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Civil Rights Update

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Pretrial Detainee Suicide and Section 1983 Claims

The doctrine of qualified immunity shields most governmental actors from §1983 liability in connection with a pretrial detainee's suicide. Qualified immunity protects government officials from liability for civil damages to the extent that their conduct does not violate "clearly established statutory or constitutional rights of which a reasonable person would have known." *Pearson v. Callahan*, 129 S. Ct. 808, 815 (2009). To determine the applicability of qualified immunity, a court must consider: (1) whether the facts, viewed in the light most favorable to the plaintiff, establish the violation of a federal constitutional or statutory right and (2) whether that right was "clearly established" at the time of its purported violation. *Cavalieri v. Shepard*, 321 F.3d 616, 620 (7th Cir. 2003).

Pretrial Detainees Can Only Allege Constitutional Violations Under the 14th Amendment

The law is well-settled that the Eighth Amendment does not apply to pretrial detainees. *Cavalieri*, 321 F.3d at 620; *Payne v. Churchich*, 161 F.3d 1030, 1039-41 (7th Cir. 1998). Instead, courts must consider alleged violations of pretrial detainees' constitutional rights under the Fourteenth Amendment. *Cagle v. Sutherland*, 334 F.3d 980, 985-86 (11th Cir. 2003).

Standard for Asserting Constitutional Violations Under the 14th Amendment

The Fourteenth Amendment is violated where a law enforcement official exhibits "deliberate indifference" to a risk of serious injury to a pretrial detainee. *Cavalieri*, 321 F.3d at 620. Pretrial detainees are entitled to at least the same protection against deliberate indifference to their basic needs as are convicted detainees under the Eighth Amendment. *Id.*; *Payne*, 161 F.3d at 1039-41. The "deliberate indifference" test requires a plaintiff to establish that: (1) the harm to the pretrial detainee was objectively serious, and (2) the government official was deliberately indifferent to the pretrial detainee's health or safety. *Cavalieri*, 321 F.3d at 620. In cases of detainee suicide, the first prong is automatically established because "[i]t goes without saying that 'suicide is a serious harm.'" *Sanville v. McCaughtry*, 266 F.3d 724, 733 (7th Cir. 2001).

Therefore, the analysis in the event of a pretrial detainee suicide focuses on the second prong, which also consists of a two-part test. It requires a showing that a government official knew that the pretrial detainee was at a substantial risk of committing suicide and intentionally disregarded that known risk. *Matos ex rel.Matos v. O'Sullivan*, 335 F.3d 553, 557 (7th Cir. 2003). According to established Seventh Circuit precedent, "deliberate indifference" is "more than mere or gross negligence, but less than purposeful infliction of harm." *Matos*, 335 F.3d at 557. As one opinion reads, a government official must: (1) be aware of the significant likelihood that an inmate may imminently seek to take his own life, and (2) fail to take reasonable steps to prevent the inmate from performing the act. *Estate of Novack ex rel. Turbin v. County of Wood*, 226 F.3d 525, 529 (7th Cir. 2000).

With respect to the first showing, "[i]t is not enough that there was a danger of which a prison official objectively *should have been aware*," rather, "the official must *both* be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, *and* he must also draw the inference." *Estate of Novack ex rel. Turbin*, 226 F.3d at 529, citing *Farmer v. Brennan*, 511 U.S. 825, 832 (1994)(emphasis added). In other words, the government official must be "cognizant of the significant likelihood that an inmate may imminently seek to take his own life." *Estate of Novack ex rel. Turbin*, 226 F.3d at 529. Liability cannot attach where the official was not alerted to the likelihood that the detainee was a genuine suicide risk. *Boncher ex rel. Boncher v. Brown County*, 272 F.3d 484, 488 (7th Cir. 2001). Even knowledge that an inmate is behaving violently or "acting in a 'freaky' manner" is insufficient to impute awareness of a substantial risk of suicide. *State Bank of St. Charles v. Camic*, 712 F.2d 1140, 1146 (7th Cir. 1983). To incur liability, the official must be aware of facts from which an inference may be drawn that a substantial risk of serious harm exists *and* "he must also draw that inference." *Estate of Novack ex rel. Turbin*, 226 F.3d at 529 (emphasis added).

With regard to the second part of the standard, there must be evidence that the government official knew the inmate was at risk of suicide or was otherwise in danger. If the plaintiff cannot prove the official had this knowledge, the plaintiff cannot establish intentional disregard for the known risk.

Several Seventh Circuit opinions have upheld summary judgment for government officials after applying this standard. In *Matos ex rel. Matos v. O'Sullivan*, 335 F.3d 553 (7th Cir. 2003), the court entered summary judgment in favor of various jail personnel in a §1983 action. The administrator of the decedent's estate alleged that jail intake officers and others were deliberately indifferent to the decedent's risk of suicide. *Id*. at 554. Although a medical form existed indicating that the decedent had attempted suicide once before, that form was not included in the decedent's medical records. The jail officials testified that they never knew about the form and that the decedent never told them he felt suicidal or depressed. Moreover, none of the officials who examined the decedent, including physicians, an intake psychologist, and a crisis counselor, ever determined that he exhibited tendencies requiring his placement on suicide watch. *Id*. at 557. The court affirmed summary judgment on the defendant's behalf, concluding that the estate failed to produce any evidence of knowledge of the decedent's risk of suicide. *Id*. at 558.

Likewise, in *Collins v. Seeman*, 462 F.3d 757 (7th Cir. 2006), the court affirmed summary judgment in favor of prison officials in a case of inmate suicide. Approximately fifty-five minutes before officials discovered the suicide, the decedent told a correctional officer that he wanted to see a prison crisis officer because he was feeling suicidal. The officer relayed the message up his chain of command, but others in the chain omitted the reference to the decedent feeling suicidal. Prison officials, however, requested a counselor for the inmate. In the interim, the officer returned to the decedent's cell and told him a counselor had been summoned. The decedent then informed the officer that he was alright and that he could wait until the counselor arrived. The officer checked on the decedent two more times before the officer found the decedent hanging in his jail cell. *Id*. at 759.

The court again sustained summary judgment, finding that the plaintiff failed to prove that the officers were aware of any imminent risk of suicide. As to three of the officers, "the record is devoid of any evidence from which it could be inferred that they were alerted to the likelihood that Collins [the decedent] was at substantial risk for committing suicide." *Id.* at 761. The court further noted the defendants "were made aware that Collins had requested to see the crisis counselor, but they were not informed of the reason for the request." *Id.*

The court also awarded summary judgment to the officer the decedent told he was feeling suicidal. The court noted that this officer immediately passed along the request, returned to check on the decedent, and was informed by the decedent that he would be fine until the counselor arrived. In the court's view, the officer's actions clearly did not demonstrate a total lack of concern for the decedent's welfare. *Id*. at 762.

Similarly, in *Boncher ex rel. Boncher v. Brown County*, 272 F.3d 484 (7th Cir. 2001), the estate of a detainee brought a §1983 action against jail officials and officers alleging deliberate indifference to the risk of suicide. *Id*. at 485. Boncher was arrested after a domestic altercation. While he had a long history of alcoholism and had attempted suicide at least three times, the arresting officers and jail personnel did not know of this history. Nor did they know that he often told his ex-wife that he planned to kill himself in jail so that a lawsuit could be filed on behalf of his children. When interviewed during the booking process, Boncher

answered "yes" when asked whether he had mental or emotional problems. To the follow-up question of whether he had ever attempted suicide, he answered, "Yeah, a couple days ago, but I am fine now." *Id.* 485-86. The decedent said this "in what the officers thought a joking manner – his entire manner since the arrest had been jovial and cooperative, and the officers thought him a 'happy drunk' – and when they followed up his answer by asking him whether he had any suicidal inclinations, he laughed and said he was 'fine.'" According to one officer, "It seemed like he was joking around and that's the impression that we got." The officers placed Boncher in a regular cell, rather than the jail's suicide-watch cell; he died 45 minutes later by hanging himself with a bed sheet. *Id*. at 486.

On appeal, the Seventh Circuit affirmed the district court's entry of summary judgment in favor of the jail officials. According to the court, the defendants were unaware of the likelihood that Boncher was a genuine suicide risk. The court observed that intake officers reasonably believed that Boncher was joking about a previous suicide attempt and that he was not a serious suicide risk. Moreover, the court found it significant that Boncher himself denied that he was suicidal. *Id.* at 487-88.

As these cases show, plaintiffs face a significant burden in demonstrating a Fourteenth Amendment violation. To establish deliberate indifference, a plaintiff must present evidence that an individual defendant intentionally disregarded the known risk to an inmate's health or safety. *Matos*, 335 F.3d at 557. As the Seventh Circuit has stated repeatedly, the deliberate indifference standard "imposes a 'high hurdle' for a plaintiff to overcome." *Collins*, 462 F.3d at 762; *Peate v. McCann*, 294 F.3d 879, 882 (7th Cir. 2002).

Conclusion

A plaintiff's burden of proving a Constitutional violation based upon a pretrial detainee suicide is significant. In order to sustain a claim, a plaintiff must demonstrate that the government official: (1) was aware of the significant likelihood that the pretrial detainee may imminently seek to take his own life, and (2) failed to take reasonable steps to prevent the inmate from performing the act. If the facts do not support such findings, officers have a valid defense to the plaintiff's claims.

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