

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

DENISE GIANDONATO, AS
ADMINISTRATRIX FOR THE ESTATE
OF DENNIS A. MANDI,
Plaintiff,

v.

MONTGOMERY COUNTY, MONTGOMERY
COUNTY CORRECTIONAL FACILITY,
WARDEN ROTH, DR. ROCIO NELL,
EMSA, MONTGOMERY COUNTY
EMERGENCY SERVICES, and DR.
BOB DOE,
Defendants.

Civil Action
No.97-CV-0419

Gawthrop, J.

May , 1998

MEMORANDUM

Before the court in this 42 U.S.C. § 1983 prisoner wrongful death action are two summary judgment motions, one by defendants Montgomery County Correctional Facility and Warden Roth, and the other by defendants Dr. Rocio Nell and Montgomery County Emergency Services ("MCES"). Upon the following reasoning, defendants MCCF and Warden Roth's motion shall be denied, and defendants Dr. Nell and MCES's motion shall be denied in part and granted in part.

I. Background

On October 13, 1995, Dennis Mandi was arrested, resulting in his incarceration at the Montgomery County Correctional Facility ("MCCF"). After he informed the medical personnel during his intake medical screening that he was undergoing drug dependency withdrawal, he was placed in the general population. Five days later, after fighting with another inmate, Mr. Mandi was moved to separation. On October 20, 1995, after Mr. Mandi jumped head first off a top bunk, he told prison officials that he had attempted to commit suicide and stated that he would try again until he succeeded. As a result of this incident, Mr. Mandi was classified as suicidal, transferred to the prison's psychiatric wing, and placed in four point restraints for a twenty-four hour period.

While housed in the psychiatric wing, Mr. Mandi was evaluated and treated primarily by two individuals: Dr. Rocio Nell and Dr. Robert Wlodarczyk ("Dr. Bob"). The prison had contracted with Dr. Bob's employer, EMSA, to provide medical services, including psychiatric and psychological services, to inmates at the prison. Under the contract terms, Dr. Bob was responsible for the daily interaction with the inmates. EMSA subcontracted with Dr. Nell's employer, MCES, to provide a psychiatrist, Dr. Nell, on-site at the prison five hours per week, and on-call services twenty-four hours a day, seven days a week. Generally, an inmate requesting psychiatric services would first be evaluated by an EMSA nurse, who would refer the inmate

to Dr. Bob, who would then, if necessary, refer the inmate to Dr. Nell for further observation. However, if an inmate threatened suicide, the prison officials would contact Dr. Nell directly, since she was responsible for the housing and monitoring decisions concerning suicidal inmates.

On October 25, 1995, Dr. Bob telephoned Dr. Nell and informed her that Mr. Mandi, who was still housed in the psychiatric wing, was expressing feelings of paranoid ideation, auditory hallucinations, feelings that others were plotting against him, and general agitation. Dr. Nell prescribed medication for his symptoms of paranoia. On October 27, 1995, Dr. Nell conducted her first in-person examination of Mr. Mandi. Although Dr. Nell had not reviewed Mr. Mandi's medical records, she consulted with Dr. Bob who knew that Mr. Mandi had jumped head-first off the top bunk. They claim, however, to have discussed only Mr. Mandi's paranoid ideation. During the exam, Dr. Nell noted that Mr. Mandi was restless, agitated, and very suspicious. Again, Dr. Nell prescribed medication only for Mr. Mandi's paranoia.

One month later, on November 24, 1995, Dr. Nell examined Mr. Mandi for the second time, at which point she discontinued Mr. Mandi's medication because he refused to take it, claiming that his fears were based in reality. Following the examination, Mr. Mandi was released back into the general population. Two days later, after Mr. Mandi told prison officials that he felt like jumping off the second floor building and that he was "ready to

pop," Dr. Nell ordered Mr. Mandi transferred back to the psychiatric unit for observation, classified as suicidal. Later that evening, a nurse reported to Dr. Nell that Mr. Mandi had stated that he no longer felt suicidal and that he wanted to be returned to the general population. Dr. Nell ordered that Dr. Bob examine Mr. Mandi as soon as possible, but Dr. Bob was unavailable until the next morning. Dr. Bob arrived at the prison the next day at 8:00 a.m. and had not yet examined Mr. Mandi when, at approximately 1:00 p.m., he was found hanging in his cell by his jumpsuit. Mr. Mandi died at Suburban General Hospital on November 29, 1995.

During the time that Mr. Mandi was incarcerated at MCCF, EMSA incorporated a written suicide policy into its contract for services, which contract was signed by Warden Roth. Among other things, as part of the effort to prevent suicidal gestures and suicide attempts, the policy announced that the correctional staff and medical personnel should cooperate to monitor suicidal inmates every fifteen minutes. The activity sheets maintained by the correctional staff indicate that the monitoring of suicidal inmates, such as Mr. Mandi, did not conform to this standard. For example, on the date of his suicide, Mr. Mandi was observed by a correctional officer at approximately 11:00 a.m., when he served Mr. Mandi his lunch tray, but was not seen again until he was found hanging in his cell at approximately 1:00 p.m. Moreover, Dr. Nell, Warden Roth, and other correctional officers deny knowledge that there was a policy stating that suicidal

inmates should be visually checked every fifteen minutes. Rather, even though Warden Roth was generally informed of suicidal inmates during his daily rounds of the facility, there were no planned tours by security for those inmates who had been designated as suicidal.

II. Summary Judgment Standard

Summary judgment is proper "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 a judgment as a matter of law." Fed. R. Civ. P. 56(c). Unless evidence in the record would permit a jury to return a verdict for the non-moving party, there are no issues for trial, and summary judgment becomes appropriate. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In considering a motion for summary judgment, a court does not resolve factual disputes or make credibility determinations and must view facts and inferences in the light most favorable to the party opposing the motion. Siegel Transfer, Inc. v. Carrier Express, Inc., 54 F.3d 1125, 1127 (3d Cir. 1995). The party opposing the summary judgment motion must come forward with sufficient facts to show that there is a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

III. Discussion

Dr. Nell and MCES argue that they are entitled to summary judgment because plaintiff cannot demonstrate that they had

knowledge of Mr. Mandi's vulnerability to suicide, and further, that they did not act with deliberate indifference in treating Mr. Mandi. Similarly, Warden Roth and MCCF argue that because Warden Roth did not have subjective knowledge of Mr. Mandi's vulnerability to suicide, summary judgment should be entered in their favor. They further assert that Warden Roth should be afforded qualified immunity against plaintiff's claims, and that plaintiff cannot demonstrate that MCCF had a policy or custom that violated any of Mr. Mandi's constitutional rights.

A. Warden Roth

To state a claim for relief under 42 U.S.C. § 1983 for denial of medical treatment, a prisoner must allege facts or omissions sufficiently harmful to evidence "deliberate indifference to serious medical needs." Estelle v. Gamble, 429 U.S. 97, 106 (1976) (setting forth standard for violations of prisoners' Eighth Amendment rights).¹ With respect to suicidal inmates, a custodial official may be liable in damages only if he acts with "deliberate indifference" to the individual's psychological needs. Williams v. Borough of West Chester, 891 F.2d 458 (3d Cir. 1989). Specifically, to establish individual liability against a custodial officer, a plaintiff must establish three elements: "(1) the detainee had a 'particular vulnerability to suicide,' (2) the custodial officer knew or should have known

¹ "A detainee is entitled under the Due Process Clause of the Fourteenth Amendment to, at a minimum, . . . no less a level of medical care than that required for convicted prisoners by the Eighth Amendment." Colburn v. Upper Darby Twncshp., 838 F.2d 633, 668 (3d Cir. 1988); Boring v. Kozakiewicz, 833 F.2d 468 (3d Cir. 1987).

of that vulnerability, and (3) the officer 'acted with reckless indifference' to the detainees' vulnerability." Colburn v. Upper Darby Twnshp., 946 F.2d 1017, 1023 (3d Cir. 1991)("Colburn II")(citing Colburn v. Upper Darby Twnshp., 838 F.2d 633 (3d Cir. 1988))("Colburn I").

More specifically, the second prong of the Colburn II test has further been held to require that the prison "official ha[ve] a subjective awareness of a substantial risk of serious harm. Thus, a plaintiff must show actual awareness of the risk, not just that the risk would have been perceived by an objective reasonable person." Litz v. City of Allentown, 896 F. Supp. 1401, 1410 (E.D. Pa. 1995); see also Farmer v. Brennan, 511 U.S. 825 (1994)(holding that to be deliberately indifferent, prison officials must know the facts from which the harm or risk of harm could be inferred, and must actually draw the inference). As to the third prong, "deliberate indifference in a pretrial detainee suicide case must amount to more than an assertion of a negligent failure to protect the detainee from his/her own actions." Robey v. Chester County, 946 F. Supp. 333, 337 (E.D. Pa. 1996).

Warden Roth argues immunity: that the question of whether he was deliberately indifferent to Mr. Mandi's needs should not go to the jury, because he is entitled to qualified immunity against plaintiff's § 1983 claims. The doctrine of qualified immunity shields "government officials performing discretionary functions . . . from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional

rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). The defendant bears the burden of proving that he is entitled to qualified immunity. Id. at 815; Stoneking v. Bradford Area School Dist., 882 F.2d 720, 726 (3d Cir. 1989). Whether an official may prevail in his qualified immunity defense depends upon the "objective reasonableness of [his] conduct as measured by reference to clearly established law." Davis v. Scherer, 468 U.S. 183, 191 (1984)(quoting Harlow, 457 U.S. at 818). However, "there does not have to be 'precise factual correspondence' between the case at issue and a previous case in order for a right to be clearly established.'" Burns v. County of Cambria, Pa., 971 F.2d 1015, 1024 (3d Cir. 1992)(quoting People of Three Mile Island v. Nuclear Reg. Comm'rs, 747 F.2d 139, 144-145 (3d Cir. 1984)).

At the time of the relevant conduct, Warden Roth did, indeed, have a clearly established duty not to act with deliberate indifference to Mr. Mandi's serious medical needs. Nevertheless, Warden Roth is entitled to immunity if he knew or should have known of Mr. Mandi's vulnerability to suicide, and based on the information available to him, he reasonably could have believed that he addressed Mr. Mandi's vulnerability with something more responsive than reckless or deliberate indifference.

In this case, there exist jury questions as to whether Warden Roth knew of Mr. Mandi's vulnerability to suicide, whether the suicide monitoring policy was sufficient to meet the

prisoners' serious psychiatric needs, and whether Warden Roth's acquiescence to the lack of proper suicide policy constitutes deliberate indifference that was causally connected to Mr. Mandi's suicide. I conclude that plaintiff has adduced sufficient evidence to support findings of fact that would constitute a violation by Warden Roth of Mr. Mandi's clearly established constitutional rights. This constrains a denial of Warden Roth's assertion of qualified immunity and precludes granting summary judgment.

B. MCCF

Supervisory liability for state employee's unconstitutional conduct exists under § 1983. However, it is based not on the ground of respondeat superior, but rather on actual knowledge and acquiescence. See, e.g., Baker v. Monroe Township, 50 F.3d 1186, 1194 (3d Cir. 1995); Andrews v. City of Philadelphia, 895 F.2d 1469, 1478 (3d Cir. 1990). Municipal defendants "can be held liable under § 1983 only if the plaintiff can establish a policy or custom on the part of the municipality," Robey, 946 F. Supp. at 338, for which a causal nexus can be shown between that policy and the violation of constitutional rights. See Monell v. Dept. of Social Servs., 436 U.S. 658, 690 (1978).

In Robey, plaintiffs claimed that Chester County prison "ha[d] not followed the minimal practice in the field of personal observation of inmates and that th[at] evidence[d] an unconstitutional policy or practice on the part of Chester County," which made it liable for the suicide of one of the

prison's inmates. Robey, 946 F. Supp. at 338. The court found that this allegation "produced enough facts of record to create a question of material fact with regard to the policy allege[d] and the requisite causation required to sustain that claim." Id. Because, here, plaintiff similarly alleges that it was the prison's failure to practice the fifteen-minute check that resulted in Mr. Mandi's suicide, that allegation presents a genuine issue of material fact. Thus, I must deny summary judgment for MCCF.²

C. Dr. Nell and MCES

1. Section 1983 Claim

Allegations merely stating a claim for medical malpractice do not support a § 1983 claim for deliberate indifference to serious medical needs. Estelle, 429 U.S. at 105-106 ("[A] complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment."). Moreover, no Eighth Amendment claim "is stated when a doctor disagrees with the professional judgment of another doctor." White v. Napoleon, 897 F.2d 103, 110 (3d Cir. 1990). Thus, even "[i]f the doctor's judgment is ultimately shown to be mistaken, at most what would

² Dr. Nell and Warden Roth were sued both in their official and individual capacities. Claims against officials in their official capacities are equivalent to claims against the government entity itself. See W.B. v. Matula, 67 F.3d 484, 499 (3d Cir. 1995). Because plaintiff has adduced facts evidencing a policy or custom on the part of the correctional and medical staff which a jury could conclude constitutes deliberate indifference to suicidal prisoners' needs, summary judgment for Dr. Nell and Warden Roth in their official capacities must also be denied.

be proved is medical malpractice, not an Eighth Amendment violation." Id.

I find that a genuine issue of material fact exists as to whether Dr. Nell's treatment of Mr. Mandi constitutes deliberate indifference or negligence, thus precluding the grant of summary judgment for Dr. Nell. Viewing the facts in the light most favorable to the non-moving party, plaintiff has produced facts sufficient to permit a trier of fact to find that Dr. Nell had actual knowledge of Mr. Mandi's serious risk of suicide and that her treatment of Mr. Mandi constituted deliberate indifference to that risk. Dr. Nell did order Dr. Bob to examine Mr. Mandi "as soon as possible"³ after his various statements to the correctional and medical staff, together with his suicidal gestures, gave her reason to know that Mr. Mandi was vulnerable to suicide. She did not, however, prescribe any medication, order a constant watch, or otherwise take steps to minimize the risk of suicide could be construed as being deliberately indifferent to Mr. Mandi's psychological needs. After all, Dr. Nell was the person responsible for the housing and monitoring directives for suicidal inmates. Whether her conduct constituted deliberate indifference is further brought into question by the fact that Dr. Nell did little to ensure that the prison's policies, which were promulgated with the specific purpose of

³ "As soon as possible," often abbreviated ASAP, does indeed express some urgency by its very words. It goes one out of the starting blocks more abruptly than, for example, "With all deliberate speed," though seemingly less so than "Right now!" "Immediately!" or "At once!"

preventing exactly that which occurred in the present case, were followed.

2. Medical Malpractice Claim

I find, however, that Dr. Nell is immune, under 42 Pa. C.S. § 8501 et seq., the Political Subdivision Tort Claims Act ("PSTCA"), against plaintiff's medical malpractice claim.. In Walls v. Hazelton State General Hospital, 629 A.2d 232 (Pa. Cmwlth. 1993), a case in which a physician was similarly on-call to provide services to a state hospital, the court held that because the "jury could have concluded that [the physician] was a 'person who is acting or who has acted on behalf of a government unit' under Section 8501," that physician was entitled to immunity against claims of negligence. Id. at 237. Similarly, I find here that Dr. Nell should be entitled to immunity against plaintiff's claims of negligence.

Under the PSTCA, state employees are afforded immunity from liability for their negligent acts. See 42 Pa. C.S. § 8541. State actors can only be sued for negligence in eight specific categories allowed under § 8542. Moreover, the PSTCA denies immunity to individual defendants whose acts constitute "actual malice or willful misconduct." See 42 Pa. C.S. § 8550. In this case, plaintiff has not alleged a cause of action that falls into any of the eight enumerated exceptions to governmental immunity or to allege state law claims based on malice or willful

misconduct.⁴ Accordingly, I find that Dr. Nell has immunity from plaintiff's negligence claims, and shall thus grant summary judgment for Dr. Nell on those claims.⁵

D. MCES

MCES will be liable only if its policies or procedures are unconstitutional or are the "moving force" behind the unconstitutional violation of Mr. Mandi's rights. Monell, 436 U.S. at 694-95, Colburn II, 946 F.2d at 1027-29. It is unclear whether, in fact, MCES implemented any policies or reasonable measures addressing Dr. Nell's treatment of inmates who posed a serious risk of suicide. Thus, that MCES had meager, inadequate, or non-existent procedures could lead a jury to conclude that its policies are so inadequate and ineffective as to demonstrate deliberate indifference toward the psychiatric needs of MCCF's inmates, including Mr. Mandi's.

An order follows.

⁴ In her opposition to defendants' motion for summary judgment, plaintiff attempts to argue that summary judgment should be denied because defendants' actions constitute "willful misconduct." Aside from belatedly attempting to bring a claim against defendants for willful misconduct that was not included in any prior pleadings, there are no facts alleged that could be seen to constitute "willful misconduct." Under Pennsylvania law, "willful misconduct" for which an employee of a local agency is not immune is misconduct that the employee recognizes as misconduct and that is carried out with the intention of achieving that exactly wrongful purpose. In re City of Philadelphia Litig., 938 F. Supp. 1264, 1273 (E.D. Pa. 1996). Here, even if it is found that defendants acted with deliberate indifference to Mr. Mandi's psychological needs, this is not equivalent to finding "willful misconduct" and therefore, does not require the denial of Dr. Nell's immunity against plaintiff's state law claims under the PSTCA.

⁵ As summary judgment has been granted on the claims of negligence against MCES's agent, Dr. Nell, plaintiff cannot proceed against MCES on these claims.

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

DENISE GIANDONATO, AS
ADMINISTRATRIX FOR THE ESTATE
OF DENNIS A. MANDI,
Plaintiff,

v.

MONTGOMERY COUNTY, MONTGOMERY
COUNTY CORRECTIONAL FACILITY,
WARDEN ROTH, DR. ROCIO NELL,
EMSA, MONTGOMERY COUNTY
EMERGENCY SERVICES, and DR.
BOB DOE ,
Defendants.

Civil Action
No.97-CV-0419

O R D E R

AND NOW, this day of May, 1998, Defendants Montgomery
County Correctional Facility's and Warden Roth's Motion for
Summary Judgement is DENIED, and Defendants Dr. Rocio Nell's and
Montgomery County Emergency Service's Motion for Summary Judgment
on Plaintiff's negligence claims is GRANTED, and DENIED as to
Plaintiff's claims under 42 U.S.C. § 1983.

BY THE COURT:

Robert S. Gawthrop, III J.