

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

BARBARA A. BREJCAK, et al.	:	CIVIL ACTION
	:	
v.	:	
	:	
COUNTY OF BUCKS, et al.	:	NO. 03-4688

MEMORANDUM

Baylson, J.

October 24, 2005

This civil rights case arises out of the tragic and unfortunate death of Virginia Brejcek (“Virginia”) on December 26, 2001, while an inmate at the Bucks County Correctional Facility (“BCCF”). The background of this case is set forth in two prior Memoranda issued by this Court dated January 28, 2004 and September 22, 2004. Since that time, several parties have settled or been dismissed. The only remaining Defendant is the County of Bucks.

Presently the Court is considering the Motion for Summary Judgment of Bucks County pursuant to F. R. Civ. P. 56. After reading voluminous briefs and record excerpts, and hearing over two hours of argument on October 20, 2005, the Court concludes that the Motion of Bucks County for Summary Judgment must be denied, and identifies the following factual issues which have led the Court to this conclusion. Additional fact issues may exist.

1. Plaintiffs wish to introduce into evidence a task force report on “Incarcerated Women and the Mentally Ill,” dated December 5, 2001. The Defendant asserts that it is inadmissible and also not probative on the issues in this case. The date of its issuance is at a crucial point in the treatment of Virginia while an inmate at the BCCF. To what extent any of

the supervisory personnel at the BCCF knew of the contents of the task force report is a disputed issue. The Court has carefully considered the Defendant's position that the task force report is inadmissible under F.R.E. 803(8) and declines to declare it inadmissible as a matter of law in the pretrial context. This does not mean that the Court will necessarily admit the document at trial; the Court will give Plaintiffs opportunity to show that it meets the stipulations of Rule 803(8), and then Plaintiffs must show that it is probative and material on the issues surrounding Virginia's treatment in the context of the other issues relevant in this case. The Court reserves the right to limit admissibility to certain portions or to make otherwise appropriate redactions. However, assuming even portions of the report are admissible, they raise fact issues as to knowledge of problems at BCCF, as well as custom and policy.

2. Under the doctrine of Monell v. New York City Department of Social Services, 436 U.S. 658 (1978), the Plaintiffs can proceed against Bucks County only on the showing of the existence of a policy or custom that is shown to have a causal relationship with the deprivation of civil rights allegedly suffered by Virginia. The Plaintiffs may not proceed on a theory of a vicarious liability. Thus, the acts or omissions of individuals employed by Bucks County cannot themselves provide for liability, although they can be introduced as background to show a policy or custom. Further, under the holding in Beck v. City of Pittsburgh, 89 F.3d 966 (3d Cir. 1996), the Plaintiffs can proceed on a theory that, even though adequate policies or customs may have been in effect, those responsible for enforcing them either deliberately chose not to follow them, or acquiesced in a long standing policy or custom of inaction.

3. A major factual issue in this case is exactly what happened to Virginia in the last several months of her life. The record is disputed as to (1) why she was not committed to a

psychiatric facility, (2) whether the fact that she was not resulted from some custom, or lack of following a policy, that existed at BCCF, and (3) the issue of causation.

4. A related factual issue is whether there were any BCCF procedures, or failure to follow those procedures, amounting to deliberate indifference for which Bucks County is responsible under Monell. For example, at the end of the oral argument, a portion of the Bucks County Medical Manual was brought to the Court's attention. See Exhibit R to the Appendix to Statement of Undisputed Facts of several Defendants who have previously settled (Doc. No. 68). This document is entitled "Commitment Procedures" and relates to involuntary hospitalization with separate provisions labeled as follows:

- "A. Section 302 Original Hospitalization
- B. Section 304 Non-Emergency Hospitalization
- C. Section 402 Not Competent to Proceed with Trial."

There was significant deposition testimony in this case (some of it relating to the claims against Drs. Davis and Brandt) about the reasons why Virginia was not committed, even though a part-time prison doctor, Dr. Davis, had recommended that Virginia be committed. Although the Court has concluded that the evidence concerning Dr. Davis does not rise to the "deliberate indifference" test, Plaintiffs have enough facts warranting a trial as to whether the above-stated commitment procedures were followed, and, if not, whether Bucks County has liability under a Monell claim for not having sufficiently specific procedures in place or a system to make sure that the procedures it did have in place were followed, and/or whether its procedures were ignored. This is more appropriately handled in a trial context than on summary judgment.

5. Plaintiffs have presented excerpts from the record that require a jury resolution as to whether the fact that Virginia was not committed resulted from some custom of not following

the above-stated policies. For example, Mr. Nesbitt, the warden at the time, testified that Virginia should have been seen by someone after December 5, 2001. There are disputes as to why a commitment hearing that had been scheduled for December 3, 2001 was cancelled, allegedly because of the lack of a petitioner, and whether this was an appropriate exercise of BCCF policy. It appears that Virginia was in a lock-up status after December 5 for only mental health reasons. Factual issues exist as to whether and/or how she was being treated for mental health problems, and this may relate to some custom or policy of BCCF.

6. Bucks County asserts BCCF is not responsible for the mental health of inmates, because it has delegated this duty to the health department, which has settled, and Plaintiffs, therefore, seek “double recovery.” The Court finds this is also a fact issue.

7. Defendant has moved for summary judgment on Plaintiffs’ allegations that Defendant failed to train its prison staff to handle appropriately patients with particular medical problems, such as Virginia (Count VI). The Court finds that Plaintiffs’ facts on this issue are insufficient to show “deliberate indifference,” and also the evidence is insufficient to warrant a trial as to the alleged lack of training being substantial a causation factor in the death of Virginia. See Wolosyn v. County of Lawrence, 396 F.3d 314 (3d Cir. 2005).

8. After reviewing numerous factual excerpts from the record, the Court cannot say that Virginia’s death was, as a matter of law, not due to any act or omission related to a policy or custom of Bucks County.

9. The Court is also aware that Plaintiffs wish to present claims of special relationship (Count III) and state-created danger (Count IV) under a theory of substantive due process based on the contention that the conduct of Bucks County in this case “shocks the

conscience.” The Court has not made a ruling on how these issues may be presented at trial, is not sure exactly how Plaintiffs plan to assert these various issues at trial, and how they relate to, or whether they are subsumed within, Plaintiffs’ claims under the Eighth and Fourteenth Amendments (Counts I, II, and V). These matters will be raised at the final pretrial conference.

An appropriate Order follows.

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ORDER

AND NOW, this 24th day of October, 2005, following extensive oral argument on Motions for Summary Judgment and related matters, it is hereby ORDERED as follows:

1. As to Defendant's Motion in Limine to Preclude Testimony and Reports from Plaintiffs' Experts Served on May 3, 2005 (Doc. No. 64), the Motion has been WITHDRAWN as to Dr. Siek, and is DENIED without prejudice as to Dr. Fillinger.

2. The Motions for Summary Judgment by Dr. Lewis Brandt (Doc. No. 70) and by Dr. David Davis (Doc. No. 72) are GRANTED, and these Defendants are dismissed as parties in this case. The Court will file an explanatory Memorandum later.

3. The Motion of the County of Bucks for Summary Judgment (Doc. No. 65) is GRANTED as to Count VI, but is otherwise DENIED, based on the discussion in the foregoing Memorandum.

4. By agreement of counsel, Defendants Fitzpatrick, Martin, Miller, Gubernick, Morton, and Nesbitt, having been sued in their official capacity only, are dismissed as parties in this case with the understanding that their testimony and depositions shall be admissible at trial against the County of Bucks.

5. The parties shall file their pretrial memoranda and preliminary points for charge

by October 31, 2005.

6. The Court will hold a final pretrial conference on November 1, 2005 at 10:00 a.m., at which time the Court will require the parties to consider and be prepared to argue:

- A. All outstanding motions.
- B. The theories on which Plaintiffs wish to proceed to trial.
- C. Issues of admissibility of key documents, such as the task force report.
- D. Any other matters identified in the parties' pretrial memoranda.

Please call chambers at 267.299.7520 for the courtroom location.

7. The case is listed for trial for Monday, November 7, 2005, subject only to a criminal case also scheduled for that date starting trial, in which event this case will start as soon as the criminal trial is completed. Counsel are welcome to call the Court's deputy clerk as to the status of the criminal case.

8. The parties may file a trial brief and submit a copy of trial exhibits any time prior to the start of trial.

BY THE COURT:

s/Michael M. Baylson
Michael M. Baylson, U.S.D.J.

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