

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION**

CARL L. SANDLER,)	
Plaintiff,)	
)	Civil Action No. 5:02CV00107
v.)	
)	<u>MEMORANDUM OPINION</u>
JACK W. BARBER, et al.,)	
Defendants.)	By: Samuel G. Wilson,
)	United States District Judge

Carl L. Sandler, pro se, brings this personal injury action pursuant to 28 U.S.C. § 1332 against Western State Hospital (“WSH”); Jack Barber, Director of WSH; Dr. Mary Smith, Medical Director of WSH; and Dr. Joseph Cosgrove, a WSH psychiatrist. Sandler is a citizen of Maryland, the defendants are citizens of Virginia, and Sandler seeks damages in the amount of \$16,000,000, alleging that the defendants wrongfully committed him to WSH,¹ forcibly medicated him, failed to properly diagnose and treat various physical injuries, and harmed his reputation by issuing a warrant for his return to WSH after he escaped. In a November 18, 2003, Order, the court held that the Eleventh Amendment barred claims against WSH and the defendants in their official capacity, and the court granted defendants’ motion to dismiss on all claims, except so far as Sandler pursued claims against the individual defendants in their individual capacity only. On March 5, 2004, the remaining defendants, Barber, Smith and Cosgrove, moved for summary judgment with supporting affidavits, and the court on April 23, 2004, ordered Sandler to respond within 20 days, but to date Sandler has failed to provide

¹ Sandler also alleges “illegal constraint,” but he fails to distinguish this claim from his wrongfully commitment claim. Accordingly, the court finds the claims redundant and treats them as one claim alleging wrongful commitment.

any affidavits or evidence supporting his claims. Accordingly, for the reasons stated, the court grants the remaining defendants' motion.

I.

Following an automobile accident, Sandler received medical treatment at a Virginia hospital, where doctors, who noticed that Sandler expressed grandiose thoughts, administered a psychiatric exam and diagnosed him with bipolar affective disorder. After medically clearing Sandler, the physicians decided to transfer Sandler to WSH, where he could continue psychiatric treatment. Pursuant to Virginia Code §§ 37.1-67.1 and 67.3, the General District Court of Charlottesville, Virginia held a civil commitment hearing for Sandler, who was represented by counsel, and ordered him involuntarily committed to WSH.

Once at WSH, Dr. Joseph Cosgrove, a WSH psychiatrist, sought authorization to treat Sandler before the General District Court for the City of Staunton, Virginia. Pursuant to Virginia Code § 37.1-134.21, the court found by clear and convincing evidence that Sandler, who again was represented by counsel, was unable to make an informed decision regarding his treatment and ordered WSH to treat him with psychotherapy and mood stabilizing medication and to administer necessary medical care.

While at WSH, Sandler expressed frustration about being at WSH, claiming he had “slipped through the cracks,” refused to participate in psychological questioning and counseling, denied that he suffered from a mental illness, and alleged various physical ailments. The defendants state in their affidavits that the WSH nursing staff evaluated Sandler each time he complained about his medical

condition and that the medical staff treated him “on a number of occasions.”²

On December 12, 2000, WSH medical staff evaluated Sandler after he complained of chest pain. Since a cardiac monitor led to inconclusive results, WSH transferred Sandler to Augusta Medical Center. The next day, Augusta Medical Center medically cleared Sandler, after ruling out cardiac involvement, and authorized his return to WSH, but before WSH could arrange transportation, Sandler left Augusta Medical Center without permission. Accordingly, Jack Barber, the director of WSH, followed WSH’s procedures and requested a criminal warrant for Sandler’s return. On January 26, 2001, after learning that Sandler had left the Commonwealth of Virginia, WSH discharged him.

II.

Sandler alleges that the defendants wrongfully committed him to WSH, forcibly medicated him, failed to properly diagnose and treat various physical injuries, and harmed his reputation by issuing a warrant for his return to WSH. Defendants Barber, Smith and Cosgrove move for summary judgment, with supporting affidavits, and Sandler has not responded. For the reasons stated, the court finds that Sander’s claims of wrongful commitment, inappropriate medication, and harm to his reputation fail because the defendants are protected by state sovereign immunity.³ Sandler also fails to raise a genuine

² Both Jack Barber, the director of WSH, and Mary Claire Smith, the medical director of WSH, state in their affidavits that as supervisors they did not provide direct medical or psychiatric care to Sandler.

³ Although not raised by the defendants, the court notes a historic principle in Virginia that provides immunity for state agents performing functions that are necessary in executing a court order. Yeager v. Carpenter, 35 Va. 454 (1836) (“I have always held it among the oldest and best settled principles of law, that a sheriff or other officers, executing the process or carrying into effect orders of a court, was protected from all consequences, however irregular and erroneous was the proceeding...”). This principle also applies to the acts necessary in executing the court’s orders to commit and medicate Sandler.

issue of material fact supporting his claims that the defendants failed to properly diagnose and treat his physical ailments.⁴ Accordingly, the court grants the defendants' motion for summary judgment.

A.

Sandler alleges that the defendants wrongfully committed him, inappropriately and forcibly medicated him, and injured his reputation by issuing a warrant for his return to WSH, but these allegations fail.⁵ State employees acting in the course of their employment are protected from negligence suits by sovereign immunity. See James v. Jane, 282 S.E.2d 864, 868 (Va. 1980). In examining a state employee's immunity claim, a court must consider four factors: (1) the nature of the employee's function; (2) the extent of the state's interest and involvement in that function; (3) the employee's use of judgment and discretion; and (4) the degree control and direction exercised by the state. Lohr v. Larsen, 431 S.E.2d 642, 644-46 (Va. 1993). In examining the first two factors, "if the function that a government employee was negligently performing was essential to a governmental objective and the government had a great interest and involvement in that function, those factors would weigh in favor of the employee's claim of sovereign immunity." Id. at 644 (citing James, 282 S.E.2d at 869). The remaining two factors may appear at odds—both the use of discretion by the employee and a high level of control by the Commonwealth weigh in favor of immunity—but "when a government

⁴ Without judging the merits of defendants' assertion that sovereign immunity also bars Sandler's claims for failure to diagnose and treat his medical ailments, the court declines to decide the claims on that basis, noting that the Supreme Court of Virginia recently agreed to hear McCloskey v. Kane, No 040264, in which the appellants claim that a state employee at WSH is not protected by sovereign immunity for incidental medical care.

⁵ Although sovereign immunity does not shield state employees from gross negligence and intentional torts, see James v. Jane, 282 S.E.2d 864, 868 (Va. 1980), Sandler's complaint alleges only that defendants were negligent. See Compl. ¶ 16.

employee is specially trained to make discretionary decisions, the government's control must necessarily be limited in order to make maximum use of the employee's special training and subsequent experience." Id. at 646.

In this case, the first two factors point decidedly toward immunity. The Commonwealth has a paramount interest in providing needed psychiatric care to those unable to care for themselves and those incapable of making informed decisions on their own behalf, see Va. Code §§ 37.1-67.1 and 134.21, and WSH is essential to that interest. The defendants, as they state in their affidavits, functioned as employees of the Commonwealth, and nothing in the record suggests that they acted as independent contractors or private practitioners. See Messina v. Burden, 321 S.E.2d 657, 663 (Va. 1984) (noting that doctors functioning essentially as independent contractors were not entitled to immunity); Bowers v. Commonwealth, 302 S.E.2d 511, 515 (Va. 1983). The defendants, as the director, medical director, and a psychiatrist at WSH, performed critical functions, essential to the Commonwealth's objective of providing mental health services to those in need. Accordingly, the defendants' function and the state's interest in that function point toward immunity.

The final two factors, the defendants' use of judgment and discretion and the state's exercise of control and direction, also point toward immunity. The defendants state in their affidavits that they must exercise a "great deal" of judgment and discretion in their duties as the director, medical director, and a psychiatrist at WSH. Sandler offers no evidence refuting this. Yet despite their discretion, the record reflects that the Commonwealth maintains control and direction over each employee. The state controls when and where each defendant works, the number of employees the supervisors manage, the compensation for each employee, the charges incurred by the patients, which patients are treated, and

the types of treatments available. Therefore, factors three and four tip in favor of immunity.

In sum, the defendants satisfy the four requirements for the application of sovereign immunity as it relates to Sandler's negligence claims for wrongful commitment, inappropriate medication, and injury to his reputation. Accordingly, the court grants defendants' motion for summary judgment as to those claims.

B.

Sandler alleges that the defendants negligently diagnosed and treated various physical injuries and other ailments, but his claims fails. Both Barber and Smith state in their affidavits that they never provided direct medical care to Sandler.⁶ Cosgrove, who provided psychiatric care, states that every time Sandler complained of medical complications, which occurred on at least eight occasions, medical and nursing staff evaluated him and, when appropriate, treated any medical condition. Sandler offers no evidence contrary to the defendants' assertions and, therefore, fails to show that the defendants breached any duty or that they proximately caused any alleged injury. Accordingly, Sandler's claims fail.

III.

For the reasons stated, the court grants the remaining defendants' motion for summary judgment and dismisses Sandler's claims.

⁶ Sandler does not allege that either Barber or Smith negligently supervised the medical staff. Even if he did, however, "Virginia does not accept negligent supervision as an independent cause of action." Stottlemeyer v. Ghramm, 60 Va. Cir. 474, 484 (2001).

Enter: The ____ day of May, 2004.

UNITED STATES DISTRICT JUDGE

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HARRISONBURG DIVISION**

CARL L. SANDLER,)	
Plaintiff,)	
)	Civil Action No. 5:02CV00107
v.)	
)	<u>FINAL ORDER</u>
JACK W. BARBER, et al.,)	
Defendants.)	By: Samuel G. Wilson,
)	United States District Judge

In accordance with the written Memorandum Opinion entered this day, it is hereby
ORDERED and **ADJUDGED** that Defendants' Motion for Summary Judgment is **GRANTED**.

The case is **STRICKEN** from the active docket of the court.

The Clerk of the Court is directed to send certified copies of this Order and the
accompanying Memorandum Opinion to the plaintiff and counsel of record for the defendants.

Enter: The ____ day of May, 2004.

UNITED STATES DISTRICT JUDGE