

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MARCIA SMART, ET AL.,	:	
Plaintiffs,	:	
	:	
-vs-	:	Civ. No. 3:00cv1281 (PCD)
	:	
PATRICIA MORGILLO, ET AL.,	:	
Defendants.	:	

RULING ON MOTION FOR SUMMARY JUDGMENT

Defendants move for summary judgment, arguing there are no genuine issues of material fact in dispute and they are entitled to judgment as a matter of law. The motion is hereby **granted**.

I. BACKGROUND

On January 7, 2000, Michael Ferry, an intake worker with the Department of Children and Families (“DCF”) at CareLine, received a call from defendant Morgillo, the principal of Quinnipiac Elementary School in New Haven. Morgillo expressed concern of possible abuse of Marcia Smart by her father, Michael Smart. DCF Social Worker Julie Sitro went to the school to assess the allegation. She conducted interviews with school personnel, Marcia Smart, and Marcia’s sister, Mariah. Sitro checked both children for bruises. Marcia and Mariah’s parents claim, on behalf of their daughters, that Sitro conducted unauthorized, highly intrusive strip searches that violated Marcia and Mariah’s rights under the Fourth Amendment to the United States Constitution. Plaintiffs assert that neither Morgillo nor defendant Divilio,¹ the school nurse, intervened to prevent these searches. They sue under 42 U.S.C. § 1983.

¹ Although the school nurse identified in the complaint is “Davilio,” defendants assert the proper spelling is “Divilio.”

II. DISCUSSION

A party moving for summary judgment must establish that there are no genuine issues of material fact in dispute and that she is entitled to judgment as a matter of law. See Fed.R.Civ.P. 56 (c); Anderson v. Liberty Lobby, 477 U.S. 242, 248 (1986). In determining whether a genuine issue has been raised, all ambiguities must be resolved and all reasonable inferences be drawn against the moving party. See United States v. Diebold, Inc., 369 U.S. 654, 655 (1962); Quinn v. Syracuse Model Neighborhood Corp., 613 F.2d 438, 445 (2d Cir. 1980). The nonmovant cannot rest on the pleadings, see Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986), but must supplement the pleadings with affidavits, depositions, and answers to interrogatories, see Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986).

A § 1983 claim requires that plaintiffs show that 1) defendants deprived them of a right secured by the Constitution and laws of the United States, and 2) this deprivation was under color of state law. See, e.g., Adickes v. S.H. Kress & Co., 398 U.S. 144, 150 (1970); John's Insulation, Inc. v. Siska Construction Co., 774 F. Supp. 156, 161 (S.D.N.Y. 1991). Plaintiffs assert that defendants violated their Fourth Amendment rights and are liable under § 1983. They claim that defendants failed to intervene to prevent these searches from taking place.

The Fourth Amendment's protection against unreasonable searches extends to children being examined by social services workers. Tenenbaum v. Williams, 193 F.3d 581, 606 (2d Cir. 1999). Plaintiffs claim that Sitro conducted unlawful strip searches of plaintiffs. Notably, there is no claim that defendants conducted an unlawful search, only that they did not intervene when Sitro conducted allegedly unlawful searches. Plaintiffs cite no authority for the proposition that a school principal and nurse can be held vicariously liable for the actions of a DCF worker on

school property. However, even if a DCF search could be attributed to school personnel for failing to prevent it, defendants here are entitled to qualified immunity.

Public officials performing discretionary functions are entitled to qualified immunity and are “shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” Wilson v. Layne, 119 S.Ct. 1692, 1696 (1999) (citing Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)). Plaintiffs argue that defendants are not entitled to such immunity because there is no authority that gives them the discretion to conduct strip searches or to authorize or allow state actors to conduct such searches. Connecticut law, however, compels school personnel to cooperate in the investigation of child abuse and neglect. Conn.Gen.Stat. § 17a-106. This mandate necessarily implicates elements of discretion.

Defendants assert their actions were objectively reasonable and they are thus entitled to qualified immunity. See Robison v. Via, 821 F.2d 913, 921 (2d Cir. 1987) (“[E]ven if the contours of the plaintiff’s federal rights and the official’s permissible actions were clearly delineated at the time of the acts complained of, the defendant may enjoy qualified immunity if it was objectively reasonable for him to believe that his acts did not violate those rights.”); see also Doe v. Connecticut Dep’t of Children & Youth Servs., 712 F. Supp. 277, 283 (D. Conn. 1989). Summary judgment on the issue of objective reasonableness is appropriate where no reasonable jury could conclude that it was objectively unreasonable for defendants to believe they were acting in a manner that did not clearly violate an established federally protected right. Robison, 821 F.2d at 921; Doe, 712 F. Supp. at 283-84.

Based on the undisputed facts and construing all evidence in the light most favorable to plaintiffs, it is hereby found that defendants’ actions were objectively reasonable. Defendants are

mandated reporters under Conn.Gen.Stat. § 17a-101. There is no allegation of impropriety with respect to the report of abuse to DCF nor with respect to the DCF inquiry as to the occurrence of the above-charged. Mandated reporters are subject to penalties for failing to report suspected child abuse. Conn.Gen.Stat. § 17a-101a. Further, school personnel are required to cooperate with DCF investigations. Conn.Gen.Stat. § 17a-106. Given this cooperation requirement and that courts have found that visual searches not involving touching, photography, or examination of sexual body parts do not necessarily require a warrant or consent, see, e.g., Taylor v. Evans, 72 F. Supp.2d 298, 313 (S.D.N.Y. 1999); Tenenbaum v. Williams, 862 F. Supp. 962, 978 (E.D.N.Y. 1994) (“Requiring a warrant for mere visual inspection (following an emergency removal based on probable cause)—particularly of asexual parts of the anatomy—could frustrate child welfare workers in their efforts to uncover child abuse by converting a quick inspection into a time-consuming procedure.”), aff’d in relevant part, 193 F.3d 581 (2d Cir. 1999), it is reasonable for school personnel to refrain from interfering with a DCF social worker’s decision to conduct a non-invasive search for bruises where a child reports that her father beats her.² In the instant case, Sitro’s “Running Narrative Document,” which plaintiffs have submitted without contesting its contents, reveals that Marcia Smart told Sitro that, whenever she brings home a “bad note” from school, her father beats her by hitting her with a belt on the buttocks and legs. If the searches were improper, plaintiffs may be able to recover in the pending lawsuit against Sitro. However, no reasonable jury could find that it was objectively unreasonable for defendants not to prevent DCF from searching the children for bruises. Accordingly, defendants are entitled to qualified immunity and their motion for summary judgment is granted.

² There is no dispute that the “searches” here were limited to nonsexual body parts.

III. CONCLUSION

The motion for summary judgment (doc. 20) is hereby **granted**. The clerk shall close the file.

SO ORDERED.

Dated at New Haven, Connecticut, July 10, 2001.

Peter C. Dorsey
Senior United States District Judge