

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

DENNIS MORGAN,)	
)	
Plaintiff,)	
)	
)	
v.)	No. 01-2936
)	
A. C. GILLESS, et al,)	
)	
Defendants.)	

**ORDER GRANTING IN PART AND DENYING IN PART
DEFENDANTS' PARTIAL MOTION FOR
JUDGMENT ON THE PLEADINGS**

Before the Court is the motion of Defendants Shelby County, Tennessee, Shelby County Sheriff's Department, and Sheriff A. C. Gilless for partial judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c). Plaintiff Dennis Morgan filed a complaint pursuant to 42 U.S.C. § 1983 claiming that his civil rights were violated during his six month incarceration at the Shelby County Jail in contravention of the Eighth Amendment. Specifically, Plaintiff contends that he received inadequate medical care, and endured unsanitary and unsafe living conditions. Defendants argue that most of the events upon which Plaintiff's claims are based are barred by the applicable statute of limitations. Therefore, Defendants contend, they are entitled to judgment on the pleadings on all claims that are based on the time-barred events. The Court has jurisdiction pursuant to 28 U.S.C. § 1331. For the following reasons, the Court grants in part and denies in part Defendants' motion.

I. Factual Background

The Court accepts the following facts stated in the complaint as true for purposes of the instant motion only. Plaintiff was incarcerated at the Shelby County Jail from July 21, 2000 to January 12, 2001. For the duration of Plaintiff's incarceration, Plaintiff maintains that raw sewage water ran into his cell and the living area of his cellpod. Plaintiff further states that when he was checked into the jail and throughout his incarceration, his high blood pressure condition was not properly diagnosed or addressed. In addition, Plaintiff asserts that jail officials did not administer Plaintiff's prescribed blood pressure medication on fifty-two days within the months of June, August, September, October, November and December 2000, and January 2001.

Plaintiff asserts that on August 8, 2000, he was bitten by a brown recluse spider. To heal the bite, Plaintiff was prescribed a ten day course of antibiotics. Plaintiff maintains that he was never given the full ten day treatment. Plaintiff further contends that his foot remained infected from August 8, 2000 through November 30, 2000. Plaintiff purportedly had to walk through the sewer water in his cell while the spider bite was still infected.

On November 6, 2000, a deputy jailer ordered Plaintiff to lay his belongings out on a sheet and then transport them to his cell. Several jail gang members witnessed Plaintiff display his belongings on the sheet. Plaintiff claims that after he returned to his cell, the gang members approached Plaintiff and demanded some of the items he had laid out. Plaintiff states that he refused to do so, whereupon the gang members began punching, kicking and hitting Plaintiff while he was on the ground. Plaintiff contends that he did not receive any medical treatment for lacerations he received as a result of this incident. On November 7, 2000, two other gang members purportedly approached Plaintiff and offered to protect him from the gang members who had beat him up if

Plaintiff would put money in their jail accounts. The gang members told Plaintiff that if he did not agree to put the money in their accounts they would beat him as well. Plaintiff asserts that he feared retribution for not complying with the gang members' request, so he put the money in their accounts. Plaintiff contends that he asked for charges to be brought against the gang members, but jail officials never complied with his request.

II. Legal Standard

“The standard of review applicable to a motion for judgment on the pleadings under Fed. R. Civ. Pro. 12(c) is the same ... standard applicable to a motion to dismiss under Rule 12(b)(6).” Ziegler v. IBP Hog Market, Inc., 249 F.3d 509, 511-512 (6th Cir. 2001). Thus, the Court must accept as true all factual allegations and construe them in the light most favorable to the plaintiff. Id. at 512; Windsor v. The Tennessean, 719 F.2d 155, 158 (6th Cir. 1983). Furthermore, a party's motion for judgment on the pleadings should not be granted unless it appears beyond doubt that the plaintiff can prove no set of facts which would entitle him to relief. Ziegler, 249 F.3d at 512; Conley v. Gibson, 355 U.S. 41, 45-46 (1957). Thus, the standard to be applied when evaluating a motion for judgment on the pleadings is very liberal in favor of the party opposing the motion. Cf. Westlake v. Lucas, 537 F.2d 857, 858 (6th Cir. 1976). Even if the plaintiff's chances of success are remote or unlikely, the motion for judgment on the pleadings should be denied. Cf. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

III. Analysis

In support of dismissal, Defendants argue that all claims based on allegations of misconduct which occurred prior to one year before the complaint was filed, November 19, 2001, are barred by the one year statute of limitation which applies to civil rights violations in Tennessee. Tenn. Code

Ann. § 28-3-104. Plaintiff does not dispute that the one year statute of limitation governs this case. Instead, Plaintiff avers that the continuing violations theory applies to this case. In other words, Plaintiff contends that he suffered repeated and continual violations of his constitutional rights which permits the Court to consider events which occurred outside of the limitation period in deciding whether to grant Defendants' motion. The Court agrees. The Sixth Circuit recognized the continuing violations theory in Hull v. Cuyahoga Valley Joint Vocational Sch. Dist. Bd. of Educ., 926 F. 2d 505 (6th Cir. 1991). In Hull, the Court held that where "an unlawful practice continues into the limitations period, the complaint is timely when it is filed within" the statutorily prescribed period. Hull, 926 F. 2d at 511. Thus, a plaintiff need only allege that at least one unlawful event occurred during the limitations period in order to survive dismissal. Id. at 511-512 (citing Havens Realty Corp. v. Coleman, 455 U.S. 363, 381 (1982)).

Plaintiff alleges that he received constitutionally inadequate medical care because 1) he was deprived of his blood pressure medication on numerous dates before and after November 19, 2000; and 2) he did not receive the ten day antibiotic treatment for his spider bite, leaving his foot infected from August 8, 2000 through November 30, 2000. In addition, Plaintiff alleges that the conditions of the jail were unconstitutionally unsanitary because raw sewage water ran through his cell for the duration of his incarceration. The Court finds these allegations sufficient to invoke the continuing violations theory and to survive judgment on the pleadings. Accordingly, the Court denies Defendants' motion with respect to Plaintiff's claims which are based on inadequate medical care and unsanitary jail conditions. However, Plaintiff did not allege that the effects of the confrontations with the gang members lasted beyond the dates of the incidents, November 6 and 7, 2000, which

predate the limitations period. Accordingly, the Court grants Defendants' motion with respect to the claims arising out of the incidents with the gang members.

IV. Conclusion

For the foregoing reasons, the Court GRANTS in Part and DENIES in Part Defendants' motion for judgment on the pleadings.

IT IS SO ORDERED this ____ day of _____, 2003

BERNICE BOUIE DONALD
UNITED STATE DISTRICT JUDGE