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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION**

RUTH ANN WARNER,
*as Guardian of Jonathan James Brewster
Warner,*

Plaintiff,

v.

CENTRA HEALTH INC., *et al.*,

Defendants.

CASE NO. 6:19-cv-55

MEMORANDUM OPINION

JUDGE NORMAN K. MOON

Plaintiff Ruth Ann Warner ("Plaintiff"), on behalf of her son Jonathan Warner ("Jonathan"), filed this lawsuit seeking compensatory and punitive damages against numerous defendants involved in the hospitalization and shooting of her son in January 2016, which left him paralyzed from the waist down. Defendant Katherine Prater allegedly facilitated Jonathan's transfer to the mental health facility where he was shot. Defendant Wesley Gillespie was the supervising security guard at Lynchburg General Hospital who shot Jonathan. Defendants James Barr and Dana Luck were security guards who escorted Jonathan to the mental health facility adjacent to the hospital. Defendant Centra Health, Inc. operated the mental health facility where the incident took place. The defendants have all moved to dismiss Plaintiff's claims against them. Dkts. 13, 15, 23.

The Court will grant in part and deny in part the motion to dismiss claims against Defendant Gillespie: dismissing Count I (unreasonable seizure) with prejudice; Count III (due process violation) without prejudice and affording Plaintiff the opportunity to amend; and denying the

motion to dismiss Count V (battery), as Plaintiff has pleaded a plausible claim of battery against Gillespie. As to Defendant Centra, the Court will dismiss all counts except Count V (battery), which survives because the facts as pleaded establish a plausible claim for vicarious liability under a theory of *respondeat superior* with respect to Gillespie's battery. The Court will dismiss all claims against Defendants Prater, Barr and Luck.

I. LEGAL STANDARD

A motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) tests the legal sufficiency of a complaint to determine whether the plaintiff has properly stated a claim; "it does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses." *Republican Party of N.C. v. Martin*, 980 F.2d 943, 952 (4th Cir. 1992). Although a complaint "does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his entitle[ment] to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted).

A court need not "accept the legal conclusions drawn from the facts" or "accept as true unwarranted inferences, unreasonable conclusions, or arguments." *E. Shore Mkts., Inc. v. J.D. Assocs. Ltd. P'ship*, 213 F.3d 175, 180 (4th Cir. 2000). "Factual allegations must be enough to raise a right to relief above the speculative level," *Twombly*, 550 U.S. at 555, with all allegations in the complaint taken as true and all reasonable inferences drawn in the plaintiff's favor, *Chao v. Rivendell Woods, Inc.*, 415 F.3d 342, 346 (4th Cir. 2005). Rule 12(b)(6) does "not require heightened fact pleading of specifics, but only enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. Consequently, "only a complaint that states a plausible claim for relief survives a motion to dismiss." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

II. FACTS AS ALLEGED

Jonathan Warner is a 32-year-old¹ man who was diagnosed with bipolar schizoaffective disorder, and suffers from “frequent, but intermittent, intense bouts of psychosis, paranoia and depression induced by bipolar schizoaffective disorder.” *Id.* ¶¶ 33, 35–36. This condition has “caused him to become paranoid as he suffered from delusional thought, violent outbursts, and irrational decision making.” *Id.* ¶ 36. He has been hospitalized many times during these episodes, both through voluntary and involuntary admissions, including at Centra and Horizon facilities on several occasions.² *Id.* ¶¶ 38–40.

In December 2015, Jonathan accompanied his mother, sisters and brothers to Florida on a vacation to visit family. *Id.* ¶ 43. There, he started exhibiting symptoms of “mania, anxiety, confusion, agitation and insomnia.” *Id.* ¶ 44. These symptoms steadily worsened throughout the trip and continued to worsen after returning home to Virginia. *Id.* ¶¶ 46–47. Finally, during the weekend of January 9–10, 2016, the symptoms became severe: Jonathan stopped eating and sleeping altogether, and he became incoherent in his expressions of fear and confusion. *Id.* ¶ 48. On the evening of January 10, 2016, his family and friends persuaded him to go to the emergency room of Lynchburg General Hospital (“LGH”) for treatment. *Id.* ¶ 49.

Centra owns and operates LGH. Dkt. 1 ¶ 12. Jonathan had reported to LGH’s emergency room “many times in the past for adjustment of psychotropic medication and he was familiar with the hospital’s intake process for such treatment.” *Id.* ¶ 15. Prior to November 2015, the complaint alleges that the intake practice for psychiatric patients reporting to LGH’s emergency room was to

¹ 28 years old at the time of the incident. Dkt. 1 ¶ 50.

² Horizon is a community services board established pursuant to Va. Code § 37.2-500 that provides mental health treatment and assessment services to residents of the City of Lynchburg and several surrounding counties.

transfer them to Virginia Baptist Hospital if admittance for psychiatric treatment was warranted. *Id.* ¶ 16. After November 2015, however, LGH began “escort[ing]” “acute voluntary psychiatric patients” to a “newly constructed, freestanding Psychiatric Emergency Center (“PEC”).” *Id.* ¶ 17. Centra provided medical, administrative, and security staff for the PEC, and was primarily responsible for its construction. *Id.* ¶¶ 23–24.

Jonathan arrived at LGH’s emergency room with his family at approximately 9:00 p.m. on January 10, 2016. *Id.* ¶ 52. He was placed in Bay 2 of the emergency room and remained there until approximately 4:15 a.m. on the morning of January 11, 2016. *Id.* ¶ 54. His family left him alone at the hospital at approximately midnight, three hours after arriving at the hospital. *Id.* ¶ 56. Prior to leaving the hospital, Plaintiff Ruth Ann Warner, Jonathan’s mother and guardian, spoke with the duty nurse, warning that Jonathan “was unstable and physically very strong.” *Id.* ¶ 57.

After his arrival at the emergency room, Dr. Michael Dunlop examined Jonathan and consulted Dr. Michael Judd, a psychiatrist, on the appropriate course of action. *Id.* ¶ 58. Dr. Dunlop then requested an evaluation by David Walker, an employee of Horizon Behavioral Health, the entity tasked with implementing the local community service board, which in turn is responsible for conducting evaluations necessary to issue Emergency Custody Orders (“ECOs”). *Id.* ¶ 59; Va. Code §§ 37.2-808–809. The community service board’s designee’s job is then to evaluate the patient to determine whether probable cause exists that the patient:

(i) has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, (ii) is in need of hospitalization or treatment, and (iii) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment.

Va. Code § 37.2-808. If the designee determines that the above criteria are satisfied, he submits a petition to a magistrate for the issuance of an ECO. *Id.* Virginia law then provides that “any person for whom an emergency custody order is issued shall be taken into custody and transported to a convenient location to be evaluated to determine whether the person meets the criteria for temporary detention pursuant to § 37.2-809 and to assess the need for hospitalization or treatment.” *Id.*

Pursuant to this statutory scheme, Walker, the community services board’s designee, spoke with Jonathan at Dr. Dunlop’s request. Dkt. 1 ¶¶ 61–62. After the evaluation, Walker recommended that Dr. Dunlop obtain an ECO from a magistrate in order to place Jonathan into custody for further supervision. *Id.* ¶ 62. Dr. Dunlop put forward the ECO petition late at night on January 10, 2016, swearing under oath that Jonathan met the legal criteria for the ECO’s issuance. *Id.* ¶ 65. However, after issuing the ECO, Jonathan “was kept in the emergency room for several hours, during which time his paranoia and psychosis continued to worsen.” *Id.* ¶ 67.

At some point during the evening, Walker handed off Jonathan’s case to Katherine Prater, another Horizon employee. *Id.* ¶ 69. Walker informed Prater that Jonathan’s case “had turned into an ECO.” *Id.* ¶ 70. Prater arrived at the emergency room at approximately 1:00 a.m. on January 11, 2016 and interviewed Jonathan times after arriving. *Id.* ¶¶ 71–72. The complaint alleges that at this time, Jonathan “expected that he would be taken into custody and transferred to an appropriate, secure mental health facility at Virginia Baptist Hospital.” *Id.* ¶ 73.

The complaint alleges that it was around this time that “an agreement was made amongst several of the named Defendants to transfer Jonathan to the PEC without executing the ECO and to later execute the ECO if [Plaintiff] was ‘active or whatever’ in the PEC.” *Id.* ¶ 78. This scheme was allegedly necessary because the PEC is a purely voluntary psychiatric facility, rather than a



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