Imka Pope v. Entirety Todd Mccomas

2011 | Cited 0 times | W.D. Washington | April 26, 2011

ORDER ADOPTING THE REPORT AND RECOMMENDATION IN ITS

The Court, having reviewed Plaintiff's 42 U.S.C. § 1983 civil rights Complaint, Defendants' Motion for Summary Judgment, the Report and Recommendation of the Honorable James P. Donohue, and the balance of the record, shall adopt the Report and Recommendation but writes separately to address the parties' objections.

I.DISCUSSION

A. Tolling of the Statute of Limitations Defendants object to the finding that the Plaintiff has satisfied the legal standard for the

tolling of the statute of limitations. Specifically, Defendants dispute that Plaintiff was incapacitated or unable to understand the nature of her claim for the almost seven year period during which the statute was tolled. Under Rivas v. Overlake Hospital Medical Center, a Plaintiff must provide evidence that she was incapacitated to such an extent that she could not understand the nature of the cause of action. 164 Wash.2d 261, 267 (2008). Such a person may be deemed incapacitated where there is "a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety." Id.; RCW 11.88.010(1)(a).

The Court finds that Plaintiff has presented significant evidence that her schizoaffective disorder "created a significant risk of personal harm by preventing [P]laintiff from adequately providing herself with nutrition, health, housing, or physical safety throughout her adult life." Dkt. #64 at 13. Plaintiff has experienced frequent bouts of homelessness, has been unable to care for her children, and her mental health counselor at the Community Psychiatric Clinic testified that her symptoms caused "some of the most persistent and disabling symptoms..which caused chronic and severe impacts on her activities of daily living and her ability to take care of herself." Dkt. #64 at 13-14.

Defendants contend that there is evidence that the statute should not have been tolled during Plaintiff's marriage because her husband made sure she took her medication. However, the assistance Plaintiff received from her husband is not sufficient to raise a material fact as to her incapacity in the face of her chronic symptoms and testimony from her mental health counselor. Moreover, the fact that the tolling period in the case at hand is significantly longer than the tolling period in Rivas is not persuasive. Rivas, 164 Wash.2d 261. Therefore the statute of limitations is tolled as Plaintiff has presented sufficient evidence that her disabling condition has existed since 1997.

B. Deliberate Indifference to Serious Medical Needs Claims against Defendants McComas and Hustead.

1. The Deliberate Indifference Standard

Defendants object to the finding that there is an issue of material fact as to the deliberate indifference claims against Defendants McComas and Hustead, who are both corrections officers in the jail. With respect to medical needs of persons in custody, the due process clause imposes at least the same duty as the Eighth Amendment, and as such persons in custody have "the right to not have officials remain deliberately indifferent to their serious medical needs." Gibson v. County of Washoe, Nevada. 290 F.3d 1175, 1187 (9th Cir. 2002). To prove a violation of a constitutional right, a plaintiff must show that a defendant "[knew] of and disregard[ed] an excessive risk to inmate health and safety." Id. In order for a prison official to be held liable, an inmate must show that: (1) the deprivation was objectively sufficiently serious and (2) the prison officials acted with a sufficiently culpable state of mind. Farmer v. Brennan, 511 U.S. 825, 834 (1994). To show an official had a culpable state of mind, a plaintiff must prove that (a) an official was aware of facts from which he could have inferred that a substantial risk of serious harm existed, and (b) that the official in fact drew the inference. Id. at 837. "Deliberate indifference may be found where prison officials 'deny, delay or intentionally interfere with medical treatment, or it may be shown by the way in which prison physicians provide medical care.'" Dkt. #64 (quoting Hutchinson v. United States, 838 F.2d 390, 394 (9th Cir. 1988)). Conduct that meets the threshold for deliberate indifference must exceed negligence or gross negligence. Wood v. Housewright, 900 F.2d 1332, 1334 (9th Cir. 1990).

Defendants contend that the Court has mischaracterized the evidence with respect to Defendant McComas. Specifically, Defendants state that there is no evidence that Defendant McComas ignored repeated requests for help from the Plaintiff. Defendants further argue that Defendant McComas' decision to continue finishing his check of the cells before summoning medical assistance can at most constitute negligence or gross negligence because Plaintiff did not appear to be in immediate danger and because the remainder of his check took only 1-2 minutes. However, Plaintiff has presented sufficient evidence to create an issue of material fact. Notably, Plaintiff, though unsure, believed that twenty minutes passed before she received assistance. Dkt. #53 at 6. Moreover, whether or not Defendant McComas ignored repeated requests for help as Plaintiff alleges, he did not stop to investigate or assist Plaintiff when she was plainly in distress, and as such evidence regarding his conduct creates a triable issue of fact as to deliberate indifference.

With respect to Defendant Hustead, Defendants contend that no triable issue of fact exists because Defendant Hustead's report showed that Plaintiff alerted him via intercom at 6:28 that she was having a baby and that just two minutes later he heard a baby crying and called for assistance. Dkt. #60 at 2. Defendants also contend that Defendant Hustead cannot be liable because he only spoke to Plaintiff once via intercom. These contentions are beside the point. It is clear from the facts that Defendant Hustead did not summon assistance until after the baby was born. Moreover, Plaintiff

contends that she thought she waited over twenty minutes after pressing the intercom. Dkt. #53 at 6. Plaintiff presents evidence that contradicts evidence presented by Defendants, and therefore creates an issue of fact that must properly be determined by a jury.

2. Qualified Immunity

Qualified immunity seeks to guarantee that public officials who are subjected to suit are on notice that their actions were unlawful. Hope v. Pelzer, 536 U.S. 730 (2002). "A court considering a claim of qualified immunity must determine (1) whether the facts shown 'make out a violation of a constitutional right,' and (2) 'whether the right at issue was "clearly established" at the time of defendant's alleged misconduct,' such that it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." Dkt. #64 at 17-18; Pearson v. Callahan, 555 U.S. 223, 129 S.Ct. 808, 815-16 (2009). When there are genuine issues of material fact relating to the official's conduct, such questions must be determined by the jury and summary judgment on the issue of qualified immunity cannot be granted. Sinaloa Lake Owners Assn. v. City of Simi Valley, 70 F.3d 1095, 1099 (9th Cir. 1995).

This Court has already determined that issues of material fact exist as to Defendant McComas' and Hustead's alleged deliberate indifference to a serious medical need. Moreover, as discussed in the Report and Recommendation, when the incident took place "it was already well-established that deliberate indifference to a prisoner's serious medical needs constituted cruel and unusual punishment and violated the Eighth Amendment." See Dkt. #64 (citing numerous decisions on deliberate indifference claims). The Report and Recommendation correctly concluded that "this Court cannot determine on summary judgment whether, in light of.clearly established case law, a reasonable officer could have believed that his conduct was lawful under the circumstances." Dkt. #64 at 22.

C. Deliberate Indifference Claims against Defendant Shumaker

Plaintiff objects to the finding that she has not satisfied the standard for a deliberate indifference claim against Defendant Shumaker, and therefore contends that the Court should not have granted Defendants' Motion for Summary Judgment as to Defendant Shumaker. Plaintiff's primary contention is that "[t]here remains copious evidence for a reasonable juror to conclude that [Plaintiff] was obviously pregnant" (Dkt #67 at 8), and therefore that Defendant Shumaker's failure to follow through on her observation that Plaintiff was pregnant constitutes deliberate indifference. However, the issue is not whether Plaintiff's pregnancy should have been obvious to Defendant Shumaker. Rather, the issue is whether Defendant's observation of Plaintiff's pregnancy constitutes conduct sufficient to satisfy the standard necessary to set forth a claim for deliberate indifference. As discussed supra, deliberate indifference may be found where prison officials deny, delay or intentionally interfere with medical treatment. Hutchinson v. United States, 838 F.2d 390, 394 (9th Cir. 1988). As such, mere negligence cannot constitute deliberate indifference. See id. Therefore,

where the negligence of officials caused the insufficient medical treatment of an inmate, the inmate cannot bring a claim for a constitutional violation. In the case at hand, it may be that Defendant Shumaker was negligent in failing to bring Plaintiff's pregnancy to the attention of other officials and nurses at the facility. However, there is no evidence that Plaintiff was in any sort of distress relating to her pregnancy when Defendant Shumaker observed her. Therefore, the mere fact that Defendant observed Plaintiff's pregnancy cannot satisfy the requisite level of culpability needed to bring forth a claim for deliberate indifference.

D. Deliberate Indifference Claims against King County

Defendants object to the finding that there is an issue of material fact as to Deliberate Indifference claims brought against Defendant King County. Defendant contends that no custom or policy of King County caused a violation of Plaintiff's constitutional right to medical care. Specifically, Defendants contend that Plaintiff was unwilling, rather than unable, to respond to medical questions at intake.

"To prove municipal liability under §1983, the plaintiff must show that the unconstitutional deprivation of rights arises from a governmental custom, policy, or practice." Dkt. #64 at 22 (citing Monell v. New York City Dept. of Social Services, 436 U.S. 658, 691 (1978)). "To state a constitutional claim against a municipality, a plaintiff must (1) identify the specific 'policy' or 'custom,' (2) fairly attribute the policy or custom and fault for its creation to the municipality, and (3) establish the necessary 'affirmative link' between the identified policy or custom and the specific constitutional violation." Dkt. #64 at 23 (citing City of Canton, Ohio v. Harris, 489 U.S. 378, 389 (1989)). Plaintiff has presented evidence that it was King County's policy, custom, or practice to refrain from attempting to perform further physical examination if an inmate refused treatment, or was unwilling or unable to answer questions. Dkt. #52, Ex. C at 6-7; Ex D at 15, 26, 36.

Defendants' contention is that because Plaintiff was unwilling to answer questions, it was not King County's policy that caused the alleged violation. However, Plaintiff's allegation does not rest on whether an inmate is unwilling or unable to communicate. Rather, regardless of why the inmate is uncommunicative, King County's policy resulted in a violation by creating a situation where necessary medical treatment would not be provided. Defendants put forth that King County staff placed the Plaintiff on a psychiatric floor where she would receive monitoring rather than force her to be subject to a physical examination. Defendants are free to present such facts before a jury. However, regardless of such facts, Plaintiff has nonetheless met her burden of raising a triable issue of fact. As stated in the Report and Recommendation:

Although it is not the role of this Court to conjecture regarding what [King County Correctional Facility's ("KCCF")] medical screening policy should have been, the Court finds that plaintiff has provided sufficient evidence to present a genuine issue of material fact regarding whether an "affirmative link" exists between KCCF's medical screening policy in 1997 and the denial of adequate

medical treatment to plaintiff in this case.[T]he Court is persuaded that a "plainly obvious" consequence of KCCF's policy, custom, or practice of terminating medical screenings of inmates who are unable or unwilling to answer questions may be the denial of constitutionally adequate medical care to those uncommunicative inmates.

Dkt. #64 at 24 (citations omitted).

Accordingly, an issue of fact exists as to whether King County's policy was deliberately indifferent to inmates' right to medical treatment.

Furthermore, Defendants contend that because the Court ruled that several individuals following the policy in question were not deliberately indifferent as a matter of law, similar claims against King County ought to also be dismissed. However, as discussed supra, Plaintiff must satisfy distinct elements to make a showing of deliberate indifference as to prison officials, on the one hand, and as to a municipality, on the other. In order for a prison official to be held liable, an inmate must show that: (1) the deprivation was objectively sufficiently serious and (2) the prison officials acted with a sufficiently culpable state of mind. Farmer v. Brennan, 511 U.S. 825, 834 (1994). By contrast, "[t]o state a constitutional claim against a municipality, a plaintiff must (1) identify the specific 'policy' or 'custom,' (2) fairly attribute the policy or custom and fault for its creation to the municipality, and (3) establish the necessary 'affirmative link' between the identified policy or custom and the specific constitutional violation." Dkt. #64 at 23 (citing City of Canton, Ohio v. Harris, 489 U.S. 378, 389 (1989).In sum, for an official to be liable, he must have a culpable state of mind. Such a showing is not necessary with respect to a municipality.

E. Claims of Outrage against Defendants McComas and Hustead.

Defendants object to the finding that reasonable minds could differ as to whether the conduct of Defendants McComas and Hustead was extreme and outrageous as required to impose liability for the tort of outrage. Orin v. Barclay, 272 F.3d 1207, 1218 (9th Cir. 2001); Rice v. Janovich, 109 Wn.2d 48, 61 (1987). Whether certain conduct is sufficiently outrageous is ordinarily for the jury to decide. However, the court may make an initial decision to determine if reasonable minds could differ on whether the conduct was sufficiently extreme to result in liability. Dicomes v. State, 113 Wash., 2d 612, 630 (1989).

Defendants contend that Plaintiff's interaction with Defendants McComas and Hustead was minimal, and that she was not visibly distressed. However, regardless of whether the interaction was minimal, Defendants were informed by Plaintiff that she believed she was in labor. Even if Defendants interaction or observation of Plaintiff was minimal, they should have been aware that failure to attend to Plaintiff could cause severe emotional distress. Moreover, Defendants and Plaintiff disagree as to the amount of time that passed between when Defendants were notified that Plaintiff was in labor, and the time that she gave birth. This is a factual dispute that must be

determined by a jury. The Court therefore finds that issues of fact remain unresolved, and reasonable minds could differ as to whether Defendants' conduct constituted outrage.

F. Medical Malpractice Claims

1. Defendants Dumas, Ilika, Jerskey and Healy

Defendants contend that they are entitled to summary judgment on Plaintiff's medical malpractice claims because Defendants met the appropriate standard of care and because Plaintiff did not suffer an injury. In their objections, Defendants emphasize the language of RCW 7.70.040, which sets the standard in reference to a reasonably prudent health care provider acting under the same or similar circumstances. Specifically, Defendants contend that the standard of care in a correctional setting is different than in the context of a community care setting. While Defendants' expert has presented conflicting testimony, Plaintiff's expert is nonetheless qualified to provide an opinion as to the standard of care. "So long as a physician with a medical degree has sufficient expertise to demonstrate familiarity with the procedure or medical problem at issue, '[o]rdinarily [he or she] will be considered qualified to express an opinion on any sort of medical question, including questions in areas in which the physician is not a specialist.'" White v. Kent Med. Ctr., Inc., 61 Wash. App. 163, 173 (1991).

Moreover, Defendants argue that Plaintiff cannot show that their conduct was the proximate cause of her injury. Defendants predicate this notion on the fact that Plaintiff's labor occurred fast, Plaintiff was uncommunicative, and that Plaintiff did not endure a physical injury. Plaintiff contends that had Defendants' not allegedly breached the standard of care, she would have experienced less physical pain during the birth and that she would have been spared the emotional distress of giving birth alone. Plaintiff has alleged injury -- physical pain and emotional distress. Moreover, whether Plaintiff's lack of communication constitutes a break in the causal chain may be determined by a jury. Viewing the evidence in the light most favorable to the Plaintiff, there is a material issue of fact as to whether Defendants' conduct was the proximate cause of emotional distress and physical pain that cannot be decided on summary judgment.

2. Defendant King County

Defendants argue that Plaintiff's claim against King County on the theory of corporate negligence fails. In Douglas v. Freeman, the court held that "[t]he doctrine of corporate negligence.is based on a non-delegable duty that a hospital owes directly to its patients." 117 Wash.2d 242, 248 (1991). Moreover, corporate liability extends to harm resulting from both medical professionals, as well as unlicensed employees working within the hospital's "walls." See id. Therefore, corporate liability may attach even where the employees in question, such as Defendants Hustead and McComas, were not practicing medicine. Moreover, material issues of fact exist with regard to malpractice claims against Defendant medical professionals Dumas, Ilika, Jerskey, and Healy. Therefore, Plaintiff

presents issues of material fact as to Defendant King County's liability for corporate negligence.

II.CONCLUSION

(1) The Report and Recommendation is APPROVED and ADOPTED;

(2) Defendants' Motion for Summary Judgment, Dkt. #43, is GRANTED IN PART and DENIED IN PART;

(3) The parties are directed to meet and confer within ten (10) days of this Order, and to submit a Joint Status Report not later than twenty (20) days after the date of this Order specifically addressing:

(A) expected trial length;

(B) proposed trial dates;

(C) whether the case is to be tried to a jury or the Court; and

(D) whether all parties consent to having Magistrate Judge Donohue hear

this case on the merits, pursuant to 28 U.S.C. § 636(c). (4) The Clerk is directed to send copies of this Order to counsel for the parties and to the Honorable James P. Donohue.

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