

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

JENNIFER DURHAM,

Plaintiff,

v.

DISTRICT OF COLUMBIA,

Defendant.

**Civil Action No. 06-0349
Calendar No. 6
Judge Geoffrey M. Alprin
Next Event: Mediation 08/01/2007**

ERRATA

It has come to the attention of the District of Columbia (the "District") that former counsel made an error in a filing before the Court. In its Motion for Summary Judgment, filed with the Court on August 30, 2006, the District stated in page 5 of its Memorandum in Support of its Motion, that "At 20:47 on the video, or 21:59 p.m., guards come in and CPR is performed." This statement should be corrected for the record to read as follows: "At 20:47 on the video, or 21:59 p.m., guards come in and provide medical assistance to the Plaintiff."

Dated: June 28, 2007.

Respectfully submitted,

LINDA SINGER
Attorney General

GEORGE C. VALENTINE
Deputy Attorney General
Civil Litigation Division

/s/Nicole L. Lynch
NICOLE L. LYNCH (471953)
Chief, General Litigation Section II

/s/Toni Michelle Jackson
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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of May, 2007, I caused the foregoing **ERRATA** to be filed with the Clerk of the Court using the CaseFileXpress system, which will send notification of such filing to:

**Douglas Sparks, Esquire
Michael Berler, Esquire
SPARKS & SILBER, LLP**

[REDACTED]
[REDACTED]

**J. Anthony Towns, Esquire
General Counsel
Center for Correctional Health and Policy Studies, Inc.**

[REDACTED]
[REDACTED]

/s/Toni Michelle Jackson
TONI MICHELLE JACKSON
Assistant Attorney General

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Civil Division

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C. A. No. 06-0349

Cal. 6; J. Alprin

MOTION FOR SUMMARY JUDGMENT

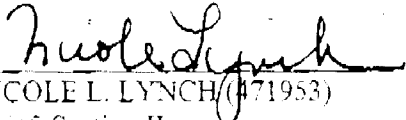
Defendant District of Columbia, by and through its undersigned counsel and pursuant to SCR-Civil 56, respectfully requests that this Court grant summary judgment in its favor. As set forth more fully in the accompanying Memorandum of Points and Authorities, the undisputed material facts demonstrate that Plaintiff cannot prevail on the assertions set forth in her Complaint, and the District is entitled to judgment as a matter of law.

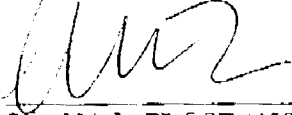
Pursuant to SCR-Civil 12-1, undersigned counsel attempted to contact counsel for Plaintiff on August 24, 2006 by leaving a voice mail message. As of the filing of this Motion, undersigned counsel has not yet received a return call from counsel for Plaintiff. Thus, this Motion should be treated as contested.

Respectfully submitted,

ROBERT J. SPAGNOLETTI
Attorney General for the District of Columbia

GEORGE C. VALENTINE
Deputy Attorney General
Civil Litigation Division


NICOLE L. LYNCH (471953)
Chief, Section II

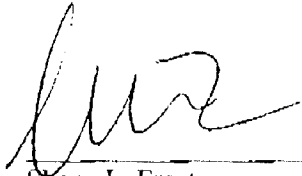

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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of August, 2006, I caused the foregoing Motion for Summary Judgment, Memorandum in Support, Statement of Material Facts Not in Dispute, and proposed order to be hand-delivered to the Honorable Geoffrey Alprin, by leaving a copy of the same in the Office of the Civil Clerk in the place designated for such filings, and mailed the foregoing first-class, postage prepaid, to:

Douglas R. Sparks, Esq.
Sparks & Silber, LLP




Shana L. Frost
Assistant Attorney General

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

JENNIFER DURHAM,)	
)	
Plaintiff,)	C. A. No. 06-0349
)	Cal. 6; J. Alprin
v.)	
)	
DISTRICT OF COLUMBIA,)	
)	
Defendant.)	

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE
DISTRICT OF COLUMBIA'S MOTION FOR SUMMARY JUDGMENT**

I. Procedural and Factual Background

Plaintiff is the mother and personal representative of decedent Thomas D. Jones, Jr., who died while incarcerated at the District of Columbia Jail ("D.C. Jail") on or about January 20, 2005. Compl. ¶¶ 2, 9. Plaintiff filed the above-captioned matter on January 19, 2006, claiming that Jones "was brutally attacked by other residents, from which injuries he died . . ." Compl. ¶ 9. Plaintiff further contends that, "[a]s a result of defendant's failure to provide timely and adequate emergency medical treatment and care . . . [Jones] was subjected to grievous bodily injury and loss of life." Compl. ¶ 10.

Plaintiff brings six causes of action. The first is entitled "Negligence – Survival Statute – Contraband Control" and alleges that the District "knew or should have known that, due to its lack of security measures at D.C. Jail including, but not limited to, its failure to control contraband, it was reasonably foreseeable that residents, including Thomas D. Jones, Jr., would be attacked by other residents with prohibited weapons." Compl. ¶ 12.

Plaintiff's second cause of action is entitled "Negligence – Survival Statute – Supervision of Residents" and alleges that the District knew or should have known that its "failure to monitor and supervise properly resident activity and movement, and to maintain sight and sound supervision" would result in reasonably foreseeable attacks by residents, such as that of Jones. Compl. ¶ 15. Similarly, the third count, entitled "Negligence – Survival Statute – Overcrowding," alleges that the District's "failure to reduce overcrowding and to maintain sight and sound supervision of residents" made it reasonably foreseeable that residents such as Jones would be attacked by other inmates. Compl. ¶ 19.

Plaintiff's fourth cause of action, "Negligent Supervision and Training – Survival Statute," asserts that the guards at the D.C. Jail "failed to maintain sight and sound supervision of residents or to properly secure the area and prevent the attack" on Jones, and that "they failed to assure that the video surveillance cameras were monitored" to ensure that Jones received timely medical care. Compl. ¶¶ 23-24.

Plaintiff's fifth cause of action is for negligent medical care. Plaintiff claims that "D.C. Jail officials failed to implement adequate emergency medical plans for the care and treatment of residents there" and that after the attack on him, Jones "was not provided with adequate emergency care and treatment which would have assured his survival." Compl. ¶¶ 27-28. Plaintiff's sixth and final cause of action is for wrongful death. Compl. ¶¶ 31-32.

II. Standard of Review

Summary judgment must be granted if the moving party demonstrates "that there is no genuine issue as to any material fact and that the moving party is entitled to a

judgment as a matter of law.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 330 (1986).

Although the party moving for summary judgment has the burden of demonstrating the absence of any material facts and the right to judgment as a matter of law, the movant is not obligated to present supporting evidence. *Ferguson v. District of Columbia*, 629 A.2d 15, 19 (D.C. 1993). Instead, the moving party need only assert that there is a lack of necessary evidence to support Plaintiff’s case. At that point, the burden shifts to the non-moving party to show the existence of a genuine issue of material fact. *Id.*; *Beard v. Area Transit Authority*, 631 A.2d 387, 390 (D.C. 1993). Theoretical speculations, unsupported assumptions, and conclusory allegations do not rise to the level of a genuine issue of fact. *Id.*

Moreover, pursuant to SCR-Civil 56(e), a party opposing a summary judgment motion “may not rest upon the mere allegations or denials of the adverse party’s pleading.” Instead, to survive summary judgment, the non-moving party must “set forth specific facts showing that there is a genuine issue for trial.” SCR-Civil 56(e). Summary judgment must be granted if the moving party demonstrates “that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *Celotex*, 477 U.S. at 330.

III. Argument

“The elements of a cause of action for negligence are a duty of care owed by the defendant to the plaintiff, a breach of that duty by the defendant, and damage to the interests of the plaintiff, proximately caused by the breach.” *Taylor v. District of Columbia*, 776 A.2d 1208, 1214 (D.C. 2001) (citation omitted). Here, Plaintiff cannot

show a breach of any duty as Plaintiff was not attacked by inmates as alleged in the Complaint.

Through the discovery process, the District has produced to Plaintiff a copy of the video surveillance tape that conclusively demonstrates that Jones died suddenly while playing basketball with another inmate at the Jail. Ex. 1 (Video Surveillance). The surveillance tape also conclusively demonstrates that emergency medical care responded to assist Jones within moments after he collapsed. *Id.*

The surveillance tape is divided up into two portions. The first is 21:29 minutes long, and the second is 8:18 minutes long. Windows Media Player permits the viewer to click on "captions" to show the actual date and time of day of the video footage. When this is done, the viewer can see that the video is recorded in a slight fast forward mode, so that the first section of the video, which is 21:29 minutes, actually spans the time of 9:00 p.m. until 10:01 p.m., or in military time 21:00 to 22:01 p.m.¹ The second portion of the video begins at 22:00 p.m.; thus there is a one-minute overlap in time at the end of the first segment and the beginning of the second segment.

When watching the video, one can see that at approximately 2 minutes into the video, or at the time of 21:06 p.m., Jones enters the room.² Ex. 1. He begins to play basketball at approximately two and a half minutes into the video, or at 21:08 p.m. *Id.* Jones leaves the room for a moment at 13:43 on the video, or 21:37 p.m. *Id.* He returns at 13:43 on the video or at 21:38 p.m., removes his jumpsuit, and continues playing in an undershirt and shorts. *Id.* At 20:42 on the video, or at 21:58 p.m., approximately 50

¹ The time is shown in military hours; thus the first portion is reflected as 21:00 to 22:01 on January 20, 2005.

² Jones is the individual with dreadlocks on the video.

minutes after he began playing basketball, Jones collapses without any other inmates close to him. *Id.*

At 20:47 on the video, or 21:59 p.m., guards come in and CPR is performed. *Id.* The first segment of the video ends, and the second segment begins, with this beginning and ending, one can see from viewing the time that there is actually a one-minute overlap so that the last minute of the first segment is also the first minute of the second segment. *Id.* Medical personnel arrive in the room at 2:41 on the second segment, or 22:07 p.m. *Id.* One can see that Jones had been receiving medical attention from a guard during the entire nine minutes that it takes for the medical personnel to arrive. *Id.* At 3:14 on the second segment, or 22:09 p.m., Jones is placed on a gurney and wheeled out of the room. *Id.* Thus, the video demonstrates that Jones was not attacked by other inmates as Plaintiff alleges in the Complaint but that Jones collapsed while playing basketball, and that he received medical attention within minutes after he collapsed. *Id.*

Additionally, the autopsy performed by the Officer of the Chief Medical Examiner determined that the manner of Jones' death was "natural" and due to "sudden cardiorespiratory arrest during exercise due to hypertensive heart disease." Ex. 2 (Autopsy Report). This is consistent with the video surveillance tape.

The undisputed material facts demonstrate that Jones was not attacked by inmates. Rather, it is clear from Exhibit 1 that Plaintiff was playing a game of one-on-one basketball with another inmate when Plaintiff suddenly collapsed of a heart attack. This conclusion is confirmed by the medical evidence set forth in Exhibit 2. Thus, Plaintiff's allegations in Count One that the District's alleged failure to control contraband resulted in other inmates attacking Jones with prohibited weapons. Compl. ¶ 13, is without merit.

Similarly, the allegations in Count Two that the District's failure to monitor residents resulted in an inmate attack on Jones also cannot pass scrutiny in light of the evidence attached hereto. Plaintiff's allegations in Count Three also fail as the undisputed material facts demonstrate that Jones' death by heart attack was not in any way related to an alleged overcrowding.

The undisputed material facts also demonstrate that Jones' death was not caused by an alleged failure to supervise or train correctional officers, as alleged in Count Four, or an alleged failure to provide prompt and adequate medical treatment as claimed by Count Five. Rather, the surveillance video demonstrates that within moments after Jones' collapse, officers and medical personnel responded to the scene, began to provide emergency medical services, and then transported Jones off of the court.

When the undisputed material facts are considered, it is clear that Jones' death was in no way caused by foul play by inmates or negligence on the part of the District. Rather, Jones died of natural causes while playing basketball. Ex. 2 (Autopsy Report). As such, summary judgment in favor of the District is appropriate.

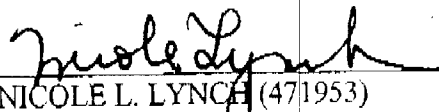
IV. Conclusion

For the reasons set forth above, the District respectfully requests that the Court grant judgment in its favor on all counts of the Complaint.

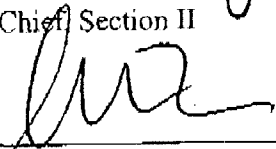
Respectfully submitted,

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Attorney General for the District of Columbia

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