANSWER and Affirmative Defenses to Amended Complaint with Jury Demand by S Frankowitz, Karen Zoahy.(Losey, Daniel) (Entered: 11/15/2012)
12/14/2012	<u>26</u>	SCHEDULING ORDER: Amended Pleadings due by 4/26/2013. Discovery due by 4/12/2013. Joinder of Parties due by 4/26/2013. Motions due by 5/17/2013. Signed by Magistrate Judge Patrick A. White on 12/14/2012. (tw) (Entered: 12/14/2012)
01/10/2013	27	Clerk's Notice of Undeliverable Mail re <u>26</u> Scheduling Order. US Mail returned for: Lance Stevenson . <i>The Court has not located an updated address for this party. After two unsuccessful noticing attempts, notices from the Court will no longer be sent to this party in this case until a correct address is provided.</i> (cqs) (Entered: 01/10/2013)
01/11/2013	<u>28</u>	MOTION for Protective Order <i>Motion for HIPAA Qualified Protective Order and Order to Disclose Protected Health Information</i> by S Frankowitz, Karen Zoahy. (Losey, Daniel). Added MOTION to Disclose Protected Health Information on 1/14/2013 (asl). (Entered: 01/11/2013)
01/14/2013	29	Clerks Notice to Filer re <u>28</u> MOTION for Protective Order <i>Motion for HIPAA Qualified Protective Order and Order to Disclose Protected Health Information. Motion with Multiple Reliefs Filed as One Relief</i> ; ERROR – The Filer selected only one relief event and failed to select the additional corresponding events for each relief requested in the motion. The docket entry was corrected by the Clerk. It is not necessary to refile this document but future filings must comply with the instructions in the CM/ECF Attorney User's Manual. (asl) (Entered: 01/14/2013)
01/16/2013	30	ORDER granting <u>28</u> Motion for Protective Order; granting <u>28</u> Motion for Disclosure, the plaintiff has put his health at issue in this case. Signed by Magistrate Judge Patrick A. White on 1/16/2013. (cz) (Entered: 01/16/2013)
01/25/2013	31	Clerk's Notice of Undeliverable Mail re 29 Clerks Notice of Docket Correction and Instruction to Filer – Attorney,,. US Mail returned for: Lance Stevenson . <i>The Court has not located an updated address for this party. After two unsuccessful noticing attempts, notices from the Court will no longer be sent to this party in this case until a correct address is provided.</i> (cqs) (Entered: 01/25/2013)
01/29/2013	32	Clerk's Notice of Undeliverable Mail re 30 Order on Motion for Protective Order, Order on Motion for Disclosure. US Mail returned for: Lance Stevenson . <i>The Court has not located an updated address for this party. After two unsuccessful noticing attempts, notices from the Court will no longer be sent to this party in this case until a correct address is provided. Two Returns/Attempts. court notices will no longer be sent to this party until a correct address is provided.</i> (cqs) (Entered: 01/29/2013)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Civil Case Number: 12-60494-CIV-WILLIAMS

Lance Stevenson
(Write the full name of the plaintiff)

vs.

Armor Correctional Health et al
Broward County Jail
Fort Lauderdale, Fl. ~~33340~~
33340

(Write the full name of the defendant/s in this case)

FILED BY ML D.C.
2012 MAY 29 PM 2:41
CLERK U.S. DIST. CT.
S.D. OF FLA.-FTL

COMPLAINT UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983

I. Party Information

A. Plaintiff: Lance Stevenson 251101172

Address: B.C.J. Corte Facility

Inmate/Prison No.: 251101172

Year of Birth: _____ (Do not include day or month, pursuant to Fed. R. Civ. P 5.2)

(Write your name, address and prison/inmate number, if applicable)

vs.

B. Defendant: S. Frankowitz D.O. Defendant: Karenizahy

Official Position: NBB, MS Official Position: Nurse

Place of Employment: Brow Count Jail Place of Employment: Broward County Jail

(Write the full name of each defendant, official position and place of employment. Attach a separate page if you need additional space for additional defendants.)

II. Statement of Claim

Briefly describe the facts of your case. Describe how each defendant is involved, names of other persons involved, and dates and places. Each claim should be stated in a separately numbered paragraph. Please use short and plain statements, with separately numbered paragraphs indicating why the relief requested should be granted. Do not include legal arguments or cite cases or statutes. Attach additional pages, if necessary.

I was ignored when I was booked in, with obvious injuries. Dr Frankowitz can not make up his mind on my injuries or what to do, I was never treated for my right hand or right knee and refused a cast. Karen Zaky ignored my injuries and refused me treatment and a cast. There are pages in back dates and names

III. Relief Requested

Briefly state what you are requesting from the Court (what do you want the Court to do). Do not include legal arguments or cite cases or statutes. Attach additional pages, if necessary.

Armar should pay for outside consult and surgery. Doctors pay for pain and suffering. I'm suing for 25,000.00 apiece.

IV. Jury Demand

Are you demanding a jury trial? Yes No

Signed this _____ day of _____, 20____

Signature of Plaintiff

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: _____

Signature of Plaintiff

12/14/11 Internal Clinic Referral Form
For CIC Neuro and x ray for Right
leg hip. I complained about my hand
and knee upon admission but they
ignored it. I was seen by Cheryl
Cummings A.R.N.P. / all site on 12/22/11
I was admitted on 12/17/11 I was
put down for an x ray of my Right
leg and hip. My Hand and knee
were the injuries but it was ignored.

2/8/12 I was seen by S. Frankowitz
Doctor he wrote non healing he
stamped the paper refused to sign it.

1/12/12 seen by Doctor, Specialty Service
Consultation Request, it states Right hand
pain, Right knee and Right hip were
re-injured. Again they deliberately misquote
my hand and knee were injured on 12/17/11
only my right hip was re-injured. But still
no treatment. Paper stamped by Erin Pakheija L.P.N.

1-24-12 again I complained of
Right hand and knee pain but they
keep saying hip pain. also theres no
relief for pain from their muscle relaxants. Paper stamped
by Karen Mizrahy. also denied a cane

1-12-12 I complained again of my right hand pain as of my Right knee, nothing done paper stamped by Karen Mizrahy.

2-15-12 see in clinic again nothing done paper stamped by Michael Prendergast

3/7/12 seen again in clinic told them the grip in my right hand is very weak when I close it and painful, also when I open my hand and extend fingers all the way out its also painful, nothing done, paper stamped by Michael Prendergast

12/8/11 Intake Health Screening by Health trained staff, "Does the inmate have visible signs of pain, bleeding, injury illness or other symptoms"? they stamped no, I have pictures of my injury and was limping. When they heard the police did it while I was handcuffed they ignored it.

2/1/12 Initial Mental Health Evaluation on Past medical History I told them how my hand was injured. All they wrote was "he wants medical review, educated on access rights,

12/23/11 I was xrayed on my right hip again I told them its my knee, it pops out of joint. They refuse to acknowledge it. the paper was stamped by S. Frankowitz, D.O.

12/23/11 They xray my knee and tell me no bones are broken. No bones have to be broken for your knee to pop out of joint. The paper was stamped by S. Frankowitz

2/12/12 Xray request - P.A. Mizrahy states Right hand post FX de Formity of Right carpal pain revealed on last xray. Spoke to Dr. Prodder said to redo xray. possibly of change signed by Nurse, just initials.

2/13/11 Redocumented what appears to be Right Navicular carpal bone Fracture, this was stamped by S. Frankowitz, D.O.

12/30/11 here they are saying what appears to be a post Fracture de Formity of the right carpal Navicular bone is noted, Please note that the possibility of avascular Necrosis of the Navicular bone etc, cannot be excluded. Suggest ortho consult and review if clinically warranted, Again no treatment signed S. Frankowitz D.O.

12/8/11 Progress Note - I stated I got beat up yesterday which was on 12/7/11 my Right hand is swollen, my knee is bruised, and my hip hurts, I stated before I have pictures of my injuries. A Judge sent a photographer in to take them. But no treatment, signed by X-Ray Technician Raphael Hyppo

1/30/12 Progress Note - Result revealed post FX deformity of the Right carpal navicular bone. Possibility of avascular recovery cannot be excluded paper stamped by .Ms. Merchant MA/NBB

These paragraphs are taken from my medical file. These people never treated my hand or knee and refused me a cane. These are written to the best of my understanding so help me God.

Lance Stevenson 251101172
P.O. 407016
Fort Lauderdale FL

Lance Sts

SS# 048-48-8515

333 40

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-60494-CIV-WILLIAMS
MAGISTRATE JUDGE P.A. WHITE

LANCE STEVENSON, :
 :
 Plaintiff, :
 :
 v. : REPORT OF
 : MAGISTRATE JUDGE
 ARMOR CORRECTIONAL HEALTH :
 CARE, et al., :
 :
 Defendants. :
 _____ :

I. Introduction

Lance Stevenson, who is confined at the Joseph P. Conte Facility, has filed a pro se civil rights complaint pursuant to 42 U.S.C. §1983. The plaintiff is proceeding in forma pauperis.

The plaintiff alleges since entry into the Broward County Jail on November 7, 2011, he has suffered from a swollen fractured right hand and right knee. He has asked for treatment and a cane and has been refused. He contends he is in severe pain.

The plaintiff named Armor Correctional Health Care as the sole defendant in his initial complaint. Armor is not a proper defendant in this case. The Eleventh Circuit requires that a plaintiff must show policy or custom in suits against private corporations performing traditional public functions. See Buckner v. Toro, 116 F.3d 450 (11 Cir.) (extending the application of Monell v. Dept. of Social Services, 436 U.S. 658, 691 (1978) to private corporations such as prison medical service companies performing traditional public functions), cert. denied, 522 U.S. 1018 (1997). In this case, the plaintiff has failed to support any claim for relief that

Armor as an entity acted in accordance with a custom or policy with regard to the possible violation of any of his constitutional rights. Without such, the plaintiff's claim is insufficient to sustain a §1983 claim. The plaintiff was ordered to file an amended complaint. The amended complaint was timely filed on May 29, 2012, however the plaintiff failed to sign the complaint under penalty of perjury. He was ordered to file a verification of the complaint, and the verification was filed on July 26, 2012.

This Cause is before the Court upon a review of the amended complaint (DE#15) pursuant to 28 U.S.C. §1915.

II. Analysis

A. Applicable Law for Screening

As amended, 28 U.S.C. §1915 reads in pertinent part as follows:

Sec. 1915 Proceedings in Forma Pauperis

* * *

(e)(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that -

* * *

(B) the action or appeal -

* * *

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief from a defendant who is immune from such relief.

This is a civil rights action Pursuant to 42 U.S.C. §1983. Such actions require the deprivation of a federally protected right by a person acting under color of state law. See 42 U.S.C. 1983; Polk County v Dodson, 454 U.S.312 (1981); Whitehorn v Harrelson, 758 F. 2d 1416, 1419 (11 Cir. 1985. The standard for determining whether a complaint states a claim upon which relief may be granted is the same whether under 28 U.S.C. §1915(e)(2)(B) or Fed.R.Civ.P. 12(b)(6) or (c). See Mitchell v. Farcass, 112 F.3d 1483, 1490 (11 Cir. 1997)("The language of section 1915(e)(2)(B)(ii) tracks the language of Federal Rule of Civil Procedure 12(b)(6)"). A complaint is "frivolous under section 1915(e) "where it lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989); Bilal v. Driver, 251 F.3d 1346, 1349 (11 Cir.), cert. denied, 534 U.S. 1044 (2001). Dismissals on this ground should only be ordered when the legal theories are "indisputably meritless," id., 490 U.S. at 327, or when the claims rely on factual allegations that are "clearly baseless." Denton v. Hernandez, 504 U.S. 25, 31 (1992). Dismissals for failure to state a claim are governed by the same standard as Federal Rule of Civil Procedure 12(b)(6). Mitchell v. Farcass, 112 F.3d 1483, 1490 (11 Cir. 1997)("The language of section 1915(e)(2)(B)(ii) tracks the

language of Federal Rule of Civil Procedure 12(b)(6)"). In order to state a claim, a plaintiff must show that conduct under color of state law, complained of in the civil rights suit, violated the plaintiff's rights, privileges, or immunities under the Constitution or laws of the United States. Arrington v. Cobb County, 139 F.3d 865, 872 (11 Cir. 1998).

To determine whether a complaint fails to state a claim upon which relief can be granted, the Court must engage in a two-step inquiry. First, the Court must identify the allegations in the complaint that are not entitled to the assumption of truth. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Twombly applies to §1983 prisoner actions. See Douglas v. Yates, 535 F.3d 1316, 1321 (11 Cir. 2008). These include "legal conclusions" and "[t]hreadbare recitals of the elements of a cause of action [that are] supported by mere conclusory statements." Second, the Court must determine whether the complaint states a plausible claim for relief. Id. This is a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." The plaintiff is required to plead facts that show more than the "mere possibility of misconduct." The Court must review the factual allegations in the complaint "to determine if they plausibly suggest an entitlement to relief." When faced with alternative explanations for the alleged misconduct, the Court may exercise its judgment in determining whether plaintiff's proffered conclusion is the most plausible or whether it is more likely that no misconduct occurred.¹

B. Facts of the amended complaint

¹ The application of the Twombly standard was clarified in Ashcroft v. Iqbal, 129 S.Ct. 1937 (2009).

The plaintiff names S. Frankowitz, D.O. and Nurse Karen Zoahy, both employed at the Broward County Jail. He claims that Frankowitz and Zoahy failed to treat his swollen fractured right hand and right knee and refused his request for a cane. He states that he was seen multiple times by Frankowitz, who re-documented a carpal bone fracture on February 3, 2011, but failed to treat him. He claims both his hand and knee were X-rayed, and although the X-ray showed no broken bones in his knee, he attempted to inform Frankowitz that his knee had previously popped out of its socket.

C. Analysis

The Eighth Amendment prohibits any punishment which violates civilized standards of decency or "involve[s] the unnecessary and wanton infliction of pain." Estelle v. Gamble, 429 U.S. 97, 102-03 (1976) (quoting Gregg v. Georgia, 428 U.S. 153, 173(1976)); see also Campbell v. Sikes, 169 F.3d 1353, 1363 (11 Cir. 1999). "However, not 'every claim by a prisoner that he has not received adequate medical treatment states a violation of the Eighth Amendment.'" McElligott v. Foley, 182 F.3d 1248, 1254 (11 Cir. 1999) (citation omitted). An Eighth Amendment claim contains both an objective and a subjective component. Taylor v. Adams, 221 F.3d 1254, 1257 (11 Cir. 2000); Adams v. Poag, 61 F.3d 1537, 1543 (11 Cir. 1995). First, a plaintiff must set forth evidence of an objectively serious medical need. Taylor, 221 F.3d at 1258; Adams, 61 F.3d at 1543. Second, a plaintiff must prove that the prison official acted with an attitude of "deliberate indifference" to that serious medical need. Farmer, 511 U.S. at 834; McElligott, 182 F.3d at 1254; Campbell, 169 F.3d at 1363. The objective component requires the plaintiff to demonstrate that he has been subjected to specific deprivations that are so serious that they deny him "the minimal civilized measure of life's necessities." Rhodes v.

Chapman, 452 U.S. 337, 347 (1981); see also Hudson v. McMillian, 503 U.S. 1, 8-9 (1992).

Because the plaintiff was a pretrial detainee at the time of the events alleged, his claims must be analyzed under the Due Process Clause of the Fourteenth Amendment rather than the Cruel and Unusual Punishment Eighth Amendment standard. Bell, 441 U.S. at 535; Hamm, 774 F.2d at 1571-74. In the context of a pretrial detainee claim of denial of medical care, the standards are the same. Id.

A serious medical need is considered "one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." Hill v. DeKalb Reg'l Youth Det. Ctr., 40 F.3d 1176, 1187 (11 Cir. 1994) (quotation marks and citation omitted). The subjective component requires the plaintiff to demonstrate that the prison officials acted wantonly, with deliberate indifference to the plaintiff's serious needs. See Farmer v. Brennan, 511 U.S. 825, 834 (1994); Wilson v. Seiter, 501 U.S. 294, 298-99 (1991). Deliberate indifference is the reckless disregard of a substantial risk of serious harm; mere negligence will not suffice. Id. at 835-36. Consequently, allegations of medical malpractice or negligent diagnosis and treatment fail to state an Eighth Amendment claim of cruel and unusual punishment. See Estelle, 429 U.S. at 106. The inadvertent or negligent failure to provide adequate medical care "cannot be said to constitute 'an unnecessary and wanton infliction of pain.'" Estelle, 429 U.S. at 105-06; Wilson, 501 U.S. at 298.

Although the plaintiff's allegations are sparse, especially concerning Nurse Zoahy, at this preliminary stage he has stated a claim for denial of medical treatment.

III. Recommendation

1. The claim of denial of medical treatment should proceed against Nurse Zoahy and D. O. Frankowitz.
2. Service will be ordered by separate order.

Dated at Miami, Florida, this 9th day of October, 2012.



UNITED STATES MAGISTRATE JUDGE

cc: Lance Stevenson, Pro Se
Joseph P. Conte Facility
Address of record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 12-cv-60494-WILLIAMS/WHITE

LANCE STEVENSON,

Plaintiff,

v.

S. FRANKOWITZ and KAREN ZOAHY,

Defendants.

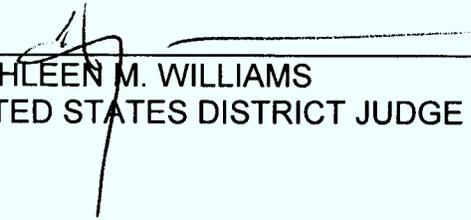
ORDER ADOPTING REPORT AND RECOMMENDATION

THIS MATTER is before the Court upon Magistrate Judge White's Report and Recommendation ("the Report"). [D.E. 19]. In his Report, Judge White undertakes a review of the Amended Complaint pursuant to 28 USC 1915 and recommends that the Court allow Plaintiff's Amended Complaint to proceed.

Upon an independent review of the Report, the record and applicable case law, it is hereby **ORDERED AND ADJUDGED** as follows:

1. The Report is **AFFIRMED AND ADOPTED**.
2. The Amended Complaint [D.E. 15] shall be the operative complaint in this matter. Therefore, Defendant Armor Correctional Health should be terminated.

DONE and ORDERED in Chambers in Miami, Florida, this 17th day of October, 2012.


KATHLEEN M. WILLIAMS
UNITED STATES DISTRICT JUDGE

cc:

U.S. Magistrate Judge Patrick White

Lance Stevenson
251101172
Joseph V. Conte Facility
P.O. Box 407016
Fort Lauderdale, FL 33340-7016
PRO SE

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-60494-CIV-WILLIAMS./WHITE

LANCE STEVENSON,

Plaintiff,

vs.

ARMOR CORRECTIONAL HEALTH
CARE, ET AL,

Defendants.

**DEFENDANTS, DR. S. FRANKOWITZ AND KAREN MIZRAHY, P.A.'S, ANSWER
AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT**

COME NOW the Defendants, DR. S. FRANKOWITZ ("Frankowitz") AND KAREN MIZRAHY, P.A., ("Mizrahy"), (incorrectly named as NURSE KAREN ZOAHY), by and through their undersigned attorneys, and hereby file this, their Answer and Affirmative Defenses to Plaintiff's Complaint, and state as follows:

1. Frankowitiz. and Mizrahy deny that they were deliberately indifferent to the Plaintiff's alleged serious medical need or that they denied the Plaintiff adequate medical treatment.
2. Frankowitz and Mizrahy deny any additional allegations, deemed directed to them, unless specifically admitted herein and further demand strict proof of all denied allegations.

AFFIRMATIVE DEFENSES

3. Further answering and as an affirmative defense, these Defendants allege that Plaintiff's Complaint fails to state or set forth claims against these Defendants upon which relief can be granted.

4. Further answering and as an affirmative defense, these Defendants allege that Plaintiff's Complaint fails to state or set forth a claim against these Defendants under 42 U.S.C. § 1983.

5. Further answering and as an affirmative defense, the claims and allegations set forth in Plaintiff's Complaint, even if taken as true, do not state a claim for relief under 42 U.S.C. § 1983, as any deprivation alleged therein does not rise to the level of a constitutional tort. As such, these Defendants respectfully submit that this Court lacks subject matter jurisdiction over Plaintiff's Complaint.

6. Further answering and as an affirmative defense, these Defendants will show that Plaintiff was not deprived of any constitutionally protected life, liberty or property interests without due process of law, nor were Plaintiff's rights under any amendments to or provisions of the United States Constitution or federal laws violated by these Defendants.

7. Further answering and as an affirmative defense, any and all of Plaintiff's claims against these Defendants are barred in whole or in part by the doctrine of qualified immunity, official immunity, sovereign immunity and discretionary act immunity and federal law.

8. Further answering and as an affirmative defense, to the extent as may be shown by the evidence through discovery, these Defendants assert that the matters in question and Plaintiff's damages, if any, were caused by acts and/or failures to act of persons other than these Defendants.

9. Further answering and as an affirmative defense, these Defendants assert that Plaintiff's negligence was the cause of any alleged injuries that he alleges to have suffered.

10. Further answering and as an affirmative defense, these Defendants assert that Plaintiff's claims are barred by his failure to exhaust administrative remedies prior to filing suit.

11. Further answering and as an affirmative defense, these Defendants assert that at the time of the incident alleged in Plaintiff's Complaint, they were governmental actors, and therefore cannot be held liable on a theory of respondeat superior.

12. Further answering and as an affirmative defense, these Defendants assert that the Plaintiff has failed to comply with the requirements of Florida Statutes Section 766 regarding presuit screening of claims for medical malpractice.

DEMAND FOR TRIAL BY JURY

Defendants, Dr. S. FRANKOWITZ and KAREN MIZRAHY, P.A., hereby demand a trial by jury on all issues triable as a right by jury.

Dated on: November 15, 2012

Respectfully submitted,

Kelley, Kronenberg, Gilmartin, Fichtel, Wander,
Bamdass, Eskalyo & Dunbrack, P.A.
Attorneys for Defs/FRANKOWITZ & MIZRAHY
8201 Peters Road, Suite 4000
Fort Lauderdale, Florida 33324
Tel: 954-370-9970; Fax: 954-381-1988
Florida Bar No. 064092
E-Mail: dlosey@kelleykronenberg.com

By: /s/ Daniel L. Losey
Daniel L. Losey

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of November, 2012, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notice of Electronic Filing.

Lance Stevenson
Jail #251101172
Joseph V. Conte Facility
P.O. Box 407016
Ft. Lauderdale, FL 33340
Plaintiff, Pro Se
VIA CERTIFIED MAIL

/s/ Daniel L. Losey
Daniel L. Losey

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-60494-CIV-WILLIAMS
MAGISTRATE JUDGE P. A. WHITE

LANCE STEVENSON, :
 :
 Plaintiff, :
 :
 v. : ORDER SCHEDULING PRETRIAL
 : PROCEEDINGS WHEN PLAINTIFF
 : IS PROCEEDING PRO SE
 S. FRANKOWITZ, ET AL :
 :
 Defendants. :

The plaintiff in this case is incarcerated, without counsel, so that it would be difficult for either the plaintiff or the defendants to comply fully with the pretrial procedures required by Local Rule 16.1 of this Court. It is thereupon

ORDERED AND ADJUDGED as follows:

1. All discovery methods listed in Rule 26(a), Federal Rules of Civil Procedure, shall be completed by April 12, 2013. This shall include all motions relating to discovery.

2. All motions to join additional parties or amend the pleadings shall be filed by April 26, 2013.

3. All motions to dismiss and/or for summary judgment shall be filed by May 17, 2013.

4. On or before May 31, 2013, the plaintiff shall file with the Court and serve upon counsel for the defendants a document called "Pretrial Statement." The Pretrial Statement shall contain the following things:

- (a) A brief general statement of what the case is about;
- (b) A written statement of the facts that will be offered by oral or documentary evidence at trial; this means that the plaintiff must explain what he intends to prove at trial and how he intends to prove it;
- (c) A list of all exhibits to be offered into evidence at the trial of the case;
- (d) A list of the full names and addresses of places of employment for all the non-inmate witnesses that the plaintiff intends to call (the plaintiff must notify the Court of any changes in their addresses);
- (e) A list of the full names, inmate numbers, and places of incarceration of all the inmate witness that plaintiff intends to call (the plaintiff must notify the Court of any changes in their places of incarceration); and
- (f) A summary of the testimony that the plaintiff expects each of his witnesses to give.

5. On or before June 13, 2013, defendants shall file and serve upon plaintiff a "Pretrial Statement," which shall comply with paragraph 4(a)-(f).

6. Failure of the parties to disclose fully in the Pretrial Statement the substance of the evidence to be offered at trial may result in the exclusion of that evidence at the trial. Exceptions will be (1) matters which the Court determines were not discover-

able at the time of the pretrial conference, (2) privileged matters, and (3) matters to be used solely for impeachment purposes.

7. If the plaintiff fails to file a Pretrial Statement, as required by paragraph 4 of this order, paragraph 5 of this order shall be suspended and the defendants shall notify the Court of plaintiff's failure to comply. The plaintiff is cautioned that failure to file the Pretrial Statement may result in dismissal of this case for lack of prosecution.

8. The plaintiff shall serve upon defense counsel, at the address given for him/her in this order, a copy of every pleading, motion, memorandum, or other paper submitted for consideration by the Court and shall include on the original document filed with the Clerk of the Court a certificate stating the date that a true and correct copy of the pleading, motion, memorandum, or other paper was mailed to counsel. All pleadings, motions, memoranda, or other papers shall be filed with the Clerk and must include a certificate of service or they will be disregarded by the Court.

9. A pretrial conference may be set pursuant to Local Rule 16.1 of the United States District Court for the Southern District of Florida, after the pretrial statements have been filed. Prior to such a conference, the parties or their counsel shall meet in a good faith effort to:

- (a) discuss the possibility of settlement;
- (b) stipulate (agree) in writing to as many facts and issues as possible to avoid unnecessary evidence;
- (c) examine all exhibits and documents proposed to be used at the trial, except

that impeachment documents need not be revealed;

- (d) mark all exhibits and prepare an exhibit list;
- (e) initial and date opposing party's exhibits;
- (f) prepare a list of motions or other matters which require Court attention; and
- (g) discuss any other matters that may help in concluding this case.

10. All motions filed by defense counsel must include a proposed order for the undersigned Magistrate Judge's signature.

DONE AND ORDERED at Miami, Florida, this 14th day of December, 2014.

s/Patrick A. White
UNITED STATES MAGISTRATE JUDGE

cc: Lance Stevenson, Pro Se
251101172
Joseph V. Conte Facility
P.O. Box 407016
Fort Lauderdale, FL 33340-7016

Daniel Lee Losey, Esquire

Kathleen M. Williams, United States District Judge