

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

BETTY DOBSON, Personal)
Representative of the Estate of)
David Dobson,)
)
Plaintiff)
)
v.)
)
MARTIN A. MAGNUSSON, et al.,)
)
Defendants)

Civil No. 89-0091 P

**RECOMMENDED DECISION ON DEFENDANTS' MOTIONS
FOR SUMMARY JUDGMENT AND JUDGMENT ON THE PLEADINGS**

In this action the plaintiff, the personal representative of the estate of David Dobson ("Dobson"), seeks damages pursuant to state law and 42 U.S.C. § 1983 from Martin A. Magnusson, the Warden of the Maine State Prison, and from C. Dale Flint and Peter J. Prescott, two Maine State Prison corrections officers.¹ The plaintiff alleges that the defendants violated Dobson's civil rights under the Eighth and Fourteenth Amendments when they failed to prevent him from committing suicide while incarcerated at the prison. In addition, she asserts that the defendants violated the Constitution of the State of Maine and that the estate is entitled to compensation pursuant to the

¹The named defendants also include two other corrections officers, Stephen J. Wood and Sergeant [Eugene] Burt. The plaintiff, however, has conceded that defendants Wood and Burt are entitled to summary judgment. See Plaintiff's Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment at 1. Accordingly, in this opinion I will address only those claims against defendants Magnusson, Flint and Prescott.

Maine Wrongful Death Act, 18-A M.R.S.A. ' 2-804. The defendants have moved for summary judgment on the federal claims and for judgment on the pleadings on the state constitutional claims.

The defendants contend that summary judgment should be granted on the federal claims because the plaintiff has failed to show that they acted with "reckless or callous indifference" to the plaintiff's constitutional rights and that they are therefore entitled to qualified immunity. *See Gutierrez-Rodriguez v. Cartagena*, 882 F.2d 553, 559 (1st Cir. 1989). The plaintiff argues that the defendants knew Dobson was a suicide risk and that their failure to prevent his suicide reflects a callous indifference to his constitutional rights.²

² The defendants object to several of the plaintiff's arguments claiming that they were made in an untimely manner. I conclude, however, that the pleadings were sufficient to give the defendants notice of these assertions and to allow this court to address them. In addition, the defendants object to the plaintiff's submission of Plaintiff's Response to Defendants' Reply to Plaintiff's Opposition to Defendants' Motion for Summary Judgment. Local Rule 19 contains no provision allowing for the filing of such a response without leave of the court. The plaintiff did not seek such leave. Accordingly, Plaintiff's Response to Defendants' Reply to Plaintiff's Opposition to Defendants' Motion for Summary Judgment is stricken.

The court shall grant summary judgment if there remains "no genuine issue as to any material fact" and if "the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The material facts,³ viewed in the light most favorable to the plaintiff, *Lipsett v. University of Puerto Rico*, 864 F.2d 881, 895 (1st. Cir. 1988), may be summarized as follows: On or about April 26, 1987 Dobson escaped from the Maine State Prison. Affidavit of Stephen Foster and Exh. A thereto. At 11:30 that evening Dobson agreed to turn himself in to Corrections Officer Stephen Foster. *Id.* Dobson was picked up at his parents' home in Lewiston, Maine and transported to the Central Maine Pre-Release Center where he spent the remainder of that night. *Id.* On April 27, 1987 Dobson went before a disciplinary board; after learning of the punishment meted out for his escape his attitude and behavior changed for the worse and he became self-abusive. *Id.* He was then put in security gear and on constant watch. *Id.* Later that same day Foster accompanied Dobson to the Maine State Prison at Thomaston. Upon their arrival Foster told defendant Flint, the corrections officer receiving prisoners at that time, of Dobson's suicidal behavior.⁴ *Id.*; Deposition of C. Dale Flint at 23, 29. Flint did not inform the supervising night captain, the officers on duty at the segregation unit where Dobson was placed or the psychological department of Dobson's suicidal mood, nor did he put Dobson in a special cell to guard against suicide or place him on any type of preventative watch. Deposition of Stephen Wood at 16-17; Deposition of C. Dale Flint at 26-27. Dobson received the normal linen supply,

³ Except where noted these facts are undisputed.

⁴ Flint maintains that Foster did not inform him of the decedent's suicide risk. Deposition of C. Dale Flint at 24-25.

including sheets, given to all incoming prisoners who are not on watch. Deposition of Stephen Wood at 20.

On April 28, 1987 at approximately 12:30 p.m. Sergeant Eugene Burt noticed that Dobson was "frightened and distressed" and appeared to be suicidal. Affidavit of Eugene Burt & 2, 4. Burt placed Dobson on a 15-minute watch and notified the psychological staff at the Maine State Prison that Dobson needed to be evaluated by a psychologist to determine if he was suicidal. *Id.* at & 2-3. Between two and three o'clock that afternoon Richard Kauffman, a member of the Maine State Prison psychological staff, went to the segregation unit to interview Dobson. Affidavit of Richard Kauffman & 1-3. As a result of this interview Kauffman determined:

that [Dobson] was a frightened young man, who was acutely distressed and anxious. I determined that he was clearly not psychotic. . . . Although he expressed suicidal ideation, there was no indication that he had an intent to die. Because there was some indication that he might engage in self-injurious behavior (although without lethal intent), as a precaution, I continued the 15-minute watch put on by Sgt. Burt. . . . I recorded my evaluation and recommendations in the segregation unit log.

Id. & 4; *see also* Deposition of Robert Prescott at 11 and Exh. 1. thereto. The 15-minute watch instituted by Burt and adopted by Kauffman was maintained until 7:30 that evening. *Id.* at 23 and Exh. 1 thereto.

Both of the officers on duty in the segregation unit on the evening of April 28, 1987, Peter Brooks and defendant Robert Prescott, knew that Dobson had been placed on a 15-minute watch. Affidavit of Robert Prescott & 4; Deposition of Peter Brooks 25-27. At 7:30 p.m. Prescott observed Dobson awake in his bunk. Exh. 3 to Deposition of Robert Prescott. At 7:40 p.m. the inmate in segregation block cell #14, which is located on a corridor other than the one Dobson was on, threatened to throw water on Lieutenant Curtis who was in the unit investigating certain misconduct.

Exh. 1 to Deposition of Peter Brooks; Affidavit of Robert Prescott & 5. Brooks subsequently turned off the water to the disruptive inmate's cell. Exh. 1 to Deposition of Peter Brooks. Prescott contacted the control room about the prisoner in cell #14. Exh. 3 to Deposition of Robert Prescott. At approximately 7:45 p.m. Brooks observed a fire outside of cell #24, located on yet another corridor, and extinguished it. Exh. 1 to Deposition of Peter Brooks; Affidavit of Robert Prescott & 6. Officer Stephen Wood and Lieutenant Curtis then assisted Brooks in clearing the corridor of smoke. Exh. 1 to Deposition of Peter Brooks. Prescott handled the corridor door while the other officers were dealing with the fire. Exh. 3 to Deposition of Robert Prescott; Affidavit of Robert Prescott & 6. At approximately 7:58 p.m. Brooks and five other officers⁵ physically removed the disruptive prisoner from cell #14 and stripped both him and his cell. Exh. 1 to Deposition of Peter Brooks. Prescott secured the corridor while these activities took place.⁶ Exh. 3 to Deposition of Robert Prescott. The search of the prisoner lasted until approximately 8:10 p.m. Exh. 1 to Deposition of Peter Brooks. Brooks removed everything from cell #14, and Prescott and S. Wood inventoried and bagged the removed prisoner's belongings. Exh. 3. to Deposition of Robert Prescott. At approximately 8:10 p.m. Officer Brooks left the north side corridor and proceeded to the south side corridor, where Dobson was located, to continue his duties and count the prisoners. Exh. 1 to Deposition of Peter Brooks. He arrived there at approximately 8:11 p.m. *Id.*; Affidavit of Robert Prescott & 8. When he reached Dobson's cell at approximately 8:14 p.m. he found him hanging by his neck from a sheet. Exh. 1 to Deposition of Peter Brooks; Exh. 3 to Deposition of Robert Prescott. After checking for signs of

⁵ The other officers were Curtis, Flint, S. Wood, W. Wood and Little. Exh. 1 to Deposition of Peter Brooks.

⁶ Prison policy requires that one officer remain in the segregation unit vestibule anytime a corridor is opened. Deposition of Robert Prescott at 21.

breathing, Brooks informed Prescott of the suicide. Exh. 1 to Deposition of Peter Brooks. A nurse confirmed Dobson's death shortly thereafter. *Id.*

Corrections officers at the Maine State Prison do not receive on a regular basis formal, specialized training or policy statements concerning the handling of suicidal prisoners. Deposition of Peter Brooks at 5; Deposition of C. Dale Flint at 56 and Exh. 7 thereto. Suicide prevention is covered in general training sessions and materials. Deposition of Stephen Wood at 6-12 and Exh. 1 thereto. Suicide precaution determinations are made by the prison psychiatric staff based on the observations of the guards and prisoner interviews. Deposition of Peter Brooks at 5-6, 16; Deposition of Stephen Wood at 8-11; Deposition of C. Dale Flint at 54-55. The guards make these observations based on experience and some training. Deposition of Robert Prescott at 9; Deposition of Stephen Wood at 12. In emergency situations the guards are required to use their own judgment in determining the priority of their acts; there appears to be no written guidelines addressing these circumstances. Deposition of Robert Prescott at 25; Deposition of Peter Brooks at 7-8; Deposition of C. Dale Flint at 64-65. Most of the suicides which occur at the Maine State Prison are by hanging. Deposition of Peter Brooks at 25; Deposition of C. Dale Flint at 57.

The plaintiff argues that summary judgment should not be granted because the evidence raises an issue of fact as to whether the defendants acted with deliberate indifference toward the decedent's health and safety.⁷ She contends that this failure amounted to a violation of Dobson's Fourteenth

⁷ In her Amended Complaint the plaintiff named Martin A. Magnusson, Warden, Maine State Prison, C. Dale Flint, Officer Maine State Prison, Peter J. Prescott, Officer Maine State Prison. It is unclear from her complaint whether she is suing these parties in their official or individual capacities, or both. If the defendants were named only in their official capacities, the complaint would fail to state a claim because "`neither a State nor its officials acting in their official capacities are `persons' under ' 1983.'" *Will v. Michigan Dept. of State Police*, 109 S.Ct 2304, 2312 (1989); *see also Cartagena*, 882 F.2d at 567 n.10. However, because the defendants have failed to raise this issue, I assume for the purposes of this motion that the plaintiff has brought this suit against the defendants in their individual

Amendment due process rights and Eighth Amendment right to be free from cruel and unusual punishment.

The Supreme Court has held that the Eighth Amendment serves as the primary source of substantive protection to convicted prisoners and that the Fourteenth Amendment affords convicted prisoners no greater protection than does the Eighth. *Whitley v. Albers*, 475 U.S. 312, 327 (1986). "[G]overnment officials may be held liable [in their individual capacities] for a deprivation of life, liberty, or property without due process if their conduct reflects a reckless or callous indifference to an individual's rights."⁸ *Germany v. Vance*, 868 F.2d 9, 17-18 (1st Cir. 1989); see also *Cartagena*, 882 F.2d at 567. An official displays such indifference "when it would be manifest to any reasonable official that his conduct was very likely to violate an individual's constitutional rights." *Vance*, 868 F.2d at 18. The plaintiff must show that prison officials displayed a deliberate indifference to the prisoner's taking of his own life. *Edwards v. Gilbert*, 867 F.2d 1271, 1274-75 (11th Cir. 1989). Negligent conduct alone is not actionable under " 1983. *Daniels v. Williams*, 474 U.S. 327, 328 (1986); *Torres Ramirez v. Garcia*, 898 F.2d 224, 226 (1st Cir. 1990).

The facts recited above clearly establish that none of these defendants acted in such a way that "his conduct was very likely to violate an individual's constitutional rights." *Vance*, 868 F.2d at 18. The plaintiff contends that Flint should be liable for his failure to inform his superiors that Dobson was suicidal. This argument fails because it is undisputed that Dobson committed suicide after he was

capacities.

⁸ Deliberate indifference and reckless or callous indifference are effectively synonymous terms and describe the same standard. *Cartagena*, 882 F.2d at 562.

placed on a 15-minute watch by Burt and Kauffman. Thus, any failure on Flint's part to inform the proper authorities was not the proximate cause of the prisoner's death. Even if it could be said that such a failure was the proximate cause of Dobson's suicide, this lack of due care simply does not rise to the level of a callous indifference to the decedent's constitutional rights. *See, e.g., Davidson v. Cannon*, 474 U.S. 344, 347-48 (1986). The plaintiff also argues that Prescott was deliberately indifferent to Dobson's rights when he failed to maintain the 15-minute watch from 7:30 p.m. until 8:14 p.m. when the body was found. The evidence establishes, however, that, during the period that the watch was not maintained, prison operating procedure required that Prescott remain in the unit vestibule. In addition, even if prison policy did not so require, there is nothing in the evidence which indicates that, faced with the same circumstances, "any reasonable official [would know] that his conduct was very likely to violate an individual's constitutional rights." *Vance*, 868 F.2d at 18. At most the evidence indicates that defendants Prescott and Flint were negligent in their failure to prevent the decedent's suicide. *See Davidson*, 474 U.S. at 347-48; *Daniels*, 474 U.S. at 328.

Finally, the plaintiff asserts that Warden Magnusson is liable under ' 1983 for two reasons. First, she alleges that he maintained a custom of laxity with regard to suicide prevention. Here, however, there is no evidence that the warden maintained "a custom of inadequate monitoring of suicidal [prisoners] which amounted to a policy of denying them medical care." *Colburn v. Upper Darby Township*, 838 F.2d 663, 672 (3rd Cir 1988) (quoting *Partridge v. Two Unknown Police Officers*, 791 F.2d 1182, 1188 (5th Cir. 1986)). On the contrary, the evidence suggests that the Maine State Prison maintained a custom which required prison guards to monitor suicide risks in compliance with the recommendations of the prison psychiatric staff.

Second, the plaintiff contends that Magnusson is liable for his failure to adequately train the prison guards in suicide prevention. An official may be liable under ' 1983 for failure to train if he is

deliberately indifferent to the need for such training. *See, e.g., Cartagena*, 882 F.2d at 567; *City of Canton v. Harris*, 109 S.Ct 1197, 1205 (1989) (addressing municipal liability for failure to train).

Liability for failure to train arises when:

in light of the duties assigned to specific officers or employees the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers . . . can reasonably be said to have been deliberately indifferent to the need.

City of Canton, 109 S.Ct at 1205. Furthermore, it will not suffice to prove that an injury or accident could have been avoided if an officer had better or more training, sufficient to equip him to avoid the particular injury-causing conduct." *Id.* at 1206. Here there is no evidence that the need for more suicide prevention training was so obvious that it can be said that Magnusson was deliberately indifferent to that need. While the guards did not receive a specific training course on suicide prevention, it is undisputed that they received some training in this area and that their suicide assessments were supervised by the prison psychiatric staff. *See* Deposition of Stephen Wood at 7-12 and Exh. 1 thereto. In addition, in this case the prisoner committed suicide after a suicide watch had already been implemented. Thus, his death did not result from a failure to train, but rather from a failure to give priority to the watch over intervening disturbances. Given the psychological assessment, reflected in the segregation log, that while Dobson had expressed suicidal notions there was no indication he intended to take his own life and that the 15-minute watch should be continued as a precaution against the more likely possibility of some other form of self-injurious behavior, the failure to prioritize the watch in the circumstances presented cannot be attributed to a lack of proper training.⁹

⁹ Indeed, one can only speculate as to whether, had the prescribed watch been executed so that no 15-minute interval was missed, Dobson may nevertheless have succeeded in committing suicide.

I conclude the plaintiff has failed to establish an essential element of her claim, to wit that the defendants acted with deliberate indifference to Dobson's constitutional rights, and that all defendants are entitled to summary judgment on the ' 1983 claim. If the court accepts my recommendation only the plaintiff's pendent state claims will remain. When federal claims are dismissed the court has the discretion to dismiss pendent state claims against the same defendants. *See Mladen v. Gunty*, 655 F. Supp. 455, 460-61 (D. Me 1987); 13B C. Wright, A. Miller & E. Cooper, *Federal Practice & Procedure* ' 3567.1 at 133-137 (1984). In this case, I can discern no compelling reason why this court should retain jurisdiction over this case and decide the remaining state issues. Accordingly, I recommend that the state claims be dismissed and thus do not reach the defendants' motion for judgment on the pleadings on the state constitutional claims.

For the foregoing reasons, I recommend that the defendants' motion for summary judgment be GRANTED and that the cause be DISMISSED.

NOTICE

A party may file objections to those specified portions of a magistrate's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. ' 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated at Portland, Maine this 16th day of May, 1990.

***David M. Cohen
United States Magistrate***