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

Alexandria Division

VIVIAN M. HITT,)
)
Plaintiff,)

v.)

CIVIL ACTION NO. 82-0077-A

LUTHER COX, et al.,)
)
Defendants.)

MEMORANDUM OPINION

Plaintiff Vivian M. Hitt has filed a section 1983 action against the sheriff and deputy sheriff of Fauquier County, the Board of Supervisors of Fauquier County, the Virginia Department of Corrections (VDOC), and the director of the VDOC. Hitt has sued the individual defendants in both their official and individual capacities. Her complaint essentially alleges that she was badly burned when held overnight in the county jail. In the case of the state defendants, Hitt argues that they had a duty under state law to supervise the operation of the local jail. The constitutional bases for her claim against the state defendants are the eighth and fourteenth amendments. The plaintiff has requested compensatory damages, punitive damages, an injunction, and a declaration that the defendants violated her constitutional rights.

The state defendants move the court to dismiss them from the suit. See Fed. R. Civ. P. 12(b)(6). They also move for summary judgment. See id. 56(b).

The court grants the motion to dismiss for two reasons. First, the eleventh amendment clearly bars an award of monetary relief against the VDOC or the director of the VDOC in his official capacity. See Edelman v. Jordan, 415 U.S. 651, 663 (1974). This amendment, however, does not insulate the state defendants from injunctive and declaratory relief. See id. at 664-65. In addition, the court cannot dismiss the director in his individual capacity on the basis of immunity. State officials sued in their individual capacities receive only a qualified immunity. See Procunier v. Navarette, 434 U.S. 555, 561-62 (1978). They are

immune only if they acted in good faith. See id. The plaintiff has not alleged any acts of bad faith. The court, nonetheless, should refrain from deciding the issue of individual immunity at this time, because the burden of proving good faith is on the defendant. See McCray v. Burrell, 516 F.2d 357, 370 (4th Cir. 1975), cert. dismissed, 426 U.S. 471 (1976).

Second, the court holds that the state defendants are not liable for isolated acts of negligence occurring in the county jail. The VDOC has a duty to set and enforce general standards for the operation of local prisons. See Va. Code §§ 53-19.35, -133, -134 (1978 & Supp. 1981). The state defendants, however, are not responsible for preventing isolated acts of negligence in county jails. See Vinnedge v. Gibbs, 550 F.2d 926, 928 (4th Cir. 1977); Leroy Lewis v. T. Don Hutto, Civil Action No. 81-0894-R (E.D. Va., Jan. 18, 1982). In addition, the state defendants have no direct control over county jail employees. They, therefore, cannot be liable for the negligent acts committed by these employees. See Vinnedge v. Gibbs, 550 F.2d at 928. As a consequence, the court dismisses the state defendants from the suit.

DATE: _____

UNITED STATES DISTRICT JUDGE