

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

TROY JAMES UPHAM,)
)
 Plaintiff)
)
v.) Civil No. 97-0239-B
)
CHERYL GALLANT, et al.,)
)
 Defendants)

MEMORANDUM OF DECISION¹

This action arises out of an incident that occurred at the Penobscot County Jail while Plaintiff was a pretrial detainee. Defendant Cheryl Gallant is the Jail Administrator. The other named Defendant was dismissed by Order dated March 23, 1998.

Plaintiff alleges that he requested transfer to a different cell block because of threats made against him by another inmate. That transfer was granted, but soon thereafter Plaintiff was returned to his original cell block without explanation. Plaintiff was then assaulted by the other inmate.

Defendant Gallant moves to dismiss Plaintiff's Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), or in the alternative for judgment as a matter of law

¹ Pursuant to Federal Rule of Civil Procedure 73(b), the parties have consented to allow the United States Magistrate Judge to conduct any and all proceedings in this matter.

on the merits of Plaintiff's claim as well as under the doctrine of qualified immunity. Defendant's Motion to Dismiss is DENIED, and the Motion for Summary Judgment is GRANTED, for the following reasons.

1. Failure to State a Claim.

Defendant's argument with respect to Plaintiff's alleged failure to state a claim upon which relief may be granted is that Plaintiff has failed to meet the heightened pleading standard required in this Circuit of civil rights plaintiffs alleging claims against individual defendants. *Judge v. City of Lowell*, 160 F.3d 67 (1st Cir. 1998). One purpose of this requirement is to protect those defendants who may be entitled to qualified immunity from the burden of engaging in discovery. *Id.* at 74 (quoting *Crawford-El v. Britton*, ___ U.S. ___, 118 S. Ct. 1584, 1596 (1998)). When it is alleged that a plaintiff has failed to meet a heightened pleading requirement, this Court is directed to offer the plaintiff the opportunity to correct the deficiency prior to resorting to the extreme remedy of dismissal. *Id.* at 75, n.11 (citation omitted). In light of this requirement, even if the Court were to find this Complaint is subject to the heightened pleading requirement,² Defendant's Motion to Dismiss on this ground

² Plaintiff's allegation against Defendant Gallant is that she is the individual responsible for setting policy and custom within the jail with respect to cell assignment, and that it is the policy and custom that resulted in Plaintiff's injury. There is no allegation that Defendant Gallant personally placed Plaintiff in the same quarters as his attacker.

is simply too little, too late. Discovery has occurred, and Defendant has moved for summary judgment on both qualified immunity and the merits of Plaintiff's Complaint. There is nothing to be gained at this point in this litigation by requiring a technical re-write of the Complaint. The Motion to Dismiss is DENIED.

2. Summary Judgment.

Summary judgment is appropriate only 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). The Court views the record on summary judgment in the light most favorable to the nonmovant. *Levy v. FDIC*, 7 F.3d 1054, 1056 (1st Cir. 1993). "A trialworthy issue exists if the evidence is such that there is a factual controversy pertaining to an issue that may affect the outcome of the litigation under the governing law, and the evidence is 'sufficiently open-ended to permit a rational factfinder to resolve the issue in favor of either side.'" *De-Jesus-Adorno v. Browning Ferris Ind. Of Puerto Rico*, 160 F.3d 839, 841-42 (1st Cir. 1998) (quoting *National Amusements v. Town of Dedham*, 43 F.3d 731, 735 (1st Cir. 1995)).

The facts submitted by the parties in connection with this Motion for Summary Judgment, viewed in the light most favorable to the Plaintiff, reveal the following.

At all relevant times, Plaintiff was a pretrial detainee at the Penobscot Jail. On or about May 7, 1997, Plaintiff filed a “Request/Grievance” form requesting that Plaintiff be transferred from his present cell assignment and away from inmate Douglas Littlefield because he “had a strong suspicion that [his] life and liberty may be in danger.” While day-to-day decisions regarding housing of inmates are left to lower level jail personnel, Defendant testified that she or her Lieutenant reviews every request for protective custody, as well as the staff’s response to that request. There is no evidence, however, that she did so in this case. Plaintiff was nevertheless assigned to a different cell block from inmate Littlefield on the basis of this original request until August 5, 1997.

Between May 22 and August 5,³ Plaintiff filed one more complaint about threats from Littlefield, and there was one verbal incident between the two inmates documented by jail officials. When Plaintiff was transferred into Littlefield’s cell block on August 5, he verbally protested, but to no avail. On August 9, Plaintiff was assaulted by Littlefield, resulting in physical injury.

There is a factual dispute regarding the degree to which jail officials are required to follow written policies with respect to the classification and housing of

³ Plaintiff was temporarily released to a federal correctional institution between May 16 and May 21, 1997.

inmates. Plaintiff points to testimony by Defendant that such decisions are made at the discretion of staff members, subject to her own authority to review and overrule those decisions.

Qualified Immunity.

Defendant argues that she is entitled to qualified immunity, which shields government officers "from civil damages liability as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated." *Hegarty v. Somerset County*, 53 F.3d 1367, 1373 (1st Cir. 1995) (quoting *Anderson v. Creighton*, 483 U.S. 635, 638 (1987)). This doctrine provides for the "inevitable reality that 'law enforcement officials will in some cases reasonably but mistakenly conclude that [their conduct] is [constitutional], and . . . that . . . those officials -- like other officials who act in ways they reasonably believe to be lawful -- should not be held personally liable.'" *Id.* (quoting *Anderson*, 483 U.S. at 641).

The qualified immunity inquiry has two prongs. First we must determine whether the right asserted by Plaintiff was clearly established at the time of the contested events. *Id.* at 1373. Here there is no dispute that Plaintiff had a right to be free from violence at the hands of other inmates. *Farmer v. Brennan*, 511 U.S. 825 (1994); *Inmates of Suffolk County Jail v. Rufo*, 12 F.3d 286, 293 (1st Cir. 1993). However, we must go one step further and determine whether the specific contours

of the right were sufficiently established such that Defendant could understand how the law would be applied to her actions *in this case*. *Anderson*, 483 U.S. at 640. The Court concludes that it was not.

The First Circuit Court of Appeals recently addressed the issue of inmate-against-inmate violence in a case arising in this Court. *Giroux v. Somerset County*, 178 F.3d 28 (1st Cir. 1999). In *Giroux*, plaintiff was assaulted by a fellow inmate after his complaints about that inmate led plaintiff to be placed on “cell feed status.” The evidence revealed that cell feed status was used for only two reasons, one of which was as a form of protective custody from other inmates. *Id.* at 30. The sole remaining defendant on appeal was the person responsible for reviewing the cell block assignment roster at the beginning of his shift. The court concluded that a jury could reasonably assume he completed that job on the day in question, and that he should thereby have been alerted that plaintiff might be in need of physical protection. *Id.* at 33. The court found this inferred knowledge would satisfy the *Farmer* requirement that the officer have actual knowledge of the risk of harm to the inmate, *id.* (citing *Farmer*, 511 U.S. at 843 n. 8), and that an abdication of his responsibility to respond to that risk could amount to a “reckless dereliction of duty rising to the level of Eighth Amendment deliberate indifference.” *Id.* at 34.

Because the Sheriff and the County had been dismissed by this Court, the Court of Appeals had no occasion to specifically address their liability. The court nevertheless commented in a footnote that a claim based solely upon policies alleged to be insufficient to protect an inmate from assault might well survive. *Id.* at 34 n. 10. The court cited three examples of such cases, all from different federal circuits. *Id.*

Defendant Gallant's role in the classification of inmates at the Penobscot County Jail is more akin to the Sheriff in *Giroux*. Defendant testified that she reviews requests for protective custody only when her assistant administrator is unavailable. She does, however, have veto power over decisions made with respect to protective custody requests. It simply cannot be said that the law regarding Defendant's particular duty as jail administrator with respect to inmate safety has been clearly defined. The First Circuit Court of Appeals has only suggested that liability might be found on the proper set of facts, but has never been offered the opportunity to clarify the parameters of that liability. This Court can find no Supreme Court decision addressing the question.

The issue is further complicated by the fact that the cases referenced by the court in *Giroux*, and *Giroux* itself, all arose under the eighth amendment, which prohibits cruel and unusual punishment of convicted prisoners. This case, by contrast, involved a pretrial detainee. Because he had by definition been provided no

due process, Plaintiff is not permitted to be “punished” at all. *Lyons v. Powell*, 838 F.2d 28, 29 (1st Cir. 1988) (citing *Ingraham v. Wright*, 430 U.S. 651 (1977)). This Court has found no case addressing liability for inmate against inmate violence on the basis of inadequate safety policies in the context of pretrial detention.⁴ Under this circumstance, it can hardly be said that the specific contours of the right have been established such that Defendant could have understood how the law would be applied in this case. Defendant is therefore entitled to qualified immunity with respect to Plaintiff’s claims.

Because qualified immunity is properly granted in this case, the Court need not reach the merits of Plaintiff’s Complaint. Defendant’s Motion for Summary Judgment is hereby GRANTED.

SO ORDERED.

Eugene W. Beaulieu
U.S. Magistrate Judge

Dated on: September 30, 1999

⁴ Plaintiff himself, understandably, analyzed his claim under the eighth amendment standard, and it is clear that he was entitled to at least as much protection under the due process clause as a convicted prisoner would receive under the eighth amendment. *Elliott v. Cheshire County*, 940 F.2d 7, 10 (1st Cir. 1991) (citations omitted).