

named Lee County, Virginia, and Lee County Sheriff Gary Parsons as defendants, and asserted municipal and supervisory liability against them as a result of the suicide.

The court thereafter dismissed Lee County as a defendant, since as a matter of state law, the county is not responsible for the training or supervision of the sheriff or the sheriff's deputies or jailors. *See Grayson v. Peed*, 195 F.3d 692, 697 (4th Cir. 1999). On October 27, 2000, the plaintiff filed an Amended Complaint, adding four employees of Sheriff Parsons as defendants: Jessee C. Fortner, John Woodard, Betty Poteet, and George Hembree. In the Amended Complaint, it was alleged that the four new defendants, as well as Sheriff Parsons, were aware of Moore's suicidal tendencies and inclinations, but were deliberately indifferent to his medical needs by failing to obtain medical attention for him and by failing to place him on suicide watch. Thereafter, at the request of the plaintiff, and by order of January 19, 2001, the defendants Jessee C. Fortner, Betty Poteet, and George Hembree were dismissed without prejudice. However, on May 29, 2001, the plaintiff filed a Second Amended Complaint, adding back Hembree as a defendant, and also adding four additional employees of Sheriff Parsons as defendants: Douglas M. Pillion, Clark Emmanuel Pauley, John Doe 1, and John Doe 2. On October 16, 2001, by agreement, a Supplemental Second Amended Complaint was filed, replacing the John Does with Delmar Randall McKnight and Harold Ray Crockett.

The defendants have now filed motions to dismiss and for summary judgment, which have been briefed and argued and are ripe for decision.

II

The general substantive principles governing this action are clear. As a pretrial detainee, Moore was constitutionally entitled under the Fourteenth Amendment to needed medical attention, and law enforcement officers are liable under 42 U.S.C.A. § 1983 (West Supp. 2001) when they are deliberately indifferent to the serious psychological conditions of prisoners. *See Gordon v. Kidd*, 971 F.2d 1087, 1094 (4th Cir. 1992). As a corollary, they “‘have a duty to protect prisoners from self-destruction or self-injury.’” *Id.* (quoting *Lee v. Downs*, 641 F.2d 1117, 1121 (4th Cir. 1981)). In proving a case involving a jail suicide, the plaintiff must show that “‘the defendants knew, or reasonably should have known, of the detainee’s suicidal tendencies.’” *Id.* (quoting *Elliott v. Cheshire County*, 940 F.2d 7, 10-11 (1st Cir. 1991)).

Summary judgment is appropriate when there is “no genuine issue of material fact,” given the parties’ burdens of proof at trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986); *see* Fed. R. Civ. P. 56(c). In determining whether the moving party has shown that there is no genuine issue of material fact, a court must assess the factual evidence and all inferences to be drawn therefrom in the light most

favorable to the non-moving party. *See Ross v. Communications Satellite Corp.*, 759 F.2d 355, 364 (4th Cir. 1985).

Rule 56 “mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Summary judgment is not “a disfavored procedural shortcut,” but an important mechanism for weeding out “claims and defenses [that] have no factual basis.” *Id.* at 327.

In the present case, based on the summary judgment record, there is no evidence that any of the defendants except John Woodard had any knowledge of Moore’s suicidal tendencies. As to Woodard, however, Mrs. Moore testified in her discovery deposition that she told him on the day of her husband’s arrest on May 25, 1999, that her husband was on medication for depression. (Moore Dep. at 21.) According to her, Woodard asked her if she knew that her husband was suicidal, because he had tried to kill himself by jumping out of the police car after his arrest. (*Id.* at 23.) Mrs. Moore replied that she knew that her husband was suicidal, and that her husband needed to be watched because he had tried to use prescription drugs to kill himself before. (*Id.* at 23-24.)

Woodard, a narcotics investigator for the sheriff's department in 1999, denies that any such conversation took place. He agrees that he talked to Mrs. Moore for approximately five minutes after her husband's arrest, but claims that no discussion of suicide took place, nor did Moore try to jump out of his vehicle after the arrest. (Woodard Dep. at 14-15.)

Mrs. Moore and her husband's mother and sister all claim that they called the jail over the next several days and mentioned Moore's suicidal tendencies, but they do not know to whom they talked, and the defendants have all denied under oath any such conversations or knowledge.

The defendants argue that there is insufficient evidence to show that they had knowledge of Moore's suicidal tendencies. As to all of the defendants except Woodard, I agree. Woodard denies any such knowledge, but Mrs. Moore's testimony presents a triable issue of fact that I cannot resolve on summary judgment. The jury may indeed believe Woodard's version of the events over Mrs. Moore's, but I cannot make that decision at this point.

The plaintiff also asserts a state cause of action for wrongful death. However, even as to Woodard, Moore's suicide bars any such claim, since under Virginia law suicide is an illegal act. *See Brown v. Harris*, 240 F.3d 383, 386 (4th Cir. 2001); *Hill v. Nicodemus*, 979 F.2d 987, 990 (4th Cir. 1992). Insanity at the time of suicide may

present an exception to this rule, *see id.*, but the plaintiff has presented no evidence in opposition to the motion for summary judgment raising any material issue of fact as to that question, and thus I must assume that the exception does not apply in this case.

While the complaint, viewed liberally, also raises an issue of supervisory liability as to Sheriff Parsons, no facts appear in the record that support any such claim. *See Carter v. Morris*, 164 F.3d 215, 221 (4th Cir. 1999) (holding that plaintiff must show that supervisory official had “actual or constructive knowledge of a risk of constitutional injury, deliberate indifference to that risk, and ‘an “affirmative causal link” between the supervisor’s inaction and the particular constitutional injury suffered by the plaintiff”).

The defense of qualified immunity is also asserted in the motion for summary judgment, except as to defendant Woodard, who expressly concedes that the record at this point does not support his immunity, in the light of Mrs. Moore’s testimony. (Mot. Summ. J. & Mem. Supp. at 9.) However, because no cause of action has been shown as to the remaining defendants, it is not necessary for me to determine their defense of qualified immunity.

Finally, in view of my determination of the motion for summary judgment, it is not necessary for me to consider the motion to dismiss, and it will be denied.¹

III

For the forgoing reasons, it is **ORDERED** as follows:

1. The defendants' Motion to Dismiss (Doc. No. 25) is denied;
2. The defendants' Motion for Summary Judgment (Doc. No. 26) is granted as to all defendants except John Woodard;
3. Judgment is hereby entered in favor of all defendants except John Woodard; and
4. As to John Woodard, the Motion for Summary Judgment is denied.

ENTER: February 7, 2002

United States District Judge

¹ Two of the grounds of the motion to dismiss were determined in the defendants' favor at an earlier stage of the case and do not need to be revisited. Those grounds were the official capacity of the defendants and any claim under the Eighth Amendment. Otherwise, as previously held, the complaint adequately states a cause of action. While the plaintiff did not respond to the motion to dismiss within the time specified in the scheduling order, that lapse did not prejudice the defendants and is excusable in light of the court's previous rulings on a similar motion to dismiss.