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 AND ORDER

This matter is before the court on motion of the plaintiffs, Darrell Rodgers, through and with his Guardian, Mae Rodgers, for reconsideration of the September 8, 1998 Memorandum Opinion and separate Order of the court, to the extent that the claims against corrections officer Terry Butrum, in his individual capacity, were ordered dismissed.

The plaintiffs take issue with the statement in our opinion that "[t]here has been no allegation that Butrum was the only guard in the prison that night." (Memorandum Opinion, pg.8). The plaintiffs contend, and it appears to be undisputed, that Butrum was the guard on the watch in the Segregation Unit on September 20, 1993, and that he last saw Rodgers at 11:45 p.m. The guards' log sheet reflects the fact that Butrum was on this shift. No other name appears on the log.. The defendants stated that inmate Allgood could not identify Butrum by name, a true statement. However the defendants *have not* stated that someone other than Butrum walked the unit on that shift. For purposes of summary judgement we view the evidence in the light most favorable to the non-moving party. *White v. Turfway Park Racing Ass'n, Inc.,* 909 F.2d 941 (6th Cir. 1990). We will amend our opinion to delete the above-quoted sentence, inasmuch as there has been no evidence offered to contest the asserted fact that Butrum was the corrections officer to whom Rodgers spoke on the evening of September 20, 1993, when Rodgers stated that he intended to commit suicide.

In light of this amendment to our opinion, we will proceed to consider the merits of Butrum's summary judgment motion concerning the nature of his conduct toward Rodgers[1].

As we quoted in our earlier opinion, the United States Court of Appeals for the Sixth Circuit has held that "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 has been applied in cases where corrections officers were "deliberately indifferent to the strong likelihood" that an inmate would commit suicide. *Id*. Proof of simple negligence will not suffice to meet this standard.

The United States Supreme Court clarified the standard necessary to demonstrate "deliberate indifference" in *Farmer v. Brennan*, 511 U.S. 825, 847, 114 S.Ct. 1970, 1984, 128 L.Ed.2d 811 (1994), and, in *Williams v. Mehra*, 135 F.3d 1105 (6th Cir. 1998), the Court of Appeals applied that standard in the context of a prison suicide. In the *Williams* case, the decedent committed suicide by taking a drug overdose. Approximately one year earlier, the decedent had attempted suicide in the same manner, having hoarded antipsychotic/antidepressant medication which had been prescribed and provided to him over a period of time. The decedent's personal representative filed suit against three prison psychiatrists who had seen and evaluated the decedent claiming violations of the decedent's constitutional rights under 42 U.S.C. §1983. The complaint alleged, among other things, that he should not have been transferred to the central prison population with no precautionary

[1]We did not address the merits of this argument in our earlier opinion since we concluded that Butrum had not been identified as the watch officer such that a claim could be maintained against him.

measures for suicide risk, particularly, without substituting liquid for tablet medication to avoid the possibility of a repeated drug overdose.

The Court of Appeals reviewed the district court's determination, and concluded that summary judgment had been properly denied to two of the psychiatrists, but should have been granted to the third. The distinction drawn by the court centered around knowledge of the risk. The court noted that psychiatrist Mehra had one visit with the decedent, knew that he had attempted suicide by overdose, but did not have the increased exposure the other psychiatrists had to appreciate the gravity of the risk of decedent's suicide. The court held that, in hindsight, Mehra "should have required that extra precautions be taken and/or that decedent be watched, such a negligent failure to do so is not sufficient to maintain an Eighth Amendment claim for deliberate indifference." *Williams*, 135 F.3d at 1114.

In the case at bar, Butrum, a corrections officer, not a psychiatrist, had a brief, first-time encounter with Rodgers on the night in question, having no prior knowledge that Rodgers was a potential suicide risk. Butrum had been away from corrections work, having been called up for active duty in the military. The night of Rodgers' suicide attempt was Butrum's first night, upon his return to corrections work. In opposition to summary judgment, Rodgers contends that other corrections officers and treatment personnel "laughed at" Rodgers' assertions that he would attempt suicide (depo. of Allgood, pg. 24-46). Taking such assertions as true, such conduct has no bearing on Butrum's knowledge at the time of his encounter with Rodgers. Allgood stated that these incidents occurred at times other than on the day of the suicide attempt, not during Butrum's watch. Thus, Butrum was clearly unconnected with this conduct and had no knowledge that Allgood talked about suicide at other times. Rodgers was not on suicide watch at the time he was incarcerated in the Segregation Unit, and Butrum had no reason to believe that he posed a serious risk of suicide. The fact that Rodgers' statements to him did not alert him to an actual suicide risk or did not prompt

him to make further inquiry may constitute negligence on his part, however this does not rise to the level of deliberate indifference to a substantial risk of serious harm.

As with Mehra in the *Williams* case, in hindsight Butrum should have pursued whether there was a possibility that Rodgers was a suicide risk, since he, in fact, was a risk. However, we cannot take a hindsight view in determining whether Butrum acted with deliberate indifference. As stated in *Molton v. City of Cleveland*, 839 F.2d 240, 243 (6th Cir. 1988), "We specifically rejected the contention that such an action may be maintained on a theory of mere negligence. The conduct for which liability attaches must be more than negligence, it must demonstrate deliberateness tantamount to an intent to punish."

The plaintiffs suggest other courses of action which might have been taken by Butrum and might have altered the outcome for Rodgers, such as investigating the matter further with his sergeant or medical staff, or putting him on suicide watch himself. However, they cite no factual bases for these suggestions in the record. It is mere speculation whether any of these suggestions constituted a viable course of action. Even more importantly, the plaintiffs have cited no legal authority to suggest that such any different course of action was mandated under the circumstances of this case. We conclude that Butrum's poor judgment in this instance does not establish deliberate indifference to a substantial risk of serious harm.

For the reasons stated herein, we decline to vacate our previous order of dismissal of the claims against Butrum.

Motion having been made and for the reasons set forth herein above, and the court being otherwise sufficiently advised, **IT IS HEREBY ORDERED AND ADJUDGED** that the motion of the plaintiffs, Darrell Rodgers, by and through his Guardian Mae Rodgers, and Mae Rodgers, Individually, for reconsideration is **GRANTED** to the extent that the Memorandum Opinion of September 8, 1998 is **AMENDED** in accordance with this opinion; in all other respects the motion is **DENIED**.

IT IS SO ORDERED this _____ day of _____, 1999.

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

cc: Counsel of Record