

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS**

Valerie R. McCann,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Case No: 11 C 50125
)	
Ogle County, et al.,)	
)	
<i>Defendants.</i>)	Judge Frederick J. Kapala

ORDER

Defendant Cindy Mongan’s motion for summary judgment [320] is granted, in part, as to the § 1983 claim raised in Count V of the Fourth Amended Complaint. The court relinquishes supplemental jurisdiction over the state-law negligence claim against Mongan raised in the first Count VI of the Fourth Amended Complaint, and that count is dismissed without prejudice to refile in state court. The remaining defendants’ motions for summary judgment [326] [328] on the second Count VI and Count VII are granted. This case is closed.

STATEMENT

On April 30, 2010, Patrick J. McCann (“McCann”) died of respiratory depression caused by an overdose of Methadone while he was being held as a pretrial detainee at the Ogle County Correctional Center (“OCCC”). Plaintiff, Valerie R. McCann, as Representative for the Estate of Patrick J. McCann, brought this suit pursuant to 42 U.S.C. § 1983 and state law alleging, among other things, that defendants were deliberately indifferent to McCann’s serious medical condition in violation of his 14th Amendment rights. Several of the defendants named in the Fourth Amended Complaint have already been dismissed from this suit, either voluntarily by plaintiff or based on the terms of a settlement agreement. The remaining defendants, Cindy Mongan, LPN; Gregory A. Beitel, individually and in his official capacity as Sheriff of Ogle County; Wendy Kerwin, individually and in her official capacity; Ogle County Sheriff’s Department; and Ogle County, have all moved for summary judgment on plaintiff’s claims. For the reasons that follow, those motions are granted as to the pending § 1983 claims, and the court relinquishes supplemental jurisdiction over the state-law negligence claim against Mongan.

I. BACKGROUND¹

On March 30, 2010, McCann physically assaulted his mother, threatened to kill both of them,

¹The background facts are taken from the parties’ Local Rule 56.1 statements of fact, as well as the responses and attachments thereto, and unless otherwise noted are either undisputed or viewed in the light most favorable to plaintiff.

and set fire to her house. McCann suffered significant injuries in the fire and was admitted to the burn unit at OSF St. Anthony Medical Center (“OSF”) where he remained for approximately three weeks. While McCann was hospitalized, the Ogle County State’s Attorney charged McCann by information with residential arson and aggravated domestic battery, and a Circuit Court judge issued a warrant for his arrest. On April 20, 2010, McCann was discharged from the hospital by his attending physicians, arrested on the outstanding warrant, and transported to the OCCC.

McCann’s arrival at the OCCC came as a surprise to jail personnel, as there had been no advanced warning that he was being brought to the jail. After his admission to the jail, Nurse Mongan reviewed a discharge summary that had been provided by OSF, which included instructions for McCann’s care and a list of medications that had been prescribed for him. Mongan called Dr. Stephan Cullinan, who was the primary physician responsible for the care and treatment of inmates at the OCCC,² to advise him of McCann’s admission and the prescription list. Dr. Cullinan instructed Mongan to have the prescriptions filled. Mongan, who relied exclusively on Dr. Cullinan’s judgment as to the proper medications and dosages to provide McCann, called OSF to confirm the prescription list and then called the pharmacy to have those prescriptions filled. Later that evening, once the prescriptions arrived, Mongan returned to the OCCC after her scheduled shift had ended in order to administer the medications to McCann. Mongan also took McCann’s vital signs, which were within the normal range, and instructed the officers on duty regarding the “Swallowing and Feeding Guidelines” that had been provided by OSF and required, among other things, that McCann take his medications with “nectar thick” liquids and be closely supervised during meals.

Over the next few days, McCann was housed in either an observation room or the medical office where he could be closely monitored by Mongan and other jail staff, who kept a “watch sheet” and documented McCann’s activities every 5 to 15 minutes. During this time, Captain Kerwin ordered that a hospital bed, extra sheets, and an air mattress be brought into the OCCC to make McCann more comfortable, while Mongan instructed the jail staff on how to follow the Swallowing and Feeding Guidelines and prepared packets of medications to be given to McCann when she was not present.³ After a question arose regarding one of McCann’s prescriptions, Mongan contacted Dr. Puyn, one of McCann’s attending physicians at OSF, who answered the question and provided some additional direction for McCann’s care. Mongan also spoke with Dr. Cullinan daily over the phone regarding McCann’s condition. Based on these conversations, Dr. Cullinan at various times discontinued some of McCann’s prescriptions, ordered blood work, and told Mongan to follow Dr. Puyn’s additional directions. Although there had been some initial concern over whether the OCCC was equipped to care for McCann given the severity of his burns and the uncertainty of what his

²Dr. Cullinan was employed by Health Professionals, Ltd., which had contracted with Ogle County to provide medical care and physician services to inmates detained at the OCCC. Both parties were named as defendants in this lawsuit but have since been dismissed pursuant to a settlement agreement which the court previously found had been entered into in good faith.

³Although there were obviously times when Mongan was off duty and not physically present at the OCCC, the correctional staff was aware that they should call her “24/7” if there was any change in McCann’s condition. In addition, it is important to note that Mongan went in on the weekend during her off time and on her own volition to help McCann take a shower, and that she spent far more time with McCann than any other inmate during the period of his incarceration.

treatment would entail,⁴ those concerns lessened over time, and within a few days of his admission, Mongan told Kerwin that they were capable of taking care of him and that he no longer needed constant supervision. Following this guidance, McCann was moved to an isolation cell in “O Block” with his bed positioned so that he could be monitored via a cell camera.

On April 27, 2010, Dr. Cullinan physically examined McCann for the first time since his admission to the OCCC. At that time, Dr. Cullinan found that McCann was not dehydrated and had no indication of edema (swelling) or fluid on the lungs; that his heart rate was appropriate; that he was mobile, eating, and moving his bowels and passing urine; that he had no signs of an infection; that he had no signs or symptoms consistent with an electrolyte abnormality; and that his respiration rate was normal. Dr. Cullinan made changes to McCann’s medications, including changing his pain medication to 60 mg of Methadone, twice daily. This amount of Methadone for a patient at the initiation stage is much too high a dose. As one of plaintiff’s experts explained during his deposition, the “continued dosage of 60 milligrams [of Methadone] twice a day at initiation is too much and will lead to problems that you cannot anticipate until it’s too late.” Mongan, however, was not made aware of any possible adverse reactions or complications to look for based on this prescription for Methadone, and she trusted Dr. Cullinan to only provide McCann with the medications that he needed. Accordingly, per Dr. Cullinan’s direction, Mongan provided McCann with 60 mg of Methadone at 8:00 a.m. and 4:00 p.m. on April 28th, at 8:00 a.m. and 4:00 p.m. on April 29th, and at 8:00 a.m. on April 30th.

On the morning of April 29, 2010, Dr. Cullinan called to check on McCann, and Mongan informed him that McCann had slept a lot the previous day and had slept all night with no complaints of pain. Dr. Cullinan directed that McCann continue with his medications and indicated that he would see McCann on his next visit to the OCCC. During the day on the 29th, Mongan found McCann to be alert and very talkative, and she did not notice any shortness of breath, change in his mental status, or fatigue.⁵ That night, however, a correctional officer noticed that McCann was drowsier and more sluggish than the previous night, and the next morning, during shift change, he reported that McCann was having trouble staying awake while eating his cereal. Another correctional officer that morning also observed that McCann was lying down in a hunched position

⁴Given these concerns, Sheriff Beitel discussed McCann’s situation with the Ogle County State’s Attorney, Ben Roe, and they agreed that, due to McCann’s current charges and his criminal history, it was the Sheriff’s responsibility to ensure that McCann was detained. Sheriff Beitel also directed Kerwin to explore whether McCann could be housed at the Winnebago County Jail or if additional nurses could be hired from Heartland Home Health Care, but neither of those options were available. Plaintiff contends that Sheriff Beitel could have retained custody of McCann but still transferred him to a hospital, and that he refused to do so for financial reasons. However, the decision of whether an inmate needed to be hospitalized based on a medical condition was within the authority and discretion of Dr. Cullinan, as the primary doctor responsible for the care of inmates at the OCCC, and he determined based on his medical judgment that McCann did not need to be hospitalized and that his condition would not be worsened as a result of incarceration.

⁵Plaintiff attempts to dispute these facts by pointing to the deposition testimony of McCann’s attorney, who explained that McCann appeared to be “heavily medicated” during a court appearance, and that he had to “keep nudging him to keep him from falling asleep while he was in court.” This testimony, however, concerned a court appearance that was held on April 28, 2010, and thus it is actually consistent with what Mongan relayed to Dr. Cullinan regarding McCann’s level of sleepiness on the 28th, and it does not show what McCann’s condition would have been like at the OCCC on April 29, 2010.

and appeared to be sleeping.

On April 30, 2010, at 8:09 a.m., Mongan entered McCann's cell to give him his medications. He was laying down and looked tired and sluggish, but he sat up when Mongan called his name. Although he appeared sleepy, McCann was able to swallow each bite of his applesauce. McCann then stood unsteadily and walked to a chair in his cell and sat down to drink his thickened Kool-Aid while Mongan changed his bedding and put lotion on his burns. McCann then walked unassisted back to his bed and was able to scoot himself back to the position he wanted while lying on his stomach. Mongan did not listen to McCann's lungs because he did not complain of any breathing problems and Mongan did not observe any signs of shortness of breath or breathing issues. Subsequent checks by a correctional officer at 8:34 a.m. and 8:47 a.m. showed McCann lying in the same position trying to get comfortable.

At 9:00 a.m. that morning, Mongan called Dr. Cullinan to report on McCann's condition, including the change from the previous day when he had been alert and talkative. Dr. Cullinan ordered Mongan to decrease the Methadone dosage to 40 mg twice daily and said that he would see McCann on his next visit. Subsequent welfare checks by a correctional officer were conducted at 9:04 a.m., 9:32 a.m., 9:59 a.m., 10:23 a.m., and 10:48 a.m., in which McCann was observed to be sleeping and sometimes snoring. At 11:07 a.m., Mongan and the correctional officer entered McCann's cell to feed him lunch, but found him to be unresponsive and not breathing. An ambulance was immediately called and resuscitation attempts were made with no success. McCann was taken to the hospital where he was pronounced dead at 12:04 p.m. Although an initial autopsy suggested that the cause of death was due to cardiac arrhythmia, the pathologist later changed his opinion and found that McCann died of adverse effects of Methadone.

II. ANALYSIS

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In evaluating such a motion, the court's role is not to weigh the evidence and determine the truth of the matter, but to determine whether there is a genuine issue for trial. Preddie v. Bartholomew Consol. Sch. Corp., 799 F.3d 806, 818-19 (7th Cir. 2015). A genuine issue of material fact exists if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The court must draw all reasonable inferences in the light most favorable to the party opposing the motion. See Preddie, 799 F.3d at 812-13. "If a party moving for summary judgment has properly supported his motion, the burden shifts to the nonmoving party to come forward with specific facts showing that there is a genuine issue for trial." Cincinnati Life Ins. Co. v. Beyrer, 722 F.3d 939, 951 (7th Cir. 2013) (emphasis omitted).

A. Count V – Deliberate Indifference (Mongan)

As a pretrial detainee at the OCCC, McCann's constitutional rights were "derived from the Due Process Clause of the Fourteenth Amendment, which prohibits deliberate indifference to his serious medical needs." Burton v. Downey, 805 F.3d 776, 784 (7th Cir. 2015); see also Tesch v. Cty. of Green Lake, 157 F.3d 465, 472-73 (7th Cir. 1998) ("Unlike convicted prisoners whose constitutional protections are primarily based in the Eighth Amendment's prohibition on cruel and

unusual punishment, state pretrial detainees are protected under the Due Process Clause of the Fourteenth Amendment.” (footnote and citations omitted)).⁶ Nevertheless, “courts still look to Eighth Amendment case law in addressing the claims of pretrial detainees, given that the protections of the Fourteenth Amendment’s due process clause are at least as broad as those that the Eighth Amendment affords to convicted prisoners.” Rice v. Corr. Med. Servs., 675 F.3d 650, 664 (7th Cir. 2012).

“Under both the Eighth and Fourteenth Amendment standards, the plaintiff has the burden of showing that (1) the harm to the plaintiff was objectively serious; and (2) that the official was deliberately indifferent to her health or safety.” Cavalieri v. Shepard, 321 F.3d 616, 620 (7th Cir. 2003) (citing Farmer v. Brennan, 511 U.S. 825, 833 (1994)). Here, there is no dispute that McCann had an objectively serious medical need. Accordingly, the question becomes whether plaintiff has presented enough evidence on which a reasonable jury could find that “defendants possessed a sufficiently culpable state of mind” in order to satisfy the subjective component of her deliberate indifference claim. Burton, 805 F.3d at 784; see also Farmer, 511 U.S. at 837 (holding that a claim for deliberate indifference requires that the prison 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”).

A plaintiff “must show more than mere evidence of malpractice to prove deliberate indifference.” Petties v. Carter, 836 F.3d 722, 728 (7th Cir. 2016) (citing Estelle v. Gamble, 429 U.S. 97, 106 (1976)). “Even objective recklessness—failing to act in the face of an unjustifiably high risk that is so obvious that it should be known—is insufficient to make out a claim.” Id. Instead, to prevail on a claim of deliberate indifference, “a plaintiff must provide evidence that an official actually knew of and disregarded a substantial risk of harm.” Id. “In evaluating the evidence, we must remain sensitive to the line between malpractice and treatment that is so far out of bounds that it was blatantly inappropriate or not even based on medical judgment.” King v. Kramer, 680 F.3d 1013, 1019 (7th Cir. 2012); see also Holloway v. Delaware Cty. Sheriff, 700 F.3d 1063, 1073 (7th Cir. 2012) (“This subjective standard requires more than negligence and it approaches intentional wrongdoing.”). “When examining a claim for deliberate indifference we are obligated to examine the totality of the circumstances surrounding the alleged actions or inaction.” Cavalieri, 321 F.3d at 625-26.

In Count V of her complaint, plaintiff alleges that Mongan was deliberately indifferent to McCann’s serious medical needs. However, after reviewing the totality of the evidence in the record, no reasonable jury could come to that conclusion. From the time of his unexpected arrival at the OCCC until his unfortunate death, Mongan provided extensive care and treatment for McCann and was anything but deliberately indifferent to his medical needs. Among other things, Mongan closely monitored McCann and provided him with lotion for his burns and other medications as

⁶Plaintiff’s argument that her § 1983 claims should be evaluated under the Fourth Amendment because McCann “never had a determination of probable cause” is without merit. Because McCann was arrested pursuant to a warrant, there had already been a probable cause determination prior to his detention at the OCCC. See Gerstein v. Pugh, 420 U.S. 103, 125 (1975) (holding that the State “must provide a fair and reliable determination of probable cause as a condition for any significant pretrial restraint of liberty . . . by a judicial officer either before or promptly after arrest”).

prescribed; she communicated daily with Dr. Cullinan regarding McCann's condition and followed his directions; she instructed the correctional officers that were on duty while she was not present on the proper feeding techniques and provided them with prepared medication packets to give to McCann; and she came in during her off time to assist McCann and instructed officers to call her "24/7" if there was any change in McCann's condition. Under these facts, no reasonable jury could find that Mongan had a "sufficiently culpable state of mind," Burton, 805 F.3d at 784, and therefore, plaintiff would be unable to sustain her burden on the subjective component of her deliberate indifference claim.

In response to Mongan's motion for summary judgment, plaintiff focuses primarily on two alleged deficiencies with Mongan's care that she believes contributed to McCann's death: (1) Mongan's failure to know the proper dosages and risks associated with the Methadone prescription, and (2) Mongan's failure to check McCann's respiration rate and other vital signs on the morning of April 30, 2010, once McCann appeared tired and sluggish. Neither of these alleged failures demonstrate deliberate indifference.

First, as to the proper administration of Methadone, it is clear that "a nurse may not unthinkingly defer to physicians and ignore obvious risks to an inmate's health." Rice, 675 F.3d at 683. However, all the evidence presented in this case, including from plaintiff's own expert witness, shows that Mongan did not know that the amount of Methadone prescribed by Dr. Cullinan was too high. Under these circumstances, Mongan did not have the necessary subjective knowledge of the risk from the Methadone prescription in order to have been deliberately indifferent to that risk. See Holloway, 700 F.3d at 1076 (concluding that "the nurses did not act with deliberate indifference in following Dr. Al-Shami's orders: no evidence suggests that the nurses knew or should have known that Holloway's health was at risk"). It is clear that plaintiff is attempting to show that Mongan was negligent by failing to know of the proper dosages and risks associated with Methadone, but by doing so, plaintiff has essentially disproven her own claim for deliberate indifference.

Second, as to the failure to check McCann's vital signs, this also suffers from a similar problem. To support her negligence claim, plaintiff alleges that Mongan should have taken McCann's vital signs on the morning of April 30, 2010, in order to properly assess his medical condition, but failed to do so. Assuming for the sake of argument that checking McCann's breathing would have alerted Mongan to the fact that McCann was in respiratory distress at that time, this argument once again shows that Mongan lacked the requisite knowledge to have been deliberately indifferent to McCann's need for medical care. See Petties, 836 F.3d at 728 ("[A] plaintiff must provide evidence that an official actually knew of and disregarded a substantial risk of harm. Officials can avoid liability by proving they were unaware even of an obvious risk to inmate health or safety." (citation omitted); see also Duckworth v. Ahmad, 532 F.3d 675, 680 (7th Cir. 2008) (finding no evidence of deliberate indifference from doctor who failed to order a cystoscopy that would have revealed a cancerous tumor in the plaintiff's bladder); Zackery v. Mesrobian, 299 F. App'x 598, 602 (7th Cir. 2008) ("Although it may have been prudent for Dr. Mesrobian to order diagnostic testing in 2001, his failure to choose the best course of action does not amount to a constitutional violation."). Moreover, Mongan did not ignore the change in McCann's condition on the morning of April 30, 2010, but rather reported her observations directly to Dr. Cullinan, who

only ordered that the Methadone dosage be reduced to 40 mg twice daily going forward without ordering any further intervention or testing. Under all of these circumstances, no reasonable jury could find that Mongan was deliberately indifferent by failing to take McCann's vital signs.

For all these reasons, Mongan's motion for summary judgment is granted with respect to plaintiff's § 1983 claim for deliberate indifference raised in Count V of the Fourth Amended Complaint.

B. Second Count VI – Deliberate Indifference (Beitel and Ogle County Defendants)

Plaintiff has also raised a § 1983 claim of deliberate indifference against Beitel, Kerwin, and the Ogle County Sheriff's Department in the second Count VI of the Fourth Amended Complaint based on an unwritten policy of denying inmates access to outside medical treatment. In her summary judgment briefing, plaintiff suggests that the only reason McCann was not detained in the hospital after his admission to the OCCC was because Ogle County did not want to pay for such treatment. Because no reasonable jury could find in favor of plaintiff on this claim, the motions for summary judgment filed by Beitel and the Ogle County defendants are granted.

As an initial matter, the court notes that Beitel and Kerwin are sued in both their official capacities (which is redundant since the Ogle County Sheriff's Department is also a named defendant) and their individual capacities. In order to sustain a claim for deliberate indifference against them in their individual capacities, plaintiff must produce some evidence showing that they were personally involved in the alleged deprivation of McCann's constitutional rights. See, e.g., Rasho v. Elyea, 856 F.3d 469, 478 (7th Cir. 2017) (“[I]n order to hold an individual defendant liable under § 1983 for a violation of an inmate's constitutional rights, the inmate must show that the defendant was personally responsible for that violation.”). Here, there is no evidence that Beitel or Kerwin were personally responsible for the medical treatment provided to McCann. Beyond that, there is certainly no evidence to suggest that Beitel and Kerwin were subjectively aware of the risks associated with McCann's Methadone prescription, which the parties agree was the cause of McCann's death. See Farmer, 511 U.S. at 837 (holding that a claim for deliberate indifference requires that the prison 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”); see also Gentry v. Duckworth, 65 F.3d 555, 561 (7th Cir. 1995) (explaining that supervisory officials could be personally responsible for the deprivation of a constitutional right only if they “know about the conduct and facilitate it, approve it, condone it, or turn a blind eye”). Accordingly, there is no basis to hold Beitel and Kerwin liable under § 1983 with regard to the failure to provide adequate medical care to McCann.

Plaintiff's allegations against Beitel and the Ogle County defendants in their official capacities are best characterized as a Monell claim. In order to prevail on this type of claim, plaintiff must show that an “official policy, widespread custom, or action by an official with policy-making authority was the ‘moving force’ behind [McCann's] constitutional injury.” Dixon v. Cty. of Cook, 819 F.3d 343, 348 (7th Cir. 2016) (quoting City of Canton v. Harris, 489 U.S. 378, 379 (1989)). Plaintiff argues that there was an unwritten policy which precluded inmates with serious medical needs from being transferred to an outside hospital for monetary reasons, and that it was this policy which caused McCann to remain in custody at the OCCC. The evidence in the record, however,

shows that the decision of whether an inmate had a serious medical need which required hospitalization was left to the discretion of the medical provider, Health Professional, Ltd., and its employee, Dr. Cullinan. In his deposition, Dr. Cullinan explained that he had determined, based on his medical judgment, that McCann did not need to be hospitalized and that his condition would not be worsened as a result of incarceration. As non-medical prison officials, Beitel and Kerwin were entitled to rely on Dr. Cullinan's decision unless it would have been evident to a lay person that McCann was receiving inadequate or inappropriate care. See Johnson v. Doughty, 433 F.3d 1001, 1010-11 (7th Cir. 2006). Although there were some initial concerns about whether the OCCC was equipped to handle McCann's medical care, there is nothing to suggest that Dr. Cullinan's decision that McCann could be properly cared for in the OCCC was obviously wrong to a lay person, especially since McCann had just been released from the hospital immediately prior to his admission to the OCCC. By all accounts, McCann's condition was being properly treated at the jail and he was doing fine until Dr. Cullinan prescribed a dosage of Methadone that turned out to be toxic.

Moreover, aside from plaintiff's own speculation, there is nothing in the record to suggest that Beitel and the Ogle County defendants were responsible for creating an unwritten policy that caused McCann to remain at the OCCC for financial reasons. Likewise, there is no evidence on which a reasonable jury could find that this alleged policy was the moving force or cause behind McCann's ultimate demise. Accordingly, there is also no basis to hold Beitel or the Ogle County defendants liable in their official capacities under § 1983 and Monell based on the failure to transfer McCann to the hospital upon his admission to the OCCC.

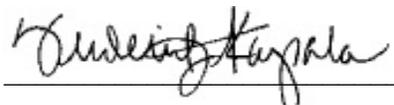
For all these reasons, the motions for summary judgment filed by Beitel and the Ogle County defendants are granted as to plaintiff's § 1983 claim for deliberate indifference raised in the second Count VI of the Fourth Amended Complaint. In addition, because Ogle County was named as a defendant in Count VII for indemnification purposes only, that count is also subject to dismissal to the extent it is based on the federal claims.

III. CONCLUSION

Based on the foregoing, defendants' motions for summary judgment as to the § 1983 deliberate indifference claims raised in Count V, the second Count VI, and Count VII of the Fourth Amended Complaint are granted. The court relinquishes supplemental jurisdiction over the state-law negligence claim against Mongan raised in the first Count VI of the Fourth Amended Complaint, and that count is dismissed without prejudice to refile in state court. See 28 U.S.C. § 1367(c); Miller v. Herman, 600 F.3d 726, 738 (7th Cir. 2010).

Date: 9/18/2017

ENTER:



FREDERICK J. KAPALA

District Judge