

Not To Be Published:

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

KRIS MARVIN,

Plaintiff,

vs.

NORTH CENTRAL IOWA MENTAL
HEALTH CENTER, INC.,

Defendant.

No. C03-3091-MWB

**MEMORANDUM OPINION AND
ORDER REGARDING
DEFENDANT’S MOTION FOR
SUMMARY JUDGMENT**

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I. INTRODUCTION AND BACKGROUND

A. Procedural Background

Plaintiff Kris Marvin filed this lawsuit on October 30, 2003, against North Central Iowa Mental Health Center, Inc. (“North Central”). At the center of this lawsuit is Marvin’s discharge as a social worker for North Central. In his complaint, Marvin alleges that North Central violated 42 U.S.C. § 1983 by depriving Marvin of due process of law and by violating his First Amendment free speech rights. Defendant North Central has moved to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). North Central asserts that it is neither a state actor nor was it acting under color of state law when it discharged Marvin, and therefore Marvin’s § 1983 claims fail as a matter of law. In its motion to dismiss, North Central submitted materials outside the pleadings. Under Rule 12(b), if, on a motion to dismiss, a party submits to the court material outside the motion, and the court does not exclude this material, the motion then becomes a motion for summary judgment under Rule 56. Here, because consideration of the merits of North Central’s motion to dismiss requires the court to review the materials attached to the motion to dismiss, the court gave notice to the parties that it would consider North Central’s motion to dismiss to be a motion for summary judgment and permitted the parties to augment their filings with any additional materials they deemed to be necessary. The parties have now filed those additional materials. Before turning to a legal analysis of the motion for summary judgment, the court must first identify the standards for disposition of a motion for summary judgment, as well as the factual background of this case as set forth in the complaint.

B. Factual Background

The record reveals that the following facts are undisputed. North Central Iowa Mental Health Center, Inc. is a non-profit corporation organized pursuant to Iowa Code Chapter 504A. North Central is a community mental health center and provides its services pursuant to Iowa Code Chapter 230A. North Central is organized pursuant to the authority of Iowa Code § 230A.3(2).¹ North Central has entered into contracts with the following Iowa counties: Calhoun, Webster, Hamilton, Wright, Humboldt, Kossuth, and Pocahontas. These are the counties in North Central's catchment area. All of the contracts between the individual counties and North Central are identical. North Central also has provider contracts with a number of insurance companies. North Central is

¹Iowa Code § 230A.3 provides two alternative forms in which a community mental health center may be organized:

Each community mental health center established or continued in operation as authorized by section 230A.1 shall be organized and administered in accordance with one of the following alternative forms:

1. Direct establishment of the center by the county or counties supporting it and administration of the center by an elected board of trustees, pursuant to sections 230A.4 to 230A.11.

2. Establishment of the center by a nonprofit corporation providing services to the county or counties on the basis of an agreement with the board or boards of supervisors, pursuant to sections 230A.12 and 230A.13.

IOWA CODE § 230A.3. North Central is organized under the later provision.

governed by a board of directors which operates pursuant to a set of corporate by-laws.

These by-laws state the purpose of North Central as:

This corporation is established to promote and safeguard the mental health of it's [sic] service area residents. The corporation will provide a comprehensive community mental health program to include services for prevention, education, consultation, diagnosis, treatment and psychiatric emergencies. The corporation will coordinate with and provide services to individuals, public authorities, social and human service agencies and other organizations for the prevention and treatment of mental, emotional, and behavioral dysfunctions. The officers of the corporation will be responsible for assuring that the services of the corporation address the mental health needs of residents within the service area.

Defendant's App., Ex. B. at 2.

The by-laws also set the number and qualifications of the board of directors as follows:

The Board of Directors will consist of four members from each county members. At least 51% of the Directors will be individuals who are not providers of health care. There will be representation of the following interest groups: h i g h / m e d i u m / l o w i n c o m e l e v e l s , child/adolescent/adult/elderly, consumer of the Center's services, and minority populations comprising 2 or more percent of the Center's service area population.

Defendant's App., Ex. B. at 2.

On April 29, 2003, plaintiff Marvin was disciplined in a meeting that took place between Mart Dohms, North Central's President, and Jim Burr, North Central's CEO. Dohms is a private citizen. In his capacity as President of North Central, Dohms had no ability to enforce any action of the State of Iowa or any state agency or subdivision.

Similarly, Burr was not acting on behalf of the State of Iowa, or any state agency or subdivision.

On May 29, 2003, plaintiff Marvin was discharged by Burr, and Brad Lethrone, a member of North Central's Board of Directors. Lethrone was acting as a private citizen and was not acting on behalf of the State of Iowa, or any state agency or subdivision. Neither the State of Iowa, a state agency, or any subdivision of the State of Iowa had any input into either the disciplinary action or the termination of Marvin. There was not joint activity that occurred between North Central and the State of Iowa or any state agency or subdivision with respect to Marvin's termination.

North Central's Board of Directors has no ties or connections to the State of Iowa, any state agency or any subdivision of the State of Iowa. North Central does have private patients who are entitled to receipt of Title XIX (Medicaid) benefits. However, North Central has complete discretion as to who they will and will not serve. No federal, state or county governmental agency controls any action of North Central, particularly with respect to employment decisions. Neither the State of Iowa, any county, or any subdivision of the State of Iowa has delegated their respective duties to North Central with respect to delivery of medical care. North Central chooses which patients it will provide services to and is not compelled to provide services to a patient due to that person's receipt of public benefits. North Central can not be compelled by any government agency to provide medical services to a person they choose not to serve. The State of Iowa can not and does not require North Central to provide medical services for a person under their care. All patients of North Central are private patients.

II. LEGAL ANALYSIS

A. Standards For Summary Judgment

This court has considered in some detail the standards applicable to motions for summary judgment pursuant to FED. R. CIV. P. 56 in a number of prior decisions. *See, e.g., Swanson v. Van Otterloo*, 993 F. Supp. 1224, 1230-31 (N.D. Iowa 1998); *Dirks v. J.C. Robinson Seed Co.*, 980 F. Supp. 1303, 1305-07 (N.D. Iowa 1997); *Laird v. Stilwill*, 969 F. Supp. 1167, 1172-74 (N.D. Iowa 1997); *Rural Water Sys. #1 v. City of Sioux Ctr.*, 967 F. Supp. 1483, 1499-1501 (N.D. Iowa 1997), *aff'd in pertinent part*, 202 F.3d 1035 (8th Cir. 2000), *cert. denied*, 121 S. Ct. 61 (2000); *Tralon Corp. v. Cedarapids, Inc.*, 966 F. Supp. 812, 817-18 (N.D. Iowa 1997), *aff'd*, 205 F.3d 1347 (8th Cir. 2000) (Table op.); *Security State Bank v. Firststar Bank Milwaukee, N.A.*, 965 F. Supp. 1237, 1239-40 (N.D. Iowa 1997); *Lockhart v. Cedar Rapids Community Sch. Dist.*, 963 F. Supp. 805 (N.D. Iowa 1997). Thus, the court will not consider those standards in detail here. Suffice it to say that Rule 56 itself provides, in pertinent part, as follows:

Rule 56. Summary Judgment

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

(b) For Defending Party. A party against whom a claim . . . is asserted . . . may, at any time, move for summary judgment in the party's favor as to all or any part thereof.

(c) Motions and Proceedings Thereon. . . . *The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file,*

together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

FED. R. CIV. P. 56(a)-(c) (emphasis added). Applying these standards, the trial judge's function at the summary judgment stage of the proceedings is not to weigh the evidence and determine the truth of the matter, but to determine whether there are genuine issues for trial. *Quick v. Donaldson Co.*, 90 F.3d 1372, 1376-77 (8th Cir. 1996); *Johnson v. Enron Corp.*, 906 F.2d 1234, 1237 (8th Cir. 1990). An issue of material fact is genuine if it has a real basis in the record. *Hartnagel v. Norman*, 953 F.2d 394 (8th Cir. 1992) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986)). As to whether a factual dispute is "material," the Supreme Court has explained, "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Beyerbach v. Sears*, 49 F.3d 1324, 1326 (8th Cir. 1995); *Hartnagel*, 953 F.2d at 394. If a party fails to make a sufficient showing of an essential element of a claim with respect to which that party has the burden of proof, then the opposing party is "entitled to judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *In re Temporomandibular Joint (TMJ) Implants Prod. Liab. Litig.*, 113 F.3d 1484, 1492 (8th Cir. 1997). In reviewing the record, the court must view all the facts in the light most favorable to the nonmoving party and give that party the benefit of all reasonable inferences that can be drawn from the facts. *See Matsushita Elec. Indus. Co.*, 475 U.S. at 587; *Quick*, 90 F.3d at 1377 (same). With these standards in mind, the court turns to consideration of defendant North Central's motion for summary judgment.

B. North Central's Motion For Summary Judgment

1. State action requirement

In order to state a claim for relief under 42 U.S.C. § 1983, Marvin must establish that he was “deprived of a right secured by the Constitution or laws of the United States, and that the alleged deprivation was committed under color of state law.” *American Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 49-50 (1999); *Kuha v. City of Minnetonka*, 365 F.3d 590, 606 (8th Cir. 2003); *Dennen v. City of Duluth*, 350 F.3d 786, 790 (8th Cir. 2003); *Murray v. City of Onawa*, 323 F.3d 616, 618 (8th Cir. 2003); *Hott v. Hennepin County, Minn.*, 260 F.3d 901, 905 (8th Cir. 2001); *Shrum v. Kluck*, 249 F.3d 773 (8th Cir. 2001). Courts have consistently treated the “under color of state law” element of § 1983 “as the same thing as the ‘state action’ required under the Fourteenth Amendment.” *Rendell-Baker v. Kohn*, 457 U.S. 830, 838 (1982) (quoting *United States v. Price*, 383 U.S. 787, 794 (1966)); accord *Brentwood Acad. v. Tennessee Secondary Sch. Athletic Ass'n*, 531 U.S. 288, 295 n.2 (2001); *American Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50 (1999); *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 935 (1982); *Tancredi v. Metropolitan Life Ins. Co.*, 378 F.3d 220, 229 (2nd Cir. 2004); *Lee v. Katz*, 276 F.3d 550, 554 (9th Cir.), cert. denied sub nom. *Oregon Arena Corp v. Lee*, 536 U.S. 905 (2002); *Mentavlos v. Anderson*, 249 F.3d 301, 310 (4th Cir.), cert. denied, 534 U.S. 952 (2001); *Tarpley v. Keistler*, 188 F.3d 788, 791 (7th Cir. 1999); *Abraham v. Raso*, 183 F.3d 279, 287 (3rd Cir. 1999); *Yeo v. Town of Lexington*, 131 F.3d 241, 248 n.3 (1st Cir. 1997), cert. denied, 524 U.S. 904 (1998); *Doe v. Rains County Indep. Sch. Dist.*, 66 F.3d 1402, 1406 (5th Cir. 1995). “[S]tate action requires both an alleged constitutional deprivation ‘caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the State or by a person for whom the State is responsible,’

and that ‘the party charged with the deprivation must be a person who may fairly said to be a state actor.’” *Sullivan*, 526 U.S. at 50 (quoting *Lugar*, 457 U.S. at 937). Careful attention to the state action requirement serves two purposes: it “preserves an area of individual freedom by limiting the reach of federal law and federal judicial power,” *Lugar*, 457 U.S. at 936; and it avoids imposing on a state responsibility for conduct which was not under its control. *Brentwood Acad.*, 531 U.S. at 295. Thus, as a consequence, the issue raised by defendant North Central’s motion for summary judgment is whether it was a state actor or was acting under color of state law when it terminated Marvin’s employment.

In *Brentwood*, the United States Supreme Court clarified the test for “state action” as it had developed through *National Collegiate Athletic Assn. v. Tarkanian*, 488 U.S. 179 (1988), *Blum v. Yaretsky*, 457 U.S. 991 (1982), *Lugar*, 457 U.S. 922, and *Rendell-Baker v. Kohn*, 457 U.S. 830 (1982). The Court instructed that the acts of a private party are “fairly attributable to the State” so as to be deemed under “color of state law” for § 1983 purposes “if, though only if, there is such a ‘close nexus between the State and the challenged action’ that seemingly private behavior ‘may be fairly treated as that of the State itself.’” *Brentwood Acad.*, 531 U.S. at 295 (quoting *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 351 (1974)). The Supreme Court noted that the criteria for determining whether state action is present “lack rigid simplicity,” but the Court identified the following factors that bear on the question:

We have, for example, held that a challenged activity may be state action when it results from the State's exercise of "coercive power," [*Blum v. Yaretsky*, 457 U.S. 991, 1004, 102 S.Ct. 2777, 73 L.Ed.2d 534 (1982)], when the State provides "significant encouragement, either overt or covert," *ibid.*, or when a private actor operates as a "willful participant in joint

activity with the State or its agents," [*Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 941, 102 S. Ct. 2744, 73 L. Ed. 2d 482 (1982)] (Internal quotation marks omitted). We have treated a nominally private entity as a state actor when it is controlled by an "agency of the State," *Pennsylvania v. Board of Directors of City Trusts of Philadelphia*, 353 U.S. 230, 231, 77 S. Ct. 806, 1 L. Ed.2d 792 (1957) (per curiam), when it has been delegated a public function by the State, cf., e.g., [*West v. Atkins*, 487 U.S. 42, 56, 108 S. Ct. 2250, 101 L. Ed. 2d 40 (1988)]; *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 627-628, 111 S. Ct. 2077, 114 L. Ed.2d 660 (1991), when it is "entwined with governmental policies," or when government is "entwined in [its] management or control," *Evans v. Newton*, 382 U.S. 296, 299, 301, 86 S. Ct. 486, 15 L. Ed. 2d 373 (1966).

Brentwood Acad., 531 U.S. at 296.

In the *Brentwood* decision, the Court concluded that pervasive entwinement of public institutions and public officials in the composition and actions of a high school interscholastic athletic association signified that regulatory actions by the nominally private association were taken under color of state law. *Id.* at 298. The Court acknowledged that the analysis of whether state action existed was a "necessarily fact-bound inquiry," *id.* (quotation marks omitted), and noted that public schools constituted 84 percent of the association's membership and school faculty and administrators provided the association's leadership. *Id.* at 298. The Court was also influenced by the fact that the association's primary revenue source was gate receipts from tournaments between teams from association member schools. *Id.* at 299. The Court concluded that:

to the extent of 84% of its membership, the Association is an organization of public schools represented by their officials acting in their official capacity to provide an integral element of secondary public schooling. There would be no

recognizable Association, legal or tangible, without the public school officials, who do not merely control but overwhelmingly perform all but the purely ministerial acts by which the Association exists and functions in practical terms.

Id. at 299-300.

2. *Is North Central a state actor?*

The central issue here is the question of whether North Central is a "state actor." The court concludes that it is not. The court reaches this conclusion because this case does not involve sufficient "entwinement" to meet *Brentwood's* "pervasive entwinement" test. North Central is a non-profit corporation whose board of directors is composed of both private individuals and public officials from the seven counties in its catchment area. Marvin points out that North Central is a community mental health center which was organized pursuant to Iowa law. The Supreme Court, however, has held that "the mere fact that a business is subject to state regulation does not by itself convert its action into that of the State.'" *Sullivan*, 526 U.S. at 52 (quoting *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 350 (1974)). Under Iowa law, non-profit community mental health centers are required to do the following:

Each community mental health center established or continued in operation pursuant to section 230A.3, shall be organized under the Iowa nonprofit corporation Act appearing as chapter 504A, Code and Code Supplement 2003, except that a community mental health center organized after January 1, 2005, and a community mental health center continued in operation after July 1, 2005, shall be organized under the revised Iowa nonprofit corporation Act appearing as chapter 504, and except that a community mental health center organized under former chapter 504 prior to July 1, 1974, and existing under the provisions of chapter 504, Code 1989, shall

not be required by this chapter to adopt the Iowa nonprofit corporation Act or the revised Iowa nonprofit corporation Act if it is not otherwise required to do so by law. The board of directors of each such community mental health center shall enter into an agreement with the county or affiliated counties which are to be served by the center, which agreement shall include but need not be limited to the period of time for which the agreement is to be in force, what services the center is to provide for residents of the county or counties to be served, standards the center is to follow in determining whether and to what extent persons seeking services from the center shall be considered able to pay the cost of the services received, and policies regarding availability of the center's services to persons who are not residents of the county or counties served by the center. The board of directors, in addition to exercising the powers of the board of directors of a nonprofit corporation may:

1. Recruit, promote, accept and use local financial support for the community mental health center from private sources such as community service funds, business, industrial and private foundations, voluntary agencies, and other lawful sources.
2. Accept and expend state and federal funds available directly to the community mental health center for all or any part of the cost of any service the center is authorized to provide.
3. Enter into a contract with an affiliate, which may be an individual or a public or private group, agency or corporation, organized and operating on either a profit or a nonprofit basis, for any of the services described in section 230A.2, to be provided by the affiliate to residents of the county or counties served by the community mental health center who are patients or clients of the center and are referred by the center to the affiliate for service.

IOWA CODE § 230A.12. It is obvious that non-profit community mental health centers are

given considerable discretion as to the type and manner of services they can provide to residents of the counties in the catchment area. Here, North Central has considerable autonomy in deciding who it will and will not serve. Neither the State of Iowa, any county, or any subdivision of the State of Iowa has delegated their respective duties to North Central with respect to delivery of medical care. North Central chooses which patients it will provide services to and is not compelled to provide services to a patient due to that person's receipt of public benefits. North Central can not be compelled by any government agency to provide medical services to a person they choose not to serve. It is noteworthy that North Central has not assumed the regulatory authority of any of the counties in its area.

Marvin's argument in favor of a finding of state action focuses heavily on the fact that North Central receives significant public funds. While it is almost self-evident that this weighs in favor of Marvin's contention, the Supreme Court has cautioned that a predominance of public funding is not conclusive evidence of state action. *See Rendell-Baker v. Kohn*, 457 U.S. at 831; *see also Blum*, 457 U.S. 991, 1011 (holding no state action even though state paid the medical expenses of more than 90 percent of the patients and subsidized the operating and capital costs of the nursing homes). In *Rendell-Baker*, 457 U.S. at 831, a privately operated school for students with disciplinary problems was sued by several former employees over the circumstances of their terminations. Most of the school's students had their tuition paid by public school districts, and the school also received aid from various federal and state education agencies. As a result, for several years public funds accounted for between 90 and 98 percent of the school's operating budget. Thus, public entities were by far the school's biggest customer and source of funds. *Id.* The Court, however, held that the school was

not a state actor, at least for the purposes of the petitioners' claims. The decisive factor in the Court's view was that the school's personnel decisions were uninfluenced by public officials and that "the decisions to discharge the petitioners were not compelled or even influenced by any state regulation." *Id.* at 841. In light of the autonomy with which it made its decisions as to whom to hire and fire, the school was not "fundamentally different from many private corporations whose business depends primarily on contracts to build roads, bridges, dams, ships, or submarines for the government. Acts of such private contractors do not become acts of the government by reason of their significant or even total engagement in performing public contracts." *Id.* at 840-41.

Similarly, here the court notes that while North Central has entered into contracts with seven Iowa counties, it also has provider contracts with a number of insurance companies. In that respect, North Central stands in the same position as those medical providers in private practice who treat both privately insured patients as well patients receiving public assistance. Moreover, while North Central's Board of Directors is made up of both private citizens as well as public officials, North Central's by-laws do not require that any of its board of directors be public officials. Furthermore, there has been no showing that the personnel decisions at issue here were influenced by those public officials sitting on North Central's Board of Directors. Indeed, Marvin has not submitted any evidence that proves, or even suggests through reasonable inference, that public officials took any part in Marvin's termination decision. Accordingly, the court concludes that, as a matter of law, North Central, was not a state actor when it terminated Marvin's employment. Therefore, defendant North Central's motion for summary judgment is granted. While the court has concluded that North Central is entitled to summary judgment in this case, the court views it a very close question. Given the closeness of the

question, if the issue had not been determinative of this litigation, the court would have recommended certifying this order for immediate appeal pursuant to 28 U.S.C. § 1292(b). The court, therefore, encourages plaintiff Marvin to seek appellate review of this order.

III. CONCLUSION

The court concludes, as a matter of law, that North Central was not a state actor when it terminated Marvin's employment. Therefore, defendant North Central's motion for summary judgment is **granted**. This case is dismissed in its entirety.

IT IS SO ORDERED.

DATED this 17th day of September, 2004.



MARK W. BENNETT
CHIEF JUDGE, U. S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA