UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

DARRELL RODGERS by and through
his Guardian, MAE RODGERS and
MAE RODGERS, Individually PLAINTIFFS

v. CIVIL ACTION NO. 3:93CV-502-S

WALT CHAPLEAU, et al. DEFENDANTS

**MEMORANDUM OPINION**

This matter is before the court on the summary judgment motion of defendants Walt Chapleau, David Wilkinson, Jerry Horton, and Terry Butrum. This case involves the defendants' treatment of Darrell Rodgers, who attempted suicide while incarcerated in the Kentucky State Reformatory. The plaintiff alleges under 42 U.S.C. §1983 that these defendants were deliberately indifferent to her son's mental health needs in violation of the Eighth and Fourteenth Amendments to the United States Constitution. For the reasons set forth above, the court will grant the defendants' motion.

**FACTS**

Darrell Rodgers was incarcerated at the Kentucky State Reformatory ("KSR") beginning in early 1992. During this time, several mental health care professionals treated him, including Dr. Robert Meyer and Dr. Phillip Johnson. Both doctors were retained by the Kentucky Corrections Cabinet to evaluate the psychological condition of inmates at KSR.

Rodgers' prison records reflect the fact that he had a history of mental depression and had attempted suicide on several different occasions while incarcerated at KSR. After an attempt on August 27, 1993, Rodgers was sent to the Kentucky Correctional Psychiatric Center ("KCPC"),

where he was reported to be responding well. Rodgers returned to KSR on September 16, 1993. A correctional officer who transported Rodgers saw old cuts he had made in previous suicide attempts and placed Rodgers on a five-minute suicide watch. Dr. Meyer was brought in to evaluate him that same day.

During his evaluation, Rodgers reported to Meyer that the suicide watch was a mistake because he had told the guard that the cuts had been previously made. Rodgers also reported that he had been doing well at KCPC, consistently denying now being suicidal. Meyer states that he evaluated Rodgers' mental status and found him to be well-oriented, clear and appropriate of thought. He showed no evidence of depression and stated that he had no suicidal thoughts since first going to KCPC. Rodgers also stated that he was doing well on his medication. Dr. Meyer checked on Rodgers' medication with officials and confirmed that Rodgers had done well at KCPC, exhibiting no signs of depression or psychosis.

Meyer left his report with the prison officials, indicating that Rodgers displayed no evidence of suicidal tendencies at that time. Rodgers was taken off the five-minute suicide watch and put in the Segregation Unit. He was seen by nurses and a case manager every day. Prison guards also checked on him during shift changes.

Terry Butrum was a guard on duty in the Segregation Unit on September 20, 1993. He last saw Rodgers at approximately 11:45 p.m. Another inmate, James Allgood, states that around 9:00 or 10:00 that evening he heard Rodgers inform a guard on duty that he was going to kill himself. Allgood also states that this guard responded that Rodgers would have to wait until the shift change close to midnight. Rodgers allegedly informed this guard again shortly before the shift change that

he was going to kill himself. The guard allegedly responded that Rodgers could see a psychologist the next day. Allgood does not know the name of the guard and cannot describe him.

David Wilkinson, a sergeant in the Segregation Unit, and Jerry Horton, another guard, came on duty at approximately 11:45 p.m. that night. Shortly after that, Horton went to count the inmates, who were shouting, and discovered that Rodgers had hung himself with a bed sheet. Horton called for Wilkinson and the two untied Rodgers and called for an ambulance. Horton and Butrum administered CPR. Allgood states that it took 10-15 minutes from the time the inmates began to shout until the officials began the CPR. Rodgers suffered severe brain damage as a result of the hanging and currently remains in a coma.

The plaintiff, Rodgers' mother, has brought suit on his behalf against Walt Chapleau, the warden at KSR, Wilkinson, Horton, and Butrum. Rodgers' claims assert that these defendants failed to provide reasonably adequate precautions to prevent suicide attempts. She alleges that this deliberate indifference to Rodgers' mental health needs constitutes a violation of 42 U.S.C. §1983. Defendants Meyer and Johnson were granted summary judgment by order of this court on January 29, 1998.

## DISCUSSION

In order to support a motion for summary judgment, a moving party must prove the absence of a genuine issue of any material fact and that the moving party is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,

248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). In deciding a summary judgment motion, a judge's role is not to weigh the evidence or determine its truth, but to determine if a genuine question of fact exists. *Id.* at 249. "[W]hether, in other words, there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." *Id.* at 250. In making these determinations, the court is to view all facts and inferences in a light most favorable to the nonmoving party. *White v. Turfway Park Racing Ass'n, Inc.*, 909 F.2d 941 (6th Cir. 1990).

**A. STATUTE OF LIMITATIONS**

The defendants argue that the plaintiff's claims are barred by the one year statute of limitations period which applies to §1983 actions. The second amended complaint, which names defendants Wilkinson, Horton, and Butrum for the first time, was filed in December 1996. The suicide attempt occurred on September 20, 1993. However, as the court stated in its memorandum opinion and order dated December 29, 1995, Rodgers' claim on behalf of her son was tolled on September 20, 1993 due to his disability. Under KRS 413.170, if a person entitled to bring an action was "of unsound mind" at the time the cause of action accrued, "the action may be brought within the same number of years after the removal of the disability or death of the person, whichever happens first, allowed to a person without the disability to bring the action after the right accrued." Here, Rodgers' was of unsound mind at the time the cause of action accrued — the suicide attempt. Since that time, he has been comatose. Therefore, the applicable statute of limitations period is tolled and Mae Rodgers' claim on behalf of her son is not barred.

## B. THE ELEVENTH AMENDMENT

The plaintiff has brought suit against the prison officials in both their official and individual capacities. It is well-settled that "absent waiver by the State or valid congressional override, the Eleventh Amendment bars a damages action against a State in federal court." *Kentucky v. Graham*, 473 U.S. 159, 169, 105 S.Ct. 3099, 87 L.Ed.2d 114 (1985). "This bar remains in effect when State officials are sued for damages in their official capacity. That is so because ... 'a judgment against a public servant "in his official capacity" imposes liability on the entity that he represents....'" *Id.* (citations omitted). Congress has not abrogated state sovereign immunity in suits under §1983. *Hutsell v. Sayre*, 5 F.3d 996, 999 (6th Cir. 1993), *cert. denied*, 510 U.S. 1119, 114 S.Ct. 1071, 127 L.Ed.2d 389 (1994).

The plaintiff does not dispute the fact that the Kentucky Corrections Cabinet is an arm of the state or that Kentucky has not waived its Eleventh Amendment immunity in §1983 suits. For these reasons, under the Eleventh Amendment, this court has no jurisdiction over the plaintiff's claims against defendants Chapleau, Wilkinson, Horton, and Butrum in their official capacities and the same must be dismissed.

## C. INDIVIDUAL CAPACITY CLAIMS

The individual capacity claims cannot be dismissed for the same reasons as the official capacity claims. In *Cowan v. University of Louisville School of Medicine*, 900 F.2d 936 (6th Cir. 1990), the Sixth Circuit removed individual capacity claims from its jurisdiction when the official was only performing his official duties. The Supreme Court rejected this position in *Hafer v. Melo*, 502 U.S. 21, 27, 112 S.Ct. 358, 116 L.Ed.2d 301 (1991) ("[W]e find it [the *Cowan* decision] both

unpersuasive as an interpretation of §1983 and foreclosed by our prior decisions."). Further, the Eleventh Amendment provides no immunity for claims against officials in their individual capacities. "[B]ecause they are sued in their individual capacities, defendants are considered 'persons' within the meaning of §1983." *Hutsell*, 5 F.3d at 1003 (citing *Hafer*, 502 U.S. at 27). "Defendants may, however, assert the defense of qualified immunity to the extent that their conduct 'does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Id.* at 1003.

The plaintiff alleges that Chapleau, Wilkinson, Horton, and Butrum violated her son's constitutional rights by exhibiting deliberate indifference to his mental health needs in violation of §1983. Under §1983, "a prison official's deliberate indifference to the serious medical needs of inmates amounts to cruel and unusual punishment, and violates the eighth amendment. To sustain such a claim, it is not necessary that the prison officials consciously sought to inflict pain by withholding treatment; it is sufficient to show deliberate indifference...." *Molton v. City of Cleveland*, 839 F.2d 240, 243 (6th Cir. 1988), *cert. denied*, 489 U.S. 1068, 109 S.Ct. 1345, 103 L.Ed.2d 814 (1989). This standard, which arose in the context of prison officials' failure to provide medical care, has also been applied in cases where prison officers were "deliberately indifferent to the strong likelihood" that an inmate would commit suicide. *Id.*

Under this standard, "deliberate indifference" can be proven by demonstrating "gross negligence or recklessness;" simple negligence does not suffice. *Barber v. City of Salem*, 953 F.2d 232, 239 (6th Cir. 1992). "Although this court has hesitated to find deliberate indifference to a serious need '[w]here the dispute concerns not the absence of help, but the choice of a certain course of treatment,' deliberate indifference may be found where the attention received is 'so clearly

inadequate as to amount to a refusal to provide essential care.'" *Torraco v. Maloney*, 923 F.2d 231, 234 (1st Cir. 1991) (citations omitted). While the issue of the existence of "deliberate indifference" is usually a jury question, "where there is no evidence of treatment 'so inadequate as to shock the conscience, let alone that any deficiency was intentional,' or evidence of acts or omissions 'so dangerous (in respect to health or safety) that a defendant's knowledge of a large risk can be inferred,' summary judgment is appropriate." *Id.* (citations omitted). "An allegation of deliberate indifference ... must be considered in light of the level of knowledge which the prison officials possessed, or should have possessed, as to the inmate's suicidal tendencies." *Id.* at 235.

*A. Defendant Chapleau*

The plaintiff alleges that Chapleau demonstrated deliberate indifference in failing to enforce suicide prevention policies. However, Chapleau, as prison warden, took precautions in dealing with Rodgers. Under prison policy, Rodgers was placed on a five-minute suicide watch after a corrections officer noticed the old cuts made in a previous suicide attempt. Rodgers was then sent to Dr. Meyer for psychiatric evaluation. Based on Meyer's report, Rodgers was taken off the five-minute suicide watch and placed in the Segregation Unit. This does not demonstrate a gross lack of care toward Rodgers. For these reasons, defendant Chapleau will be granted summary judgment.

*B. Defendant Wilkinson*

Wilkinson was not on duty on September 20th until 11:45 p.m. When Horton informed him of Rodgers' suicide attempt, Wilkinson entered the cell, assisted in untying Rodgers and aided in seeking medical care for Rodgers. The receipt of medical attention was not inordinately delayed. Wilkinson's actions do not demonstrate any lack of care, much less care so lacking as to shock the conscience. For this reason, the motion for summary judgment in favor of Wilkinson will be granted.

*C. Defendant Horton*

As with Wilkinson, Horton did not come on guard duty until approximately 11:45 that evening. As usual, Horton began to count inmates at the beginning of his shift. Horton discovered Rodgers, untied him, and assisted in administering CPR. Again, the rendering of medical attention was not unduly delayed. These actions do not demonstrate a gross lack of care toward Rodgers. Accordingly, the motion for summary judgment as to Horton will be granted.

*D. Defendant Butrum*

The only factual allegation that supports the §1983 claim in this matter against these defendants is Allgood's deposition testimony. Allgood states that "a guard" was told by Rodgers that he would kill himself and that this guard did nothing in response. However, Allgood can neither give the name of this guard nor identify him. There has been no allegation that Butrum was the only guard in the prison that night. The court finds that Butrum cannot be attributed with the actions of the guard referenced by Allgood when Allgood cannot connect the statements with him in any way. Although the plaintiff states that it is undisputed that "the guard" refers to Butrum, Butrum denies

this and states that he had no conversations with Rodgers. The plaintiff offers no other proof connecting Butrum to the guard referenced by Allgood. For these reasons, summary judgment will be granted in favor of defendant Butrum.

For the reasons set forth above, the court will grant the motion for summary judgment as to all defendants both in their official and representative capacities. A separate order will be entered herein this date in accordance with this opinion.

This _____ day of _____, 1998.

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CHARLES R. SIMPSON III, CHIEF JUDGE
UNITED STATES DISTRICT COURT

cc: Counsel of Record

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**ORDER**

Motion for summary judgment having been made by the defendants, Walt Chapleau, David Wilkinson, Jerry Horton, and Terry Butrum, and for the reasons set forth in the memorandum opinion entered herein this date, and the court being otherwise sufficiently advised, **IT IS HEREBY ORDERED AND ADJUDGED** that so much of the plaintiff's complaint as asserts claims against said defendants in their official and individual capacities is **DISMISSED** with prejudice.

**IT IS SO ORDERED** this _____ day of _____, 1998.

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CHARLES R. SIMPSON III, CHIEF JUDGE
UNITED STATES DISTRICT COURT

cc: Counsel of Record