

## And The Defense Wins

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### Laura Eschleman



Plaintiff, a pre-trial detainee, sued a city, a jail, a sheriff's department, a hospital, multiple correctional officers, a nurse and DRI member [Laura Eschleman's](#) client, a psychiatrist. Plaintiff alleged Defendants repeatedly used excessive force against him including beating, kicking, stomping, Tasing and striking Plaintiff with their fists. Plaintiff claimed that despite serious injuries caused thereby, he was not provided medical care or treatment for his injuries. Plaintiff additionally claimed he never received a proper mental assessment and that Defendants failed to provide Plaintiff with needed mental health care services. He further alleged that he was given Haldol and/or other injections of sedatives without diagnosis or prescription by a treating physician; and, that Defendants excessively used Haldol or a similar drug to sedate him as opposed to providing him appropriate mental health care. Plaintiff raised claims pursuant to 42 U.S.C. §1983, contending that Defendants' deliberate indifference to his medical and mental health needs and excessive force violated his constitutional rights. Plaintiff also asserted state law claims for assault, battery and the "tort of outrage." Laura moved to dismiss all claims against their psychiatrist client. With respect to the excessive force claim, the United States District Court for the Middle District of Georgia, Columbus Division, held that Plaintiff failed to state a claim upon which relief may be granted. The Court further held that absent specific facts demonstrating that the psychiatrist took some action or failed to take some action that could be construed as deliberate indifference to Plaintiff's medical or mental health needs, those allegations also failed to state a claim. Plaintiff's claim of improper medication without prescription suggested that prison officials acted without seeking advice from the psychiatrist and the Court held that Plaintiff's failure to allege the psychiatrist's involvement in forced administration of medication was fatal to his claim and must also be dismissed. The Court further held that the official capacity claims against the psychiatrist were redundant in light of the fact he separately sued each of the entities he believed were responsible for violating his constitutional rights. Additionally, the Court held that the state law claims of assault and battery were based on Defendants' use of excessive force and must be dismissed because Plaintiff failed to allege any facts suggesting that the psychiatrist used excessive force against him. The Court also held that even if the Court liberally construed Plaintiff's "tort of outrage" claim as one for intentional infliction of emotional distress, Plaintiff failed to state a cognizable claim as he did not describe any specific act or omission by the psychiatrist that was so terrifying or insulting as to naturally humiliate, embarrass or frighten him.

Ms. Eschleman also moved for dismissal based on Plaintiff's failure to exhaust his administrative remedies prior to bringing his §1983 action. According to the documents they submitted on behalf of their psychiatrist client, Plaintiff was an inmate in custody at the time he filed his Complaint. The jail had a grievance system available to all inmates. While Plaintiff filed several grievances while he was incarcerated, none of the grievances named the psychiatrist or described any conduct or misconduct by a doctor. The Court held that while an inmate need not name any particular defendant in a grievance in order to properly exhaust his claim, a grievance must alert prison officials to a problem and give them the opportunity to resolve it before being sued. Thus, the Court held Plaintiff's claims against the psychiatrist must be dismissed for a failure to exhaust. In addition, the Court held that although the normal remedy for a failure to exhaust under §1997e(a) is a dismissal without prejudice, the psychiatrist requested a dismissal *with* prejudice, reasoning that the jail's grievance procedures were no longer available to Plaintiff because Plaintiff had been released from jail. Thus, Plaintiff could no longer cure his failure to exhaust his administrative remedies. The Court agreed and dismissed Plaintiff's claims against Ms. Eschleman's psychiatrist client with prejudice.

Ms. Eschleman is a partner at **Nall & Miller LLP** in Atlanta, Georgia.

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