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

Derrick, *et al.*, Plaintiffs, v. Glen Mills Schools, *et al.*, Defendants.	No. 2:19-cv-01541-HB Honorable Harvey Bartle III, J.

Reply Brief in Support of Motion to Dismiss, in part, Plaintiffs' Complaint Pursuant to FED R. CIV. P. 12(b)(6) and to Sever Claims Pursuant to FED. R. CIV. P. 42 Filed on Behalf of Defendant, Andre Walker

AND NOW, comes Defendant, Andre Walker (hereinafter "Walker" or "Defendant"), by and through his undersigned counsel, and submits this Reply Brief in Support of Defendant's Motion to Dismiss, in part, Plaintiffs' Complaint and to Sever Claims Pursuant to FED. R. CIV. P. 42 in order to address arguments raised by Plaintiff in his Response to that Motion.

I. The Third Circuit Applies the Eighth Amendment Standard to Claims by Adjudicated Juveniles

In the "Omnibus" response to various Motions to Dismiss, Plaintiffs cite to *A.M. ex rel. J.M.K. v. Luzerne County Juvenile Detention Center*, 372 F.3d 572 (3rd Cir. 2004), for the proposition that the Third Circuit applies the Fourteenth Amendment to claims brought by incarcerated juveniles.[1] This is an inaccurate and improper reading on that decision. In *A.M. ex rel.*, the Third Circuit first provided a recitation of the facts of the case, noting:

> On July 12, 1999, A.M. was arrested in Lake Township, Pennsylvania, for indecent conduct. He was taken to the Center, a secure detention facility for children alleged to have been

[1] Docket Item No. 52, at p. 18.

> delinquent or adjudicated delinquent and awaiting final disposition and placement, and remained there until August 19, 1999.
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> * * *
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> On August 19, 1999, A.M. appeared in the Luzerne County Court of Common Pleas, Juvenile Division for a disposition hearing. At the conclusion of the hearing, the court committed A.M. to Northwestern Intermediate Treatment Facility ... in Northumberland County, Pennsylvania for an indeterminate period of time.

A.M. ex rel., at 575, 576-77. In evaluating whether A.M.'s claims were governed by the Eighth or Fourteenth Amendment, the Third Circuit focused not on his status as a juvenile but rather on the fact that he had not yet been adjudicated. The Third Circuit cited to *City of Revere v. Massachusetts General Hospital*, 463 U.S. 239, 103 S. Ct. 2979, 77 L. Ed. 2d 605 (1983), and *Fuentes v. Wagner*, 206 F.3d 335 (3rd Cir. 2000), for the general proposition that the Fourteenth Amendment, not the Eighth Amendment, provides the protections for pretrial detainees. *See A.M. ex rel.*, at 584. A.M.'s status as a juvenile did not factor into the analysis by the Third Circuit. As such, this decision offers no support to Plaintiffs' argument, but rather supports Walker's claim that the Eighth Amendment must apply in this case, where Derrick already had been adjudicated and committed to Glen Mills Schools.

Further, decisions within this Circuit and District are contrary to Plaintiffs' position. For example, in *Allen v. Youth Educational Services of PA, LLC*, 2014 WL 1123120, *12 (E.D. Pa. March 20, 2014), the court cited to *Betts v. New Castle Youth Development Center*, 621 F.3d 249 (3rd Cir. 2010), and held, "The Third Circuit has applied the Eighth Amendment to conditions-of-confinement claims raised by adjudicated minors in a state-run juvenile detention center." In *Beers-Capitol v. Whetzel*, 256 F.3d 120 (3rd Cir. 2001), the Third Circuit also applied the Eighth Amendment to a claim that officials in a juvenile detention facility were deliberately indifferent

to sexual abuse against incarcerated minors. There is no precedent from the Third Circuit suggesting that the Court should apply a different standard. Instead, the Third Circuit has been clear that where, as here, § 1983 claims are raised by an incarcerated minor after adjudication and commitment, the Eighth Amendment provides the relevant constitutional protections, and the Fourteenth Amendment does not. As such, Defendant's Motion to Dismiss Derrick's Eighth Amendment claim must be granted.

II. Plaintiff's Response to Walker's Motion Demonstrates Why Derrick's Claims Against Walker Should be Severed from the Class Action

Defendant's Motion to Sever claims against Walker was filed on June 18, 2019. The Memorandum of Law filed in support of that Motion was only sixteen (16) pages long. Under the Eastern District of Pennsylvania's local rules, Plaintiffs' response ordinarily would have been due on or before July 2, 2019. Instead, the Court initially set a deadline of August 15, 2019, for responses to any and all Motions to Dismiss. Subsequently, on or about July 24, 2019, Counsel for Plaintiffs filed a Motion for Extension of Time to Respond,[2] arguing that they required additional time to respond to the myriad motions that had been filed. The Court granted that Motion[3] and allowed Plaintiffs until August 30, 2019, to respond to all motions. On August 30, 2019, ten (10) ***weeks*** after Walker's Motion was filed, Plaintiffs finally filed a response. Plaintiffs' Brief was sixty-three (63) pages long, of which a total of three (3) pages address the issue of severance of the claim against Walker. The extreme delay in responding, and the fact that Plaintiffs' response is overwhelmingly focused on addressing issues unrelated to Derrick's claim against Walker is a prime example of the prejudice that will befall Walker and demonstrates why severance is needed.

[2] Docket Item No. 50.
[3] Docket Item No. 51.

Had the claim against Walker been addressed as a separate action, a response to his Motion would have been due on or before July 2, 2019, and would have been limited to the specific issues concerning the claim against him. Instead, Plaintiffs took five (5) ***times*** longer to respond, and spent the majority of their Brief addressing issues that are irrelevant to the claim against Walker. Assuming that this trend were to continue throughout this litigation, it would be optimistic to expect that a trial would commence in 2021 at the very earliest. Throughout this time, Walker would have no means to clear his name. Instead, he would bear the ignominy of being lumped into a class-action alleging chronic and systemic mistreatment of children. At this stage, no discovery has taken place, and Walker has not yet even been informed of the real name of the student making allegations against him.

In *Lopez v City of Irvington*, 2008 WL 565776, * (D. N.J. February 28, 2008), cited by Plaintiffs in support of their argument against severance of claim, the court held that, "Defendants have offered no support for their allegation of prejudice." The prejudice to Walker in this case is explicit. Plaintiffs' Complaint contains 368 paragraphs of factual allegations, several with multiple sub-paragraphs, before it gets to the various enumerated Counts against various Defendants. On these, six (6) paragraphs (1.6%) are relevant to Derrick's claim against Walker.[4] The remaining 362 paragraphs (98.4%) relate to other claims. This does not even consider the fact that there are multiple other class-action lawsuits which various parties seek to consolidate with this docket. As noted in Walker's Primary Brief, these include the statement that, "This lawsuit is filed on behalf of the ***hundreds*** of youth who suffered at the hands of Glen Mills leadership and staff."[5] Ostensibly, each of these alleged incidents will require written

[4] Docket Item No. 1, at ¶¶ 17, 30, 84, 88, 103, and 112.
[5] Exhibit "A", at ¶ 3.

discovery and depositions. The claims against Walker are not just likely to, but are assured to be buried within this avalanche of discovery. There can be no dispute as to this prejudice.

Plaintiffs also cite to *United States v. Console*, 13 F.3d 641 (3rd Cir. 1993), to support their argument that there would be no prejudice to Walker by forcing him to endure this litigation as part of a class action. *Console* involved charges against three (3) individuals, each of whom was indicted for conduct within the same criminal conspiracy. The Third Circuit applied the Federal Rules of Criminal Procedure in analyzing the issue of severance. Under that standard, the Third Circuit held, "[A] trial court should balance the public interest in joint trials against the possibility of prejudice inherent in the joinder of defendants, and that the public interest in judicial economy favors joint trials where the same evidence would be presented at separate trials of defendants charged with a single conspiracy." *Console*, at 655 (*internal formatting omitted*). This standard is not applicable to the matter currently before the Court. Not only is Walker not subject to criminal charges, but Plaintiffs seek to address hundreds of discrete incidents, not three (3) parties to the same conspiracy. Further, as criminal defendants, the parties in *Console* had the constitutional protection of a speedy trial.[6] There is no such protection for a civil litigant such as Walker. It is entirely possible (even likely) that, if not severed, Derrick's claim against Walker would not get to trial for several years. When that trial does finally take place, the facts surrounding Derrick's narrow claim would likely take about one (1) day of a (conservatively) multi-week trial during which a jury would be bombarded with allegations about numerous incidents, as well as arguments that the conduct alleged against Walker was part of a larger pattern of conduct. This argument would invariably prejudice Walker, as a jury would be unable to consider the claim against him in the proper context. This

[6] U.S. Const., amend. VI.

is a clear demonstration of the prejudice required for the Court to exercise its discretion and sever the claim against Derrick.

Finally, Plaintiffs argue:

> Duplicating trials is especially problematic considering the vulnerability of Plaintiffs – child who have been severely abused. Requiring them to recount the traumatic experiences of their abuse repeatedly as they sit through multiple discovery and trial procedures would be extremely burdensome. This re-traumatization can be avoided by keeping the claims together.[7]

This is a fallacious argument. Defendant is arguing that the claim involving alleged excessive force against Derrick be tried separately and prior to any trial on the class-action allegations. There is no reason that a single deposition of Derrick could not take place during which all claims could be addressed. Further, a trial in the severed claim would undisputedly take place first. If a jury were to find that there was no excessive force, there would be no reason for Derrick to testify in the trial of the class-action. If, on the other hand, there was a verdict in favor of Derrick, then the issue of the excessive force would already be decided, and the jury in that trial could be instructed accordingly. Both cases would remain under the Court's jurisdiction, and that Court would be in the position to exercise its discretion to coordinate discovery and trial so to avoid ***any*** unfair prejudice to Derrick.

III. Conclusion

In light of the foregoing, the claims against Walker should be severed from the class-action in order to avoid massive and irreparable prejudice to Walker and to guarantee a fair trial. Further, Plaintiffs' claim under the Fourteenth Amendment should be dismissed with prejudice, as Derrick's claim arises solely from the protections of the Eighth Amendment.

[7] Docket Item No. 52, at p. 60.

Respectfully submitted,

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By: _____

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Certificate of Service

I, Rufus A. Jennings, hereby certify that on the date set forth below, I did cause a true and correct copy of the Reply Brief in Support of Defendant's Motion to Dismiss, in part, Plaintiffs' Complaint Pursuant to FED R. CIV. P. 12(b)(6) and to Sever Pursuant to FED. R. CIV. P. 42 to be filed with the Court's ECF/PACER electronic filing system, where it was available for immediate viewing and download to all counsel of record.

Rufus A. Jennings, Esquire

Date: 9/4/19