

**STATE OF VERMONT**

**SUPERIOR COURT  
Windsor Unit**

**CIVIL DIVISION  
Docket No. 476-9-15 Wrcv**

**WILLIAM HYLTON,  
Plaintiff**

v.

**ANDREW A. PALLITO, ET AL.,  
Defendants**

**DECISION  
Motion To Dismiss Amended Complaint (#7)**

The Plaintiff, an inmate in the custody of the Commissioner of the Department of Corrections, alleges that he was kept in segregation at Southern State Correctional Facility for 25 more days than allowable under the rules and regulations of the Department of Corrections. In the Amended Complaint filed March 23, 2016, the Plaintiff has sued the Defendants in their official capacities for violation of civil rights under 42 U.S.C. § 1983 and negligent infliction of emotional distress. The Defendants have moved to dismiss this action.<sup>1</sup>

42 U.S.C. § 1983 Action

The Defendants move to dismiss the § 1983 action on the basis of immunity. The Amended Complaint emphasizes that this case is brought against the Defendants in their official capacities. As such, the Plaintiff has effectively sued the State of Vermont under 42 U.S.C. § 1983. *Kentucky v. Graham*, 473 U.S. 159, 165 (1985) (official-capacity suits “generally represent only another way of pleading an action against an entity of which an officer is an agent.”). Section 1983 provides as follows:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities

---

<sup>1</sup> The original Defendants were Andrew Pallito (former Commissioner of the Department of Corrections), Mark Potanas, and Joshua Rutherford. In the Amended Complaint, Plaintiff put in the Defendants portion of the caption “Lisa Menard, et al., Commissioner of Vermont Dept of Corrections, Defendants.” He did not otherwise name the Defendants in the body of the complaint, but specified that all defendants were being sued in their official capacities. Lisa Menard is the current Commissioner of the Department of Corrections. Lisa Menard as Commissioner, Mark Potanas, and Joshua Rutherford are considered to be the Defendants in this Decision. The Motion to Dismiss was filed on their behalf.

secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . .

42 U.S.C. § 1983.

In *Hafer v. Melo*, 502 U.S. 21, 26 (1991), the Supreme Court made clear that § 1983 actions cannot be maintained against either the States or against state employees being sued in their official capacities. Because the Plaintiff has sued the Defendants only in their official capacities, they do not qualify as “persons” as required by the statute. Because they are only named in their official capacities, they are protected by sovereign immunity, which has not been waived. *Bock v. Gold*, 2008 VT 81, ¶ 9, 184 Vt. 575. Accordingly, the Plaintiff has failed to state a valid claim against the Defendants under 42 U.S.C. § 1983.

### Negligent Infliction of Emotional Distress

The second claim is for negligent infliction of emotional distress. The Defendants have moved to dismiss on the basis that the Plaintiff’s allegations do not satisfy the physical impact element required under Vermont law for a legal claim for negligent infliction of emotional distress.

“To establish a claim for negligent infliction of emotional distress, a plaintiff must make a threshold showing that he . . . faced physical peril.” *Brueckner v. Norwich University*, 169 Vt. 118, 125 (1999). If there has been physical impact from an external force, a plaintiff may recover for emotional distress stemming from the incident during which the impact occurred. *Id.*; Restatement (Third) of Torts § 47.

In this case, the Plaintiff alleges that the Defendants’ conduct resulted in his extended confinement in segregation while in prison. Segregation, by definition, involves an external force imposing more physically restrictive conditions than normal upon an inmate, and is a deprivation of liberty requiring justification and due process. It is isolation in prison for a period of time. The average person would consider that if he or she were taken and locked up in a physically confined space for a period of time without justification, such imprisonment constitutes a physical impact from which emotional harm may flow.

Plaintiff alleges in his complaint physical confinement for 25 days and further alleges: “There were thoughts of lashing out and hurting others, there was diminished desire of appetite, There was a sleeping deprivation and thoughts of self harm. These thoughts are mental anguish and an infliction of emotional duress all caused by the continued (25) unjust days in segregation and loss of priviledges [sic] and amenties [sic] that would otherwise be afforded to Plaintiff.”

Dismissal of a claim on a motion to dismiss is only appropriate when it appears beyond doubt that a plaintiff cannot prove any set of facts in support of the claim that would entitle him to relief. *Association of Haystack Property Owners, Inc. v. Sprague*, 145 Vt 443 (1985). The court cannot conclude that Plaintiff would be unable to show facts in support of the element of physical impact from an external force resulting in emotional distress.

**Order**

Based on the foregoing, the Defendants' Motion to Dismiss is *granted* as to Count 1, the § 1983 claim, and otherwise *denied*.

A telephone status conference will be scheduled to address the pretrial needs of the case.

Dated in Woodstock, Vermont this \_\_\_\_ day of May, 2016.

---

Mary Miles Teachout  
Superior Court Judge