IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA TALLAHASSEE DIVISION

EVELYN BRADY, etc.,

Plaintiff,

v. CASE NO. 4:11cv510-RH/WCS

FLORIDA DEPARTMENT OF CORRECTIONS,

Defendant.

_____/

ORDER DENYING THE MOTION TO DISMISS THE ADA CLAIM

This is a prisoner civil-rights case. The corrected first amended complaint alleges that Rommell Johnson was an inmate in the Florida Department of Corrections, that he had asthma that substantially limited his ability to breathe, and that jail officials sprayed him with oleoresin capsicum, causing his death. The personal representative of Mr. Johnson's estate has sued the Department of Corrections, asserting a Florida common-law negligence claim (count one) and a claim under the Americans with Disabilities Act (count two). The Department has moved to dismiss the ADA claim.

The Supreme Court has set out the standards governing a motion to dismiss:

> Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." Specific facts are not necessary; the statement need only "'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). In addition, when ruling on a defendant's motion to dismiss, a judge must accept as true all of the factual allegations contained in the complaint. *Bell Atlantic Corp.*, *supra*, at 555-556 (citing *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 508, n.1 (2002); *Neitzke v. Williams*, 490 U.S. 319, 327 (1989); *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974)).

Erickson v. Pardus, 551 U.S. 89, 93-94 (2007). The court must accept the complaint's allegations as true "even if [the allegations are] doubtful in fact." *Twombly*, 550 U.S. at 555.

A complaint thus "does not need detailed factual allegations." *Id.* Nor must a complaint allege with precision all the elements of a cause of action. *See Swierkiewicz*, 534 U.S. at 514-15 (rejecting the assertion that a Title VII complaint could be dismissed for failure to plead all the elements of a prima facie case).

But neither is a conclusory recitation of the elements of a cause of action alone sufficient. A complaint must include more than "labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555. A complaint must include "allegations plausibly suggesting (not merely consistent with)" the plaintiff's entitlement to relief. *Id.* at 557. The complaint must set forth facts—not mere labels or conclusions—that "render plaintiffs' entitlement to relief plausible." *Id.* at 569 n.14.

A district court thus should grant a motion to dismiss unless "the plaintiff pleads *factual content* that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009) (emphasis added). This is so because

> the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, *supported by mere conclusory statements*, do not suffice. . . . [Federal] Rule [of Civil Procedure] 8 marks a notable and generous departure from the hyper-technical, code-pleading regime of a prior era, but it does not unlock the doors of discovery for a plaintiff *armed with nothing more than conclusions*.

Id. at 1949-50 (emphasis added).

Judged by these standards, count two adequately states an ADA claim on which relief can be granted. Whatever the precise contours of the ADA in a correctional facility, the statute at least prohibits a correctional facility from intentionally using a method of discipline that, because of an inmate's disability, subjects the inmate to a substantial risk of death that (1) is not faced by other inmates and (2) could be avoided by a reasonable accommodation. The Department says that is not what it did—that spraying Mr. Johnson was just a mistake made by a person who did not know Mr. Johnson had asthma, despite reasonable procedures designed to avoid such a mistake. But the factual accuracy

of a plaintiff's allegations of course cannot be determined on a motion to dismiss for failure to state a claim.

For these reasons,

IT IS ORDERED:

The motion to dismiss count two, ECF No. 11, is DENIED.

SO ORDERED on November 1, 2011.

Robert L. Hinkle
United States District Judge