

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ROBERT EDWARD REAGAN,	:	CIVIL ACTION
	:	
Plaintiff,	:	
v.	:	
	:	NO. 99-CV-5748
DALE MEISEL and	:	
NANCY AFFLERBACH,	:	
	:	
Defendants.	:	
	:	

EXPLANATION AND ORDER

Anita B. Brody, J.

December 28, 2004

I. Introduction

Pro se plaintiff Robert Reagan (“Reagan”) brings this action under 42 U.S.C. § 1983 alleging that defendants Dale Meisel (“Meisel”) and Nancy Afflerbach (“Afflerbach”) violated Armstead’s Eighth Amendment right to be free from cruel and unusual punishment. Reagan, who at relevant times was a prisoner at Lehigh County Prison, alleges that Meisel and Afflerbach, Warden and Deputy Warden of the Prison, respectively, failed to protect him from attack by a fellow prisoner. Reagan seeks monetary damages and injunctive relief. The defendants have filed a motion for summary judgment. For the reasons that follow, I will grant their motion in part and deny it in part.

II. Statement of Facts¹

Reagan's claim stems from a November 5, 1999 altercation between Reagan and a fellow inmate at Lehigh County Prison, Victor Simmons ("Simmons"). (Pl.'s Mem. Opp. Mot. Dismiss Ex. M.) Simmons brought Reagan into corner cell on the second level of the cell block where the two were housed. Simmons punched Reagan on the neck, attempted to throw him down a stairwell, and lifted him up, attempting to throw him over the railing and down to the first level. (Pl.'s Mem. Opp. Mot. Dismiss Ex. O.) Correctional officers intervened and subdued the two men. (Id.) As a result of the altercation, Reagan sustained minor injuries to his neck and throat. (Id. at Ex. Q.) Reagan was attacked by Simmons at the behest of Joseph Snyder ("Synder"), Reagan's codefendant in a state burglary case. (Id. at Ex. O.) Reagan alleges that the attack was carried out in retaliation for his cooperation with the state authorities against Snyder in that case. (Id.; Pl.'s Mem. Opp. Summ. J. at ¶ 3.D.) For purposes of this motion, I accept that as true.²

On August 27, 1999, roughly 10 weeks before the Simmons altercation, Afflerbach told Reagan that she had been informed by the state police that Snyder had been charged in state proceedings and that Meisel would consider transferring Reagan, but would not place Reagan in protective custody. (Pl.'s Mem. Opp. Mot. Dismiss Ex. A.) At this time, Reagan explained to Afflerbach that Snyder had sent threats to him through fellow prisoners and that the victim of the

¹ All inferences drawn from the underlying facts are viewed in the light most favorable to plaintiff, the non-moving party, and his allegations are taken as true when supported by proper proofs whenever those allegations conflict with those of the defendants. See Kopec v. Tate, 361 F.3d 772, 775 (3d Cir. 2004).

²Prison authorities later made an official determination that Reagan was in fact the aggressor in this incident and was guilty of aggravated assault, simple assault, and disruption. (Def.'s Mem. Supp. Mot. Summ. J. Ex. B.) It was Reagan's fifteenth episode of misconduct in less than three years at the prison. (Id.)

burglary for which Snyder and Reagan were being prosecuted was a corrections officer at Lehigh County Prison. (Id.) Reagan was transferred to Northampton County Prison three days later.

(Id.)

Sometime before October 5, 1999, Reagan was transferred back to Lehigh County Prison. (Id. at Ex. C.) The reason for Reagan's transfer back to Lehigh County Prison is in dispute.

Reagan did not receive any formal misconduct reports while at Northampton County Prison, but defendants have asserted that Northampton County Prison authorities were extremely displeased with Reagan's behavior. (Id.)

On October 5, 1999, Reagan submitted an "Inmate's Request to Staff" form to Afflerbach. (Id.) In this form he expressed displeasure with his transfer back to Lehigh County Prison and disputed that he had misbehaved in such a way as merited a transfer out of Northampton County Prison. (Id.) Nowhere in the form did he express a concern over his own safety.

At the time of the attack, Reagan was housed in the "Special Management Unit," a general population cell block for prisoners with special needs. The Unit houses a variety of prisoners, including violent offenders. (Id. at Ex. H, L.)

Following the attack on November 5, 1999, Reagan submitted a number of requests for transfer and protective custody grounded in his belief that he was not safe under the prevailing conditions in the Special Management Unit and generally in Lehigh County Prison. (Id. at Ex. G (Nov. 12, 1999 inquiry regarding protective custody); id. at Ex. H (Nov. 7, 1999 request for clarification of policy and procedures of cell block); id. at Ex. S (Nov. 10, 1999 inquiry regarding prison's refusal to place him in protective custody or transfer him to another prison and citing

possibility of injury under present conditions); id. at Ex. W (Nov. 22, 1999 application for hearing regarding denial of protective custody).) In support of these requests, Reagan documented instances of other fights and attacks within the Special Management Unit where Reagan was housed. (Id. at Ex. R.) Prison authorities did not grant these requests and Reagan filed this suit in federal court on November 18, 1999.

III. Legal Standard

Pursuant to Federal Rule of Civil Procedure 56(c), “[s]ummary judgment should be granted if, after drawing all reasonable inferences from the underlying facts in the light most favorable to the non-moving party, the court concludes that there is no genuine issue of material fact to be resolved at trial and the moving party is entitled to judgment as a matter of law.”

Kornegay v. Cottingham, 120 F.3d 392, 395 (3d Cir. 1997).

IV. Discussion

The Eighth Amendment, as incorporated through the Fourteenth Amendment, places restraints and imposes duties on prison officials. Farmer v. Brennan, 511 U.S. 825, 832 (1994). Not only must prison officials not use excessive force against prisoners, but they must affirmatively “take reasonable measures to guarantee the safety of the inmates.” Id. In particular, “prison officials have a duty . . . to protect prisoners from violence at the hands of other prisoners.” Id. (citation omitted). However, a prison official who fails to prevent harm to an inmate violates the Eighth Amendment only when two requirements are met: 1) the inmate must

show that he is incarcerated under conditions posing a substantial risk of serious harm; and 2) the inmate must show that the prison official's state of mind was one of "deliberate indifference" to inmate health or safety. Id. at 834. An official is deliberately indifferent only if the official "knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." Id. at 837. "[A] defendant can rebut a prima facie demonstration of deliberate indifference either by establishing that he did not have the requisite level of knowledge or awareness of the risk, or that, although he did know of the risk, he took reasonable steps to prevent the harm from occurring." Beers-Capitol v. Whetzel, 256 F.3d 120, 133 (3d Cir. 2001).

To survive summary judgment on a deliberate indifference claim, a plaintiff must "present enough evidence to support the inference that the defendants 'knowingly and unreasonably disregarded an objectively intolerable risk of harm.'" Beers-Capitol, 256 F.3d at 132. "Whether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence, and a factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious." Farmer, 511 U.S. at 842. That is, circumstantial evidence can be employed to prove that "the excessive risk was so obvious that the official must have known of the risk." Beers-Capitol, 256 F.3d at 133.

There are genuine issues of material fact regarding Afflerbach's subjective awareness of an objectively intolerable risk of harm to Reagan and whether she responded reasonably to that risk. Reagan has produced evidence from which a reasonable jury could infer that as of

November 5, 1999, Afflerbach was aware that: 1) Reagan had cooperated with the government against a co-defendant and fellow prisoner; 2) because that cooperation presented a risk to his safety, Reagan had been transferred to a different prison; 3) the co-defendant had communicated threats to Reagan through other prisoners; and 4) Reagan was transferred back to Lehigh County Prison and housed in a general population cell block over his objections. These facts are sufficient to support both a finding that Reagan was incarcerated under conditions posing a substantial risk of serious harm and an inference that Afflerbach was actually aware of an objectively intolerable risk to Reagan's safety.³ Further, there remains an outstanding question of fact as to whether Afflerbach knowingly and unreasonably failed to take additional protective measures following Reagan's transfer back to Lehigh County Prison that would have prevented Reagan's assault. See Hamilton v. Leavy, 117 F.3d 742, 747-48 (3d Cir. 1997).

As for defendant Meisel, Reagan has failed to point to evidence supporting an inference that Meisel was actually aware of an objectively intolerable risk of harm to Reagan. He has presented no evidence that Meisel was even aware of Reagan's transfer back to Northampton County Prison. At most he has shown that Meisel was aware that Reagan had cooperated against a co-defendant and for that reason had been transferred to another prison. Summary judgment is therefore appropriate with respect to Meisel.

Reagan has also made a claim for injunctive relief. To survive summary judgment:

An inmate seeking an injunction on the ground that there is "a

³Afflerbach has also claimed qualified immunity for her actions. However, "[b]ecause deliberate indifference under Farmer requires actual knowledge or awareness on the part of the defendant, a defendant cannot have qualified immunity if she was deliberately indifferent." Beers-Capitol, 256 F.3d at 142 n.15.

contemporary violation of a nature likely to continue,” . . . must come forward with evidence from which it can be inferred that the defendant-officials were at the time suit was filed, and are at the time of summary judgment, knowingly and unreasonably disregarding an objectively intolerable risk of harm, and that they will continue to do so; and finally to establish eligibility for an injunction, the inmate must demonstrate the continuance of that disregard during the remainder of the litigation and into the future.

Farmer, 511 U.S. at 846. Reagan’s pre- and post-attack submissions to prison authorities do not amount to evidence from which it can be inferred that the defendants are currently “knowingly and unreasonably disregarding an objectively intolerable risk of harm.” Id. Reagan has provided no evidence of an ongoing threat to his safety—all of his relevant evidence predates the year 2000. An injunction is therefore inappropriate.

V. Conclusion

For the reasons described above, defendants’ motion for summary judgment is granted with respect to Reagan’s claims against defendant Meisel and with respect to his request for injunctive relief, but denied with respect to Reagan’s claims based on defendant Afflerbach’s alleged past constitutional violations.

AND NOW, this ___ day of December 2004, upon consideration of defendants Dale Meisel's and Nancy Afflerbach's motion for summary judgment (Docket #47) and plaintiff's responses, it is hereby **ORDERED** that the said motion is **GRANTED IN PART** and **DENIED IN PART**, as stated in the accompanying memorandum.

ANITA B. BRODY, J.

Copies **VIA ECF** on _____ to:

Copies **MAILED** on _____ to:

C:\Inetpub\www\documents\opinions\source1\ASQ04D0660P.pae