APPENDIX TABLE OF CONTENTS

OPINIONS AND ORDERS

Opinion of the United States Court of Appeals for the Sixth Circuit (February 27, 2020) 1a

Opinion of Justice Readler Concurring in Part and in the Judgment (February 27, 2020)..... 26a

Judgment of the United States Court of Appeals for the Sixth Circuit (February 27, 2020)..... 35a

Memorandum Order of the United States District Court for the Middle District of Tennessee (July 5, 2018)..... 37a

Order of the United States District Court for the Middle District of Tennessee (July 5, 2018) 62a

REHEARING ORDER

Order of the United States Court of Appeals for the Sixth Circuit Denying Petition for Rehearing En Banc (April 20, 2020)..... 64a

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT (FEBRUARY 27, 2020)

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

J.H., BY CONSERVATOR BETTY HARRIS,

Plaintiff-Appellant,

v.

WILLIAMSON COUNTY, TENNESSEE; STEVE MCMAHAN; BETSY ADGENT,

Defendants-Appellees.

No. 18-5874

Appeal from the United States District Court for the Middle District of Tennessee at Nashville. No. 3:14-cv-02356—Aleta Arthur Trauger, District Judge.

Before: COLE, Chief Judge, STRANCH and READLER, Circuit Judges.

COLE, Chief Judge.

J.H., a 14-year-old boy and pretrial detainee, was placed in segregated housing in Williamson County's juvenile detention facility after three other juveniles alleged that he threatened to assault them. J.H. alleges that his placement in segregated housing

from November 17 to December 19, 2013, amounted to unconstitutional punishment through the means of solitary confinement. He also alleges that a Williamson County detention monitor, Juan Cruz, sexually assaulted him during this period; that this assault was a direct result of Williamson County's failure to train Cruz; and that during his placement in segregated housing, detention facility officials failed to provide adequate medical care. The district court granted summary judgment in favor of Williamson County and officials Steve McMahan and Betsy Adgent. We affirm.

I. Background

Plaintiff J.H., a minor, suffers from Pediatric Autoimmune Neuropsychiatric Disorder Associated with Streptococcal Infections ("PANDAS"). According to his doctor, PANDAS often manifests itself in multiple psychiatric symptoms, such as an abrupt onset of Obsessive-Compulsive Disorder ("OCD"), impulsivity, eating disorders, depression, dysgraphia, and problems with sleep. J.H.'s mother, Betty Harris ("Harris"), avers that J.H. began exhibiting extreme behaviors in April 2013, after exposure to strep bacteria from a housekeeper caused his PANDAS diagnosis to flare up. And beginning in May 2013, J.H. had a series of run-ins with Tennessee's Williamson County Juvenile Court and its Juvenile Detention Center.

In October 2013, J.H. traveled to Maryland to receive intravenous immunoglobulin therapy ("IVIG")—a treatment that reboots a patient's immune system—from a pediatric neurologist, Dr. Elizabeth Latimer, who specializes in treating children with PANDAS. According to Dr. Latimer, it usually takes four to six

months for a child with PANDAS to start improving after receiving IVIG treatment. During this time, she recommends that patients, like J.H., remain in a center that specializes in treating children with neuropsychiatric illnesses and behavioral challenges.

Two days after his treatment in Maryland, J.H. was placed in Williamson County's Juvenile Detention Center ("JDC") after allegedly taking and crashing his mother's car. He was kept in JDC's dormitory section from October 13 to October 25, 2013, without incident. While J.H. was detained, Harris continued to seek an inpatient center for J.H.'s PANDAS treatment, as Dr. Latimer recommended.

On October 17, 2013, J.H., through counsel, petitioned the juvenile court to be furloughed into his mother's care so that he could receive treatment for his PANDAS at a neurological treatment facility. The court accepted the petition and released J.H. on furlough on October 25. But when the court discovered, in November 2013, that J.H. had not entered the facility because of an insurance dispute, it ordered that J.H. be returned to JDC. At all times that follow, J.H. was a 14-year-old pretrial detainee.

On November 17, 2013, two days after J.H. returned to JDC, three juveniles alleged that J.H. had become angry, destroyed property, punched a window, and verbally threatened them with sexual assault if they reported his conduct. After the alleged incident, one of the juveniles recanted his statement and instead claimed that the story was fabricated in order to get J.H. removed from the dormitory. The other two juveniles did not recant.

Because of the allegations, JDC officials moved J.H. from the dormitory to a single cell on November 17, 2013, where he remained until December 19, 2013. On November 17, JDC officials filled out a Detention Center Incident Report, which detailed the allegations against J.H and stated that the "Action Taken" in response to the incident was that J.H. "was moved to a single cell." While JDC's written policy provides that a juvenile charged with a facility violation resulting in segregation is entitled to a hearing before the Disciplinary Committee, JDC officials did not provide J.H. with a disciplinary hearing.

During J.H.'s segregation from November 17 to December 19, 2013, JDC officials housed him in an eleven-by-seven-foot cell. The officials did not allow J.H. to interact with any other juveniles. They initially allowed J.H. short daily visits with his parents (approximately 30 minutes), until November 21, 2013, when the officials limited J.H.'s visits with his mother to 30 minutes per week. JDC officials allowed J.H. limited time in the "rec yard"—an area of approximately 24-by-24 feet surrounded by concrete walls, razor wire above, and a single basketball hoop—and in the T.V. room, at their discretion. But time both in the rec yard and the T.V. room were spent alone. J.H. alleges that, during his time in segregation, his mental health deteriorated.

On December 7, 2013, J.H. asked JDC detention monitor Juan Cruz if he could clean around the facility rather than stay in his cell. Cruz agreed. While J.H. was cleaning, Cruz allegedly followed J.H. into a closet, where there were no security cameras, and sexually assaulted J.H. J.H. reported the assault to another JDC official. JDC suspended Cruz pending

investigation of the sexual assault and ultimately terminated him when prosecutors filed criminal charges against him related to the incident with J.H.

At a hearing in juvenile court on December 9, 2013, Judge Sharon Guffee ruled upon J.H.'s parents' request to alter J.H.'s terms of confinement. Judge Guffee held that J.H. should remain in segregated detention because J.H. did not "get along with the boys in his dormitory cell" and to prevent J.H. from discussing Cruz's alleged sexual assault with others in such a way that might negatively impact the ongoing investigation.

During J.H.'s time at JDC, he was treated by multiple medical professionals in relation to his PANDAS diagnosis: he had an appointment with his psychiatrist, received an examination by JDC's nurse, and received medication from his pediatric neurologist. None of these officials requested that JDC make any accommodations for J.H.'s medical needs. On December 19, 2013, J.H. was released from detention—and his segregated cell—into the custody of his father.

About a year after his release, J.H., by and through his mother, Betty Harris, filed a lawsuit against Williamson County, Detention Monitor Juan Cruz, Juvenile Detention Center Supervisor Steve McMahan, Director of Juvenile Services Betsy Adgent, and Judge Sharon Guffee. The lawsuit, brought under 42 U.S.C. § 1983, alleged in relevant part that the defendants violated his Fourteenth Amendment rights in relation to J.H.'s allegations of solitary confinement, failure to provide adequate medical and mental health services, and sexual assault.

On May 22, 2017, the district court issued a partial summary judgment order in favor of Williamson County, Judge Guffee, Adgent, and McMahan. In analyzing the defendants' motions, the district court divided J.H.'s time in solitary confinement into two periods: (1) J.H.'s detention from November 17 to December 8, 2013, before any court had ordered that J.H. be placed in segregation; and (2) his detention from December 9 to December 19, 2013, following Judge Guffee's order that J.H. remain in segregation. Regarding the second period of confinement, the court found that Judge Guffee was entitled to absolute immunity for J.H.'s placement in segregation after her order, and Adgent and McMahan were eligible for quasi-judicial immunity for their role in J.H.'s housing after December 9 because they were required to comply with Judge Guffee's court order.

The district court issued another summary judgment ruling on July 5, 2018, after both J.H. and the defendants had filed summary judgment motions. In this order, the court granted McMahan, Adgent, and Williamson County's motions for summary judgment as to the first period of solitary confinement as well. It found that a claim against Adgent could not succeed because "Plaintiff had conceded [she] was not responsible for housing and classification decisions." (Summ. J. Order, R. 384, PageID 13253.) The court further held that solitary-confinement-related claims against McMahan and Williamson County could not proceed because J.H. had not shown "that it was clearly established in 2013 that placing a juvenile detainee in a single cell would violate his constitutional right," which was required to overcome qualified immunity and to sustain a failure-to-train *Monell* claim against

a municipality. (*Id.* at 13253-58.) Additionally, although J.H. argued in his motion for summary judgment that he had been placed in solitary confinement without due process, the court granted the defendants' motion as to this claim because J.H. failed to plead any procedural due process claim in his complaint.

The court also granted Adgent and McMahan's motions for summary judgment on J.H.'s claims for failure to provide medical and mental health care. While the court agreed that J.H.'s severe mental health issues had been documented, it nonetheless found that because none of J.H.'s mental health care providers requested special accommodations for him, J.H. was unable to show that the care provided to him during his detention at JDC was grossly inadequate.

Finally, the court addressed the claims relating to the alleged sexual assault. The court found that genuine disputes of material fact existed on J.H.'s claim against Cruz and permitted that claim to go forward. But it granted the remaining defendants' motions for summary judgment on J.H.'s claims related to the assault. The court held that the claims against Adgent and McMahan for failure to train and supervise Cruz were in their official capacities only, and thus these claims were redundant of the claim against the county; and J.H. could not succeed on his claim against Williamson County, as he had failed to show that the county knew of any substantial risk of Cruz sexually assaulting J.H.

The district court then granted J.H.'s motion to deem judgment final as to Williamson County, McMahan, and Adgent pursuant to Federal Rule of Civil Procedure 54(b), allowing J.H. to appeal while

proceedings for the remaining claim against Cruz are stayed. J.H. timely appealed.

The following decisions by the district court are now before us: (1) the district court's grant of summary judgment for McMahan and Williamson County on J.H.'s claim that they violated J.H.'s Fourteenth Amendment rights by placing him in solitary confinement from November 17 to December 8, 2013, the period before Judge Guffee's order; (2) the district court's grant of summary judgment for Williamson County on J.H.'s claim of being placed in solitary confinement from December 9 to 19, 2013, the period following Judge Guffee's order; (3) the district court's dismissal of J.H.'s procedural due process claim; (4) the district court's grant of summary judgment for Adgent and McMahan on J.H.'s denial of health care claim; and (5) the district court's grant of summary judgment for Williamson County on J.H.'s claim that the county was deliberately indifferent to the substantial risk of harm from Cruz.

II. Analysis

A. Standard of Review

On appeal, we review the "grant of summary judgment de novo." *Hanover Ins. Co. v. American Eng'g Co.*, 33 F.3d 727, 730 (6th Cir. 1994). Summary judgment is appropriate when "there is no genuine dispute as to any material fact," thereby allowing the court to decide that the moving party "is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "A genuine dispute of material fact exists 'if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" *Peffer v. Stephens*,

880 F.3d 256, 262 (6th Cir. 2018) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

B. Solitary Confinement Claims

On appeal, J.H. challenges the district court's grant of summary judgment in favor of McMahan for the period of solitary confinement prior to December 9, and its grant of summary judgment in favor of Williamson County for the entire period of solitary confinement—November 17 to December 19. J.H. also argues that his procedural due process claim was properly pleaded. We address each argument in turn below.

1. Fourteenth Amendment Substantive Due Process Claim Against McMahan for Solitary Confinement from November 17 to December 8, 2013

The district court held that J.H. had sufficiently alleged McMahan's personal involvement in J.H.'s solitary confinement, but disposed of J.H.'s Fourteenth Amendment claim against McMahan on grounds of qualified immunity. "Determinations of qualified immunity require us to answer two questions: first, whether the officer violated a constitutional right; and second, whether that right was clearly established in light of the specific context of the case." *Hayden v. Green*, 640 F.3d 150, 153 (6th Cir. 2011). Because we can answer the qualified immunity questions in any order, *see Pearson v. Callahan*, 555 U.S. 223, 236 (2009), we begin with the question of whether McMahan violated a constitutional right and then turn to whether that right was clearly established.

i. Violation of a Constitutional Right

J.H. has alleged that JDC officials, acting at McMahan's direction, kept him in solitary confinement as punishment for the November 17 incident, and that while in segregation he was fully isolated. Under the first prong of our qualified immunity analysis, we ask "whether [J.H.]'s allegations, if true, establish a constitutional violation." *Hope v. Pelzer*, 536 U.S. 730, 736 (2002) (emphasis added).[1]

The Supreme Court established in *Bell v. Wolfish* that, under the due process clause, "a detainee may not be punished prior to an adjudication of guilt." 441 U.S. 520, 535 (1979). Under *Bell*, a pretrial detainee can demonstrate that he was subjected to unconstitutional punishment in either of two ways: (1) by showing "an expressed intent to punish on the part of the detention facility officials," or (2) by showing that a restriction or condition is not rationally related to a legitimate government objective or is excessive in relation to that purpose. *Id.* at 538-39; *see also Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2473 (2015).

The "expressed intent to punish" prong proscribes an intent to punish for the alleged crime causing incarceration prior to an adjudication of guilt. *See Bell*, 441 U.S. at 535. It also prohibits officials from

---

[1] The district court held that there were genuine disputes of material fact as to these allegations by J.H., particularly "whether J.H. was placed in a single cell as punishment" and "how much social interaction J.H. had while housed in the single cell." (Summ. J. Order, R. 384, PageID 13251-52.) In assessing the first prong of the qualified immunity analysis, we do not disturb the district court's determination on these factual points. Instead, we ask whether J.H. can show a constitutional violation if his allegations were true. *See Hope*, 536 U.S. at 736.

subjectively seeking to punish detainees simply because they are detainees, *see id.* at 539, or on the basis of vengeful or other illegitimate interests, *see Bistrian v. Levi*, 696 F.3d 352, 375 (3d Cir. 2012) (holding the plaintiff had sufficiently alleged a substantive due process violation under the "expressed intent to punish" prong where placement of the plaintiff in solitary confinement was allegedly a vindictive response to a challenge brought by the plaintiff's lawyer). This prong does not, however, categorically prohibit discipline imposed by jail officials for infractions committed while in pretrial detention. *See, e.g.*, *Rapier v. Harris*, 172 F.3d 999, 1002-03 (7th Cir. 1999); *Kanu v. Lindsey*, 739 F. App'x 111, 116 (3d Cir. 2018); *Stamper v. Campbell Cnty.*, 415 F. App'x 678, 678-81 (6th Cir. 2011). Here, J.H. alleges that he was placed in solitary confinement in direct response to the November 17 disciplinary incident. This alleged action, without more, does not run afoul of the first prong of *Bell*.

The relevant question is thus under *Bell*'s second prong: whether J.H.'s placement in segregation was "rationally related to a legitimate nonpunitive governmental purpose and whether [it] appear[s] excessive in relation to that purpose." *Bell*, 441 U.S. at 561; *see also Collazo-Leon v. U.S. Bureau of Prisons*, 51 F.3d 315, 318 (1st Cir. 1995). In answering the first part of this question, we agree that McMahan has put forth a legitimate governmental purpose: "maintain[ing] safety and security in the facility." (McMahan Br. 42.) As the Supreme Court explained in *Bell*, "maintaining institutional security and preserving internal order and discipline are essential goals" of a detention facility. 441 U.S. at 546. Temporary placement of J.H. in

solitary confinement, given his accused disciplinary infraction, appears rationally related to this purpose.

Yet where McMahan's argument falters is on the question of whether the discipline here was excessive. *See Williamson v. Stirling*, 912 F.3d 154, 176 n.18 (4th Cir. 2018) (explaining "disciplinary measures based on a pretrial detainee's misconduct in custody" must be "proportional thereto" in order to avoid qualifying as unconstitutional "'punishment' within the meaning of *Bell*"); *see also Collazo-Leon*, 51 F.3d at 318; *Bistrian*, 696 F.3d at 374. Jail administrators are afforded "wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." *Bell*, 441 U.S. at 547. Yet this deference has its limits, and does not permit a detention facility to impose conditions that are excessively "harsh . . . to achieve objectives that could be accomplished [with] . . . alternative and less harsh methods." *Id.* at 539 n.20.

In considering whether the discipline imposed on J.H. was excessive, we are mindful of J.H.'s age; his known mental health issues; and the duration and nature of his confinement. We weigh these factors against the disciplinary infraction of which J.H. was accused and the governmental purpose for which the discipline was imposed. When considering "the totality of [these] circumstances," we conclude that the discipline imposed was excessive relative to its purpose and thus violated J.H.'s Fourteenth Amendment rights as described in *Bell*. *See Hubbard v. Taylor*, 399 F.3d 150, 159-60 (3d Cir. 2005).

First, we must consider that J.H. was a 14-year-old juvenile. As the Supreme Court has described,

"youth is . . . a moment and 'condition of life when a person may be most susceptible to influence and to psychological damage.'" *Miller v. Alabama*, 567 U.S. 460, 476 (2012) (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982)). A growing chorus of courts have recognized the unique harms that are inflicted on juveniles when they are placed in solitary confinement. *See*, *e.g.*, *Doe by and through Frazier v. Hommrich*, No. 3-16-0799, 2017 WL 1091864, at *2 (M.D. Tenn. Mar. 22, 2017) (granting a preliminary injunction preventing a detention facility from placing juveniles in solitary confinement as punishment or discipline and describing how "courts around the country have found increased protections for juveniles and persons with diminished capacities from inhumane treatment under the Eighth and Fourteenth Amendments"); *V.W. by and through Williams v. Conway*, 236 F. Supp. 3d 554, 583, 590 (N.D.N.Y. 2017) (issuing a preliminary injunction to enjoin a county and its officials "from imposing 23-hour disciplinary isolation on juveniles" and recognizing "there is a broad consensus among the scientific and professional community that juveniles are psychologically more vulnerable than adults"); *Turner v. Palmer*, 84 F. Supp. 3d 880, 884 (S.D. Iowa 2015) (denying qualified immunity to officials who placed a juvenile with psychiatric issues in solitary confinement and noting that "[t]raditionally, juvenile detainees are afforded greater constitutional protection"). As a 14-year-old, J.H. was uniquely vulnerable to the harmful effects of solitary confinement, and thus his placement in segregation was a particularly harsh form of discipline.

Second, it was well-known to McMahan before placing J.H. in solitary confinement that J.H. had been

diagnosed with and required treatment for PANDAS, which is associated with several psychiatric symptoms. Placement of a mentally-ill detainee in solitary confinement "raises a genuine concern that the negative psychological effects of his segregation will drive him to self-harm." *Wallace v. Baldwin*, 895 F.3d 481, 485 (7th Cir. 2018). As the Third Circuit has explained, confinement of a detainee should be assessed "in light of his mental illness," recognizing the "growing consensus" that solitary confinement "can cause severe and traumatic psychological damage, including anxiety, panic, paranoia, depression, post-traumatic stress disorder, psychosis, and even a disintegration of the basic sense of self identity." *Palakovic v. Wetzel*, 854 F.3d 209, 225 (3d Cir. 2017). Here, J.H.'s documented mental health issues made him particularly vulnerable to the effects of solitary confinement.

Third, we are mindful of the nature and duration of J.H.'s segregation. *See Williamson*, 912 F.3d at 180 ("[T]he *Bell* Court expressly considered, inter alia, the duration of the punitive conditions.") (citing *Bell*, 441 U.S. at 543); *Bistrian*, 696 F.3d at 374 (considering the "nature of [the pretrial detainee's] confinement" in determining whether the disciplinary segregation was excessive). J.H was in solitary confinement for several weeks—from November 17 to December 8, 2013—before Judge Guffee ruled on his placement in segregation. J.H. was housed in an eleven-by-seven-foot cell where he was not allowed to interact with any other juveniles. These 21 days of isolation are of noteworthy duration, as "[t]here is not a single study of solitary confinement wherein non-voluntary confinement that lasted for longer than 10 days failed to result in negative psychological

effects." *Williams v. Sec'y Pa. Dep't of Corrs.*, 848 F.3d 549, 566 (3d Cir. 2017) (quoting Craig Haney & Mona Lynch, *Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement*, 23 N.Y.U. Rev. L. & Soc. Change 477, 531 (1997)). The Third Circuit noted a study showing that "even a few days of solitary confinement will predictably shift the electroencephalogram (EEG) pattern toward an abnormal pattern characteristic of stupor and delirium." *Id.* at 567 (quoting Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 Wash. U. J.L. & Pol'y 325, 331 (2006)). And as Justice Kennedy has described, it has "long . . . been understood" that there is a "human toll wrought by extended terms of isolation." *Davis v. Ayala*, 135 S. Ct. 2187, 2209 (2015) (Kennedy, J., concurring).

In sum, considering J.H.'s age, mental health, and the duration and nature of his confinement, we conclude that the punishment imposed on J.H. was excessive. When weighing the penalty imposed against his disciplinary infraction—in which he made verbal threats but did not physically injure another detainee—it is apparent that his punishment was disproportionate in light of the stated purpose of maintaining institutional security. *See Williamson*, 912 F.3d at 179-81 (holding a reasonable factfinder could conclude a detainee's lengthy placement in solitary confinement "because of a single incident of unrealized and unrepeated threats" was excessive). Any momentary need to separate J.H. from the specific detainees whom he had threatened on November 17 does not justify the extended duration in which McMahan subjected J.H. to solitary confinement and completely isolated him from all contact with other juveniles. This discipline

was excessive given the infraction that J.H. was accused of and the unique vulnerabilities he possessed—namely his age and mental health status.[2] We therefore hold that, assuming J.H.'s allegations to be true, his Fourteenth Amendment substantive due process rights were violated when he was held in solitary confinement from November 17 to December 8, 2013.

ii. Clearly Established Right

The second question is whether the constitutional right in question was clearly established at the time of the alleged violation. In order for the right to be clearly established, "[then-]existing precedent must have placed the . . . constitutional question beyond debate." *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011);

---

[2] We do not mean to imply that each of these factors—that is, a detainee being a juvenile and mentally ill must be present for the imposition of solitary confinement to be unconstitutionally excessive under *Bell*. *See, e.g.*, *Williamson*, 912 F.3d at 181 (holding that simply the length of the plaintiff pretrial detainee's solitary confinement could lead a "reasonable factfinder [to] conclude" that it was "excessive relative to his infractions"); *Bistrian*, 696 F.3d at 374 (concluding that given the "nature of [the plaintiff's] confinement" it could be deemed excessive). However, where these factors are present, they must be relevant to our analysis. A court cannot consider the punishment of a child while ignoring the fact that he is a child, nor can a court pretend that the effects of solitary confinement are the same regardless of a detainee's mental health status. *See Miller*, 567 U.S. at 474 (explaining that "imposition" of "penalties on juvenile offenders cannot proceed as though they were not children"); *Palakovic*, 854 F.3d at 225-26 (reversing a district court's dismissal of an Eighth Amendment claim brought on behalf of a mentally ill 23-year-old who was placed in solitary confinement where plaintiffs had sufficiently alleged the "conditions there were inhumane for him in light of his mental illness").

see also Dist. of Columbia v. Wesby, 138 S. Ct. 577, 589 (2018).

We cannot say that the right at issue was established with sufficient specificity as to hold it clearly established as of 2013, the time of these incidents. Many of the cases recognizing what a punishing experience placement in solitary confinement can be—especially for juveniles and those with mental health issues—have been issued after 2013.

Thus, McMahan is entitled to qualified immunity, and we are obliged to affirm the district court's grant of summary judgment on this claim.

2. Fourteenth Amendment Substantive Due Process Claim against Williamson County for Solitary Confinement from November 17 to December 8, 2013

J.H. also sued Williamson County, arguing that its policies and customs were the "moving force" for the "constitutional violations perpetrated against" J.H. and that the county was deliberately indifferent "in the supervision and training of juvenile detention personnel." (Compl., R. 1, PageID 3.) Although "[m]unicipalities are not vicariously liable for the actions of their employees" under 42 U.S.C. § 1983, *Bible Believers v. Wayne County*, 805 F.3d 228, 260 (6th Cir. 2015) (en banc), a plaintiff can establish municipal liability under § 1983 by showing he was injured pursuant to a municipality's custom or policy, *Monell v. Department of Social Services of City of New York*, 436 U.S. 658, 694 (1978).

One basis for a *Monell* claim is a municipality or county's failure to train its employees. As the Supreme

Court concluded in *City of Canton v. Harris*, 489 U.S. 378 (1989):

> [I]t may happen that in light of the duties assigned to specific officers or employees the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need. In that event, the failure to provide proper training may fairly be said to represent a policy for which the city is responsible, and for which the city may be held liable if it actually causes injury.

Id. at 390. In *Shadrick v. Hopkins County*, 805 F.3d 724 (6th Cir. 2015), we held that plaintiffs can establish liability under a failure-to-train theory based on "'a single violation of federal rights, accompanied by a showing that [the county] has failed to train its employees to handle recurring situations presenting an obvious potential' for a constitutional violation." *Id.* at 738-39 (quoting *Bd. of Cnty. Comm'rs of Bryan Cnty. v. Brown*, 520 U.S. 397, 409 (1997)). "'[O]bvious potential for such a violation' has two elements: It must be obvious that the failure to train will lead to certain conduct, and it must be obvious (*i.e.*, clearly established) that the conduct will violate constitutional rights." *Arrington-Bey v. City of Bedford Heights*, 858 F.3d 988, 995 (6th Cir. 2017). "The absence of a clearly established right spells the end of [a plaintiff's] *Monell* claim." *Id.*

J.H. argues it was obvious that Williamson County's failure to train its employees on the classification and housing of juveniles would lead to

unconstitutional uses of "punitive solitary confinement for pre-trial detainee juveniles." (Appellant Br. 41.) Furthermore, he argues it was obvious (or clearly established) that such punitive uses of solitary confinement would be unconstitutional. Having already concluded that J.H.'s substantive due process right was not clearly established as of 2013, we must also conclude that J.H.'s *Monell* claim against Williamson County cannot succeed. *See Arrington-Bey*, 858 F.3d at 995.

We thus affirm the district court on this claim.

3. Fourteenth Amendment Substantive Due Process Claim Against Williamson County for Solitary Confinement from December 9 to December 19, 2013

J.H. also appeals the district court's grant of summary judgment for Williamson County on the claim relating to his solitary confinement after Judge Guffee ordered on December 9 that J.H. remain in segregation. J.H. argues that neither Guffee's judicial immunity nor McMahan's quasi-judicial immunity extends to a municipality. *See Monell*, 436 U.S. at 701 ("[M]unicipal bodies sued under § 1983 cannot be entitled to an absolute immunity, lest our decision that such bodies are subject to suit under § 1983 'be drained of meaning.'") (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 248 (1974)).

Williamson County does not contend that it is eligible for judicial or quasi-judicial immunity—rather, it correctly argues that no basis for municipal liability remains after the court order on December 9, 2013, because Judge Guffee is not a policymaker whose decisions can create municipal liability. This conforms

with our precedent. We have held that the "alleged unconstitutional actions taken by a juvenile court judge are not 'policies' of the county for which liability could attach under *Monell*"; instead, Judge Guffee's order that J.H. remain in segregation was a "judicial decision[ ]" that was only "reviewable on appeal to the Tennessee appellate courts." *Johnson v. Turner*, 125 F.3d 324, 335-36 (6th Cir. 1997). Nor could Adgent's or McMahan's adherence to that order create municipal liability because neither retained final policymaking authority regarding whether to segregate J.H. after the order was issued. *See Pembaur v. City of Cincinnati*, 475 U.S. 469, 481 (1986).

We therefore affirm the district court on this claim.

4. Fourteenth Amendment Procedural Due Process Claim Against McMahan and Williamson County

J.H. next argues that the district court erroneously dismissed his procedural due process claim against McMahan and Williamson County on the basis that it was not properly pleaded. The defendants argue that allowing J.H. to pursue a procedural due process claim not found in J.H.'s complaint would prejudice them because it would "subject [them] to unfair surprise." (Williamson Cnty. Br. 40.)

"The Federal Rules of Civil Procedure . . . provide for liberal notice pleading at the outset of the litigation." *Tucker v. Union of Needletrades, Indus. & Textile Emps.*, 407 F.3d 784, 788 (6th Cir. 2005). Accordingly, even if a new claim appears during discovery, "liberal amendment of the complaint is provided for by Rule 15(a) of the Federal Rules of Civil Procedure, which states that leave to amend the complaint 'shall be

freely given when justice so requires.'" *Id.* But "[o]nce a case has progressed to the summary judgment stage," as is true here, "the liberal pleading standards under . . . [the Federal Rules] are inapplicable." *Id.* (quoting *Gilmour v. Gates, McDonald & Co.*, 382 F.3d 1312, 1315 (11th Cir. 2004)).

J.H.'s complaint alleges that the decision to put him in segregation "occurred in violation of [the Prison Rape Elimination Act (PREA)] and Tennessee Department of Corrections minimum requirements of confinement." (Compl., R. 1, PageID 7-8.) It is unclear from the complaint, however, which portions of the PREA and the Tennessee Department of Corrections minimum requirements of confinement that J.H. alleges were violated. And even though J.H.'s complaint alleges violations of the Fourteenth Amendment, there are no specific allegations of procedural deficiencies.

Thus, we affirm the district court's holding that J.H. did not properly plead a procedural due process claim.

C. Failure to Provide Medical and Mental Health Care Claims Against Adgent and McMahan

J.H. also argues that Adgent and McMahan failed to provide adequate medical and mental health care and were deliberately indifferent to his serious medical needs. Specifically, he alleges that "there was ample evidence to put Adgent and McMahan on notice of [the fact] that J.H. was suffering from serious mental health issues when he arrived at detention." (Appellant Br. 52.) J.H. further alleges that "Adgent and McMahan ignored the needs of J.H. with ample evidence in front of them that he was a

child suffering from mental deterioration" while in their care. (*Id.* at 53.)[3]

To prove deliberate indifference to his serious medical needs, J.H. must "demonstrate both: (1) the existence of a 'sufficiently serious' medical need; and (2) that defendants 'perceived facts from which to infer substantial risk to the prisoner, that [they] did in fact draw the inference, and that [they] then disregarded that risk.'" *Hopper v. Plummer*, 887 F.3d 744, 756 (6th Cir. 2018) (quoting *Comstock v. McCrary*, 273 F.3d 693, 702-03 (6th Cir. 2001)).

The district court found that "it was reasonable for Adgent and McMahan to follow the instructions of medical providers concerning J.H.'s medication and to believe that any additional counseling or mental health treatment would be set up by J.H.'s parents or guardian ad litem or ordered by his medical providers." (Summ. J. Order, R. 384, PageID 13262.) We agree. It is undisputed that J.H. met with and received medication from multiple medical professionals during his time at JDC, and that none of these officials requested that JDC make any accommodations for J.H.'s medical needs. Thus, the defendants' actions were taken in reasonable "rel[iance] on medical judgments made by medical professionals responsible for prisoner care." *Graham ex rel. Estate of Graham v. Cnty. of Washtenaw*, 358 F.3d 377, 384 (6th Cir.

---

[3] We do not read J.H.'s brief on appeal as also raising a claim against Williamson County for failure to provide medical care, nor has he provided a basis for why there would be *Monell* liability here. Thus, we need not address the arguments raised in Williamson County's brief averring that J.H. cannot succeed on such a claim against the county.

2004) (quoting *Ronayne v. Ficano*, No. 98-1135, 1999 WL 183479, at *3 (6th Cir. Mar. 15, 1999)).

We therefore affirm the district court on this claim.

D. Failure to Train and Supervise Cruz Claim Against Williamson County

Finally, J.H. alleges that Williamson County was deliberately indifferent to the substantial risk that Cruz would sexually assault him, and that it failed to supervise and train Cruz.[4] In order to establish municipal liability under an "inaction" theory, as J.H. alleges, he must show: (1) "the existence of a clear and persistent pattern of sexual abuse by [JDC] employees; (2) notice or constructive notice on the part of [Williamson County]; (3) [Williamson County]'s tacit approval of the unconstitutional conduct, such that their deliberate indifference in their failure to act can be said to amount to an official policy of inaction; and (4) that [Williamson County] was the 'moving force' or direct causal link in the constitutional

---

[4] J.H.'s brief, in passing, also asks this court to hold that a reasonable jury could find Adgent and McMahan were "individually" deliberately indifferent to the substantial risk posed by Cruz. (*See* Appellant Br. 72.) We need not address the merits of this claim. The district court held that "there are no claims for failure to train and supervise against Adgent and McMahan individually," as "Plaintiff has agreed" that these claims are only alleged against Adgent and McMahan in their official capacity. (Summ. J. Order, R. 384, PageID 13264.) The district court correctly dismissed these official capacity claims as superfluous of the claim against the county. *See Foster v. Michigan*, 573 F. App'x 377, 390 (6th Cir. 2014) ("Where the entity is named as a defendant, an official-capacity claim is redundant."). J.H. cannot raise new individual-capacity claims, which he previously agreed he was not asserting, in his appellate brief.

deprivation." *Doe v. Claiborne Cnty.*, 103 F.3d 495, 508 (6th Cir. 1996). According to J.H., Williamson County was deliberately indifferent to the risk that Cruz would sexually assault J.H. when it failed to properly train him and properly conduct a background check, which would have revealed that Cruz is bisexual.

While the details of Cruz's alleged assault on J.H. are troubling, J.H. has not met his burden to establish municipal liability. We have held in unpublished cases that "opportunity alone, without reason to suspect that it will lead to a constitutional violation, does not establish deliberate indifference." *Mize v. Tedford*, 375 F. App'x 497, 501 (6th Cir. 2010); *see also Doe v. Magoffin Cnty. Fiscal Ct.*, 174 F. App'x 962, 970 (6th Cir. 2006). There was no clear pattern of sexual abuse at JDC, and Cruz had no history of misconduct at JDC. And there is no authority to support the offensive claim that a sexual assault is the obvious consequence of an official's sexual orientation. J.H. argues that *Mize* and *Magoffin* are inapposite because, in those cases, the defendants were not charged with assuming responsibility of the plaintiffs in the way that Cruz's job required. But that does not change the fact that "[t]he intentional, violent act that" Cruz is alleged to have "performed far outside the scope of his duties" was not "something that was 'obvious' to occur." *Magoffin Cnty. Fiscal Ct.*, 174 F. App'x at 970. Furthermore, J.H. has not shown a "direct causal connection" between the failure to train Cruz and his alleged assault of J.H.—in other words, it is far from clear that any lack of training was the "moving force" behind Cruz's decision to sexually assault a child. *Claiborne Cnty.*, 103 F.3d at 508-09.

Thus, we affirm the district court on this claim.

III. Conclusion

For the foregoing reasons, we affirm the district court's grant of summary judgment to defendants Williamson County, Steve McMahan, and Betsy Adgent.

OPINION OF JUSTICE READLER CONCURRING IN PART AND IN THE JUDGMENT (FEBRUARY 27, 2020)

CHAD A. READLER, Circuit Judge, concurring in part, and in the judgment. The public employees operating the Williamson County Juvenile Detention Center faced a dilemma. Responsible for the care of up to a dozen minors, those officials had under their supervision one minor, J.H., who, due to mental health concerns, was a threat to himself and others. To remedy the situation and protect the juvenile detainee population, the facility for a time housed J.H. away from other detainees, in a single cell. A state juvenile court judge approved that arrangement and ordered that it continue for an additional period to allow for further evaluation of J.H.

I concur with much of the majority opinion, including its holding that the conduct of these public safety officials did not violate a clearly established constitutional right. But I respectfully disagree with the majority's assessment that the conduct nonetheless ran afoul of substantive due process principles. In reaching that conclusion, the majority tailors its analysis to the unique facts before us: the multi-week confinement of a fourteen-year-old suffering from mental illness, one so severe that it is "associated with several psychiatric symptoms." A heartbreaking episode, we all agree, for both J.H. and his family.

As this case aptly demonstrates, however, ensuring safety in a detention facility sometimes requires difficult decisions. Put yourself in the shoes of these public servants. Their duties, never easy in the best of times, were made especially challenging by reports

of J.H.'s threatening behavior. The officials moved J.H. away from others to ensure safety and to avoid a potential confrontation. Any other response would have allowed J.H. to remain a threat to his dorm mates, other juveniles, facility staff, and indeed himself.

1. To the majority, these efforts constituted impermissible punishment, in violation of the substantive due process principles described in *Bell v. Wolfish*, 441 U.S. 520 (1979). As I will explain later, I do not agree that the restrictions on J.H. amounted to impermissible punishment under *Bell*. But we need not even reach that question, for it is doubtful *Bell* was intended to apply in the context of an official's effort to remedy misconduct committed while in custody. *Bell*, all acknowledge, places limits on pretrial punishment for acts committed before one is detained. Punishing a detainee simply for the alleged criminal conduct that led to his detention, after all, would impermissibly put the retributory cart before the adjudicatory horse, invoking constitutional considerations. *See id.* at 535-36. Yet whether the standard "condition[s] of confinement" applicable to all pre-trial detainees housed in a specific facility are so restrictive as to constitute punishment for pre-incarceration conduct is all that *Bell* addressed. *Id.* at 531. The case says nothing about the measures officials may take to address an individual's rules violations while in custody, for which some measure of punishment may be appropriate. *See id.* at 536-37 (assessing whether certain restraints were appropriate and justified for the general purpose of ensuring a detainee's presence at trial for the charges leading to detention).

The majority seemingly acknowledges as much. It notes that *Bell* "proscribes an intent to punish for

the alleged crime causing incarceration prior to an adjudication of guilt." And it observes that *Bell* does not "categorically prohibit discipline imposed by jail officials for infractions committed while in pretrial detention." But the majority then ties these notable limitations only to *Bell*'s first prong, not its second. All agree that *Bell*'s first prong addresses instances where impermissible intent to punish can be derived from an "expressed intent," whereas *Bell*'s second prong addresses whether, in the absence of an express indication, a restriction's illegitimacy or irrationality indicates it is in fact a form of impermissible punishment. *Bell*'s two prongs are thus complimentary means for measuring whether the restriction in question was imposed with an intent to "punish for the alleged crime causing incarceration prior to an adjudication of guilt." *See Graham v. Connor*, 490 U.S. 386, 398 (1989) (noting that use of the word "punishments" clearly suggests an inquiry into subjective motivations). *Bell*'s second prong does not independently guide officials in how they remedy in-custody misconduct, with the first prong governing pre-incarceration conduct. Rather, both prongs measure the permissibility of the restriction in question only against "the alleged crime causing incarceration." *Bell* simply did not consider scenarios where the purported punishment was imposed based upon the detainee's misconduct while detained. *See, e.g.*, *Collazo-Leon v. U.S. Bureau of Prisons*, 51 F.3d 315, 317-18 (1st Cir. 1995) (noting that *Bell* did not deal with punishment of in-custody conduct and that *Bell*'s second prong looks to "an intent to punish the detainee for prior unproven criminal conduct").

That is not to say J.H. has no constitutional means available for testing the restrictions placed upon him for his in-custody misconduct. He enjoys procedural due process rights that would apply if he were punished, *see Martucci v. Johnson*, 944 F.2d 291, 294-95 (6th Cir. 1991), although the majority rightly concludes that no such violation was sufficiently alleged here. Pretrial detainees more generally may enjoy other well-defined substantive rights in this context as well. *See, e.g.*, *Kingsley v. Hendrickson*, 135 S. Ct. 2466 (2015) (excessive force); *City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239 (1983) (inadequate medical care); *Farmer v. Brennan*, 511 U.S. 825 (1994) (deliberate indifference); *see also Richko v. Wayne County*, 819 F.3d 907, 915 (6th Cir. 2016) (noting that "pretrial detainees are entitled to the same Eighth Amendment rights as other inmates" (quoting *Thompson v. County of Medina*, 29 F.3d 238, 242 (6th Cir. 1994))). And in the rare case where the punishment for in-custody conduct is so severe that it clearly was inspired not by in-custody misconduct, but instead by the crime that led to incarceration, *Bell* may provide relief if the means used are excessive to a legitimate purpose. *See* 441 U.S. at 538-39. But, it bears repeating, in generally limiting what a facility may do for the broad purpose of ensuring a detainee's presence at trial, *Bell*'s prohibition on punishing pretrial detainees for pre-incarceration conduct says nothing about the limits placed on public officials who are responding to a disobedient, threatening detainee. *See, e.g.*, *Ford v. Bender*, 768 F.3d 15, 24-25 (1st. Cir. 2014) (noting that the court's inquiry does not end upon finding punishment of a pretrial detainee for in-custody misconduct, because "*Bell* was not written to address a 'situation where

discrete sanctions were imposed on individual pretrial detainees as discipline for specific in-house violations'" (quoting *Collazo-Leon*, 51 F.3d at 317)).

2. Even if one were to accept the majority's expansive reading of *Bell*'s second prong, substantive due process does not tie the hands of public officials in weighing the many considerations before them as they resolve a difficult episode. As *Bell* reminds us, the "central objective of prison administration" is "safeguarding institutional security." 441 U.S. at 547 (citations omitted). In view of that "central objective," we routinely approve of restrictions employed to curtail detainee misconduct and support institutional security. *Id.* (explaining that this "central objective" may require limits even on detainees' "specific constitutional guarantee[s]").

Adopting the majority's reading of *Bell*, to establish impermissible punishment, J.H. must show either that there was no legitimate, nonpunitive purpose for the restrictions placed upon him, or that those restrictions were excessive for their assigned purpose. *Id.* at 538-39. In making that assessment, we must not forget that "the problems that arise in the day-to-day operation of a corrections facility are not susceptible of easy solutions," *id.* at 547, and we thus must honor detention officials' judgment over "a court's idea of how best to operate a detention facility." *Id.* at 539 (citations omitted). Mindful of the training and experience enjoyed by those officials, in matters involving the operation of a detention facility, we hold plaintiffs to a "heavy" burden. *Id.* at 561-62. "[I]n the absence of substantial evidence in the record to indicate that the officials have exaggerated their response to these considerations, courts should ordinarily defer to their

expert judgment in such matters." *Id.* at 548 (quoting *Pell v. Procunier*, 417 U.S. 817, 827 (1974) (emphasis added)); *see also T.S. v. Doe*, 742 F.3d 632, 639 (6th Cir. 2014) (collecting cases showing that Supreme Court precedent has "emphatically reinforced the hands-off approach courts must apply").

To my eye, J.H.'s detention was not excessive to the legitimate safety interests involved. Even reading the record in the light most favorable to J.H., one is struck by the security and safety challenges faced by the public servants at the Juvenile Detention Center. Those officials were responsible for the well-being of up to a dozen minors, each of whom was placed in detention for threatening conduct of varying proportions. One of the minors, J.H., entered the facility in the midst of a behavioral and psychological crisis. Multiple petitions were filed against him in juvenile court for serious behavioral problems, including attempts to harm himself and others. He stole cars and crashed them, not once, but twice. And he had been placed in juvenile detention previously, for varying periods of time.

Unfortunately, this self-destructive behavior continued when J.H. returned to pretrial detention in November 2013. Just two days in, J.H.'s dorm mates reported disturbing conduct to facility officials: J.H. had destroyed property by ripping a mattress and a shoe, punched the window with his hand, and threatened to harm and rape his dorm mates if they reported the conduct. That behavior was consistent with observations by J.H.'s own physician, who had recommended inpatient treatment for J.H. because J.H. "continue[d] to exhibit significant physically and verbally aggressive behaviors that [were] creating

extreme safety challenges at home for him and his family." Facility staff assessed the situation, recorded the reported incident, and moved J.H. to a single cell, apart from other children. Taking all of this together, there was a legitimate basis for believing J.H. was a threat to others, and for acting accordingly, to ensure safety given the specific confines of the detention facility. No case, to my knowledge, requires facility officials to allow open hostility between detainees, threatening their safety and indeed that of the officials themselves, all in the name of substantive due process. To the contrary, we afford those officials "wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." *Bell*, 441 U.S. at 547 (citing cases).

Given these legitimate safety concerns, the restrictions employed were not excessive. J.H. was placed in a single cell, away from other minors. The majority notes that J.H. "was not allowed to interact with any other juveniles." But facility officials, in achieving their prophylactic aim, took steps to limit J.H.'s isolation. J.H. had phone calls with his parents. He had regular in-person visits with his father. He had regular visits with his mother as well, until she tried to bring prescription medications into the facility without prior authorization, at which point her visits were limited to thirty minutes a week. J.H. also met with a doctor, a psychologist, his attorney, and his guardian ad litem. He conversed with the guards. He had books available in his cell, brought to him by his mother. And he was allowed to enjoy certain privileges outside of his cell, including visits to the "rec yard," exercising, watching T.V., and doing his homework

in the hallway. These measures sought to minimize the chances that J.H. would harm himself, and to honor the security concerns of the other detainees, who themselves enjoy constitutional protections from deliberate indifference of their detention officials. *See, e.g.*, *Farmer*, 511 U.S. at 837 (holding officials may be liable for deliberate indifference where they are aware of, and disregard, facts informing them of a substantial risk to inmate health or safety); *see also Richko*, 819 F.3d at 918 (finding genuine dispute as to deliberate indifference where jail officials placed inmate with history of violent assault and mental illness with cellmate whom he later assaulted, rather than placing him in a single cell). That J.H., for a time, could not be around other juveniles strikes me as a reasonable "judgment call" by the detention facility, given the many respective interests at stake. *See Bell*, 441 U.S. at 562; *see also id.* at 546-47 (noting the "central . . . corrections goal[ ] is the institutional consideration of internal security within the corrections facilities themselves" (quoting *Pell*, 417 U.S. at 823)).

It may be, as the majority contends, that some social science cautions against the use of solitary confinement, at least for longer periods of time, perhaps for minors in particular. Of course, many restrictions employed in the detention context may well be viewed in the same cautionary light, when utilized in a reckless manner. But there was nothing reckless about how these officials balanced the interests of J.H. with those of the other detainees. And more broadly, solitary confinement as a means of remedial action remains "a useful or necessary" discretionary option available to safety officials in their efforts "to protect prison employees or other inmates." *Davis v. Ayala*,

135 S. Ct. 2187 (2015) (Kennedy, J., concurring); *see also Higgs v. Carver*, 286 F.3d 437, 438 (7th Cir. 2002) (allowing prisoner segregation as "a jail's failure to take steps to prevent harm to the prisoner or to other prisoners might give rise to meritorious suits against the jail" (citation omitted)).

Back to *Bell*. There, the Supreme Court approved of a host of detainee-related practices, including intrusive body cavity searches, 441 U.S. at 558, and emphasized the myriad steps officials operating detention facilities may take to maintain security, *id.* at 540, 547, guard against inmate fights, *id.* at 555, and maintain discipline, *id.* at 546, even if those practices are "discomforting." *Id.* at 540; *see also Blackmon v. Sutton*, 734 F.3d 1237, 1242, 1244 (10th Cir. 2013) (Gorsuch, J.) (indicating that restraint chair may be appropriate where there is a "legitimate penological purpose," such as "when the detainee bears a weapon he refuses to release or otherwise poses a grave threat to himself or others" (citations omitted)). And those practices, it bears adding, need not be the least restrictive means available to accomplish an official's security objectives. *Block v. Rutherford*, 468 U.S. 576, 589 (1984) (upholding a complete ban on contact visitation even for low-risk detainees).

Taking all of this together, a safety-based restriction must simply be legitimate and not excessive for that purpose. *See Bell*, 441 U.S. at 538-39. Where legitimate factors support the restriction, the "limited scope of the judicial inquiry" is at an end. *Block*, 468 U.S. at 589 (citing *Bell*, 441 U.S. at 554). As well intentioned as is the majority, we nonetheless may not substitute our judgment for that of detention officials.

JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT (FEBRUARY 27, 2020)

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

J.H., BY CONSERVATOR BETTY HARRIS,

Plaintiff-Appellant,

v.

WILLIAMSON COUNTY, TENNESSEE; STEVE MCMAHAN; BETSY ADGENT,

Defendants-Appellees.

No. 18-5874

Appeal from the United States District Court for the Middle District of Tennessee at Nashville.

Before: COLE, Chief Judge, STRANCH and READLER, Circuit Judges.

THIS CAUSE was heard on the record from the district court and was argued by counsel.

IN CONSIDERATION THEREOF, it is ORDERED that the district court's grant of summary judgment to Williamson County, Steve McMahan, and Betsy Adgent is AFFIRMED.

ENTERED BY ORDER OF THE COURT

/s/ Deborah S. Hunt
Clerk

MEMORANDUM ORDER OF THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE (JULY 5, 2018)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

J.H., by Conservator BETTY HARRIS,

Plaintiff,

v.

WILLIAMSON COUNTY, TENNESSEE, BETSY ADGENT, STEVE MCMAHAN, and JUAN CRUZ,

Defendants.

No. 3-14-2356

Before: Aleta A. TRAUGER,
United States District Judge.

Pending before the court are Plaintiff's Motion for Summary Judgment (Docket No. 305); Defendant Williamson County's Motion for Judgment on the Pleadings or, Alternatively, Motion for Summary Judgment (Docket No. 310); Defendant McMahon's Motion for Judgment on the Pleadings or, Alternatively, Motion for Summary Judgment (Docket No. 311); and Defendant Adgent's Motion for Judgment on the Pleadings or,

Alternatively, Motion for Summary Judgment (Docket No. 312).[1]

Factual Background

Plaintiff J.H. was, at all relevant times, a minor child residing in Williamson County, Tennessee. This action was brought on J.H.'s behalf by his mother, Betty Harris, who was later appointed his Conservator. Defendant Williamson County owns and operates the Williamson County Juvenile Detention Center ("the Center"). Defendant Cruz was an employee at the Center during the relevant time period. Defendant McMahon was Supervisor of the Center, and Defendant Adgent was Director of Juvenile Services for the Williamson County Juvenile Court. Defendant Guffee was the Williamson County Juvenile Court Judge.

On multiple occasions in 2013, J.H. was incarcerated in the Center. This action, brought pursuant to 42 U.S.C. § 1983, alleges that, while J.H. was detained in the Center in November and December of 2013,[2] Defendants violated his rights under the Fourteenth Amendment to the U.S. Constitution through alleged solitary confinement, failure to provide adequate medical and mental health care, and an alleged sexual assault by Defendant Cruz.

Because he was a pretrial detainee at all relevant times, Plaintiff's Eighth Amendment claims have

---

[1] Defendant Cruz has not filed a dispositive motion.

[2] The Complaint in this action was filed on December 16, 2014. (Docket No. 1). Although all Defendants raised the statute of limitations as an affirmative defense (*see* Docket Nos. 22 and 23), no one has raised the statute of limitations as an argument on summary judgment.

been dismissed. Docket No. 217. Plaintiff's original claim for violations of the Americans with Disabilities Act, claims based upon certain decisions of Juvenile Court Judge Guffee[3] and claims based upon any actions by the other Defendants to implement Guffee's December 9, 2013 judicial decision have also been dismissed. *Id.*

In response to Defendants' Motion for Summary Judgment, Plaintiff conceded that there is insufficient evidence to support his claim concerning the hiring of Defendant Cruz. Docket No. 334, p. 6. Plaintiff also represented that he is no longer pursuing a claim for violation of the Prison Rape Elimination Act ("PREA"). *Id.*, p. 21. Further, Plaintiff stated that he has no authority to establish that a detained juvenile has a constitutional right to educational services. *Id.*, p. 22. Plaintiff conceded that his claim for punitive damages against Williamson County should be dismissed (*Id.*, p. 25), but the Complaint does not seek punitive damages from any Defendant (Docket No. 1, p. 22), so that claim is not before the court. Plaintiff also has conceded that his state law claims for negligent and intentional infliction of emotional distress should be dismissed. Docket No. 337, p. 24.

Accordingly, Plaintiff's claims related to the hiring of Defendant Cruz, claims for violation of the PREA, claims for failure to provide educational services, and state law claims for negligent and intentional infliction of emotional distress will be dismissed.

Because the parties have filed statements of undisputed facts in accordance with Fed. R. Civ. P. 56,

---

[3] All claims against Defendant Guffee have been dismissed.

and the court is considering evidence outside the pleadings, the court will address Defendants' motions as motions for summary judgment. The operative Complaint is the original Complaint (Docket No. 1). The remaining claims are claims for violations of the Fourteenth Amendment based upon alleged solitary confinement, failure to provide medical and mental health services, and the alleged sexual assault.

Summary Judgment

Summary judgment is appropriate where there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Pennington v. State Farm Mut. Automobile Ins. Co.*, 553 F.3d 447, 450 (6th Cir. 2009). The party bringing the summary judgment motion has the initial burden of informing the court of the basis for its motion and identifying portions of the record that demonstrate the absence of a genuine dispute over material facts. *Rodgers v. Banks*, 344 F.3d 587, 595 (6th Cir. 2003). The moving party may satisfy this burden by presenting affirmative evidence that negates an element of the non-moving party's claim or by demonstrating an absence of evidence to support the nonmoving party's case. *Id.*

In deciding a motion for summary judgment, the court must review all the evidence, facts and inferences in the light most favorable to the nonmoving party. *Van Gorder v. Grand Trunk Western Railroad, Inc.*, 509 F.3d 265, 268 (6th Cir. 2007). The court does not, however, weigh the evidence, judge the credibility of witnesses, or determine the truth of the matter. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). The court determines whether sufficient

evidence has been presented to make the issue of fact a proper jury question. *Id.* The mere existence of a scintilla of evidence in support of the nonmoving party's position will be insufficient to survive summary judgment; rather, there must be evidence on which the jury could reasonably find for the nonmoving party. *Rodgers*, 344 F.3d at 595.

Section 1983

Plaintiff brings this action pursuant to 42 U.S.C. § 1983, which provides a private right of action against anyone who subjects any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights or privileges secured by the Constitution and laws of the United States. *Rehbueg v. Paulk*, 132 S. Ct. 1497, 1501 (2012). A person suing under this statute must demonstrate the denial of a constitutional right caused by a defendant acting under color of state law. *Epperson v. City of Humboldt*, 183 F.Supp.3d 897, 903 (W.D. Tenn. 2016); *Carl v. Muskegon County*, 763 F.3d 592, 595 (6th Cir. 2014). The Eighth Amendment provides an inmate the right to be free from cruel and unusual punishment. *Richmond v. Huq*, 885 F.3d 928, 937 (6th Cir. 2018). The Due Process Clause of the Fourteenth Amendment provides the same protections to pretrial detainees. *Id.*[4]

---

[4] As a pretrial detainee, a plaintiff is protected by the Fourteenth Amendment from conduct that the Eighth Amendment would prohibit as against individuals who have been tried, convicted and sentenced. *Thompson v. Cheatham County Jail*, 2018 WL 1920415 at * 3 (M.D. Tenn. Apr. 24, 2018); *Richko v. Wayne Cty, Mich.*, 819 F.3d 907, 915 (6th Cir. 2016). The Sixth Circuit has made clear that, under the Fourteenth Amendment, pretrial detainees are entitled to the same Eighth Amendment rights as other inmates. *Id.*

Proving an Eighth Amendment (or, in this case, Fourteenth Amendment) claim requires that the plaintiff make a showing of deliberate indifference. *Villegas v. Metropolitan Gov't of Nashville and Davidson Cty.*, 709 F.3d 563, 568 (6th Cir. 2013). Deliberate indifference has two components, objective and subjective. The objective component demands a showing that the detainee faced a substantial risk of serious harm and requires the court to assess whether society considers the risk about which the prisoner complains to be so grave that it violates contemporary standards of decency. *Id.* (quoting *Helling v. McKinney*, 113 S. Ct. 2475 (1993)).

As to the subjective component, a plaintiff must show that the defendant had a "sufficiently culpable state of mind." *Villegas*, 709 F.3d at 569 (quoting *Harrison v. Ash*, 539 F.3d 510, 518 (6th Cir. 2008)). This state of mind is shown where the official knows of, and disregards, the substantial risk of serious harm facing the detainee. *Id.* A prison official acts with deliberate indifference when he knows of, and disregards, an excessive risk to inmate health or safety. *Baynes v. Cleland*, 799 F.3d 600, 618 (6th Cir. 2015). An 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 that inference. *Id.*[5]

---

[5] Deliberate indifference is characterized by obduracy or wantonness; it cannot be predicated on negligence, inadvertence or good faith error. *Reilly v. Vadlamudi*, 680 F.3d 617, 624 (6th Cir. 2012).

Solitary Confinement

Plaintiff's Motion

J.H. alleges that, on November 15, 2013, he was incarcerated at the Center and housed in a dormitory-type cell with other juveniles. He contends that, on November 17, 2013,[6] he was removed from the dormitory cell to a single cell, based upon an incident report from three other juveniles at the Center about his behavior. J.H. argues that this housing placement was a form of punishment that was cruel and unusual in violation of his constitutional rights.[7] J.H. submits that he had no meaningful social contact while in the single cell.

Defendants, on the other hand, argue that J.H. was placed in a single cell as a safety and preventative measure—safety for himself and for other detainees—not for punitive or disciplinary reasons. Defendants contend that, while in the single cell housing, J.H. continued to interact with Center employees and had visits from his guardian ad litem, his attorney, a psychologist, an advocate, and his parents. Defendants assert that, even though he was in a single cell, J.H. was allowed time in the TV room, recreation time, and time in the hallways to work on homework.

---

[6] On December 9, 2013, Judge Guffee ordered that J.H. remain segregated. Allegations related to that Order and actions taken by Defendants to implement it have already been dismissed. Docket No. 217. Therefore, this Opinion addresses J.H.'s single cell placement from November 17 until December 9, 2013, only.

[7] Plaintiff also contends that Defendants placed him in "solitary confinement" without procedural due process, but that claim was not pled in the Complaint.

There are genuine issues of material fact as to whether J.H. was placed in a single cell as punishment or for safety reasons.[8] *See* Docket No. 333-1 at ¶¶ 53-58, 67-69, 73-74 and 162; Docket No. 344 at ¶¶ 52, 83-84, 86, 88, 92, 295-98, 301-02, and 307-08. J.H. claims that he was put in a single cell as punishment, but McMahan, Adgent and Judge Guffee all testified that J.H. was never segregated for disciplinary purposes or punishment.

Moreover, there are genuine issues of material fact as to how much social interaction J.H. had while housed in the single cell.[9] *See* Docket No. 333-1 at ¶¶ 59-64, 162 and 164; Docket No. 344 at ¶¶ 105-06, 237, 242-43, 255-59, 305 and 307-10. For example, J.H. claims he was in "full isolation," while Defendants have testified that he continued to interact with Center employees and had visits from his guardian ad litem, his attorney, a psychologist, an advocate, and his parents. As noted above, Defendants assert that, even though he was in a single cell, J.H. was allowed time in the TV room, recreation time, and time in the hallways to work on homework.

Plaintiff is not entitled to summary judgment on this issue because there are genuine issues of material fact as to what actually happened and why.

---

[8] Plaintiff himself posits that determining whether restrictions imposed on Plaintiff during his detention constituted punitive measures implicating due process or were permissible regulatory restraints requires the trier of fact to consider whether detention facility officials expressed an intent to punish. Docket No. 306, p. 13. That issue involves disputed factual questions.

[9] Plaintiff admits these facts are in dispute. Docket No. 334, pp. 16 and 19.

The Individual Defendants' Motion

Steve McMahan and Betsy Adgent first argue that Plaintiff has failed sufficiently to allege their personal involvement in this alleged constitutional violation. The Complaint's allegations against McMahan and Adgent, specifically with regard to the alleged solitary confinement, are sparse. Paragraph 17 alleges that Guffee, Adgent and McMahan "acted in concert allowing the continuing course of conduct violating the constitutional rights of the plaintiff." Paragraph 33 alleges that "J.H. was pulled from the dorm cell and put in a solitary cell." It does not attribute this conduct to any specific person. Finally, paragraph 66 states that the "defendants specifically and knowingly violated the State and Federal standards regarding the solitary confinement of the child," again attributing this conduct to no specific defendant.[10]

Plaintiff has conceded that Adgent was not responsible for housing and classification decisions in the Center. Docket No. 333-1, ¶ 203. Therefore, his "solitary confinement" claim against Defendant Adgent will be dismissed. Defendants have stated that the housing and classification decisions in the Center were the responsibility of the detention supervisor and intake officers. *Id.* Defendant McMahan was the detention supervisor. Plaintiff's allegations against Defendant McMahan concerning this issue are sufficient to allege his personal involvement.

---

[10] The Complaint alleges, in paragraph 70, that Defendant Adgent, after speaking with Judge Guffee, denied the parents access to the child and left him in solitary confinement after he had been assaulted. To the extent this paragraph references Guffee's December 9, 2013 Order, claims related to that Order have been dismissed.

McMahan contends, however, that he is entitled to qualified immunity from this claim. The doctrine of qualified immunity protects government officials from liability for civil damages insofar as 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). Although the defendant bears the burden of pleading this defense, the plaintiff must show that the defendant is not entitled to qualified immunity. *Hayden v. Green*, 640 F.3d 150, 153 (6th Cir. 2011). Determinations of qualified immunity require the court to answer two questions: (1) whether the officer violated a constitutional right, and (2) whether that right was clearly established in light of the specific context of the case. *Hayden*, 640 F.3d at 153.[11]

McMahan denies that J.H. was placed in "solitary confinement." Nonetheless, he argues that, even if J.H.'s detention could properly be characterized as such, the law in late 2013 was not "clearly established" concerning a juvenile detainee's right not to be placed into a solitary cell. The law has changed considerably on this issue since 2013, and McMahan contends that these new measures represent a significant departure from the standards in effect in 2013.

Plaintiff cites a 2010 case, *Graham v. Florida*, 560 U.S. 48 (2010), to argue that the standard of care for juveniles is different than the standard of care for

---

[11] "The judges of the district court and the courts of appeals should be permitted to exercise their sound discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand." *Pearson*, 129 S. Ct. at 818.

adults. That case, however, does not stand for the proposition that juveniles should never be placed in a single cell. In *Graham*, the Court held that a juvenile offender who did not commit homicide could not be sentenced to life without parole. Other cases prior to 2013 prohibited the death penalty for juveniles. *See, e.g.*, *Roper v. Simmons*, 543 U.S. 551 (2005). Plaintiff does not cite a case decided before 2013 involving alleged solitary confinement of a juvenile detainee.

Plaintiff's reliance upon *Davis v. Ayala*, 135 S. Ct. 2187 (2015) is misplaced. That case was decided two years after the alleged misconduct here, so the holdings in *Davis* could not have been "clearly established" in 2013. Moreover, Plaintiff's citation is to the concurrence by Justice Kennedy, in which Kennedy admitted that his separate writing had no direct bearing on the precise legal questions presented by the case. The inmate in *Davis* was a death row prisoner and not a juvenile. The precise details of the inmate's conditions of confinement in *Davis* were not in the record. Kennedy simply argued that consideration of the issue of solitary confinement was needed. *Id.* at 2210. He also stated that "prison officials must have discretion to decide that in some instances temporary, solitary confinement is a useful or necessary means to impose discipline and to protect prison employees and other inmates." *Id.* Kennedy's concerns are further evidence that, even in 2015, the law as to the constitutionality of solitary confinement, even for adult prisoners, was not clearly established. Plaintiff also cites numerous publications, studies and expert scholarship to support his claim that, in 2013, it was clearly established that solitary confinement for juveniles was unconstitutional. Law review articles and

United Nations Resolutions are not "clearly established" legal authority for purposes of qualified immunity.

This court held, in 2017, that solitary confinement of juveniles in government custody for punitive or disciplinary reasons, especially for extended periods of time and especially for youth who may suffer from mental illness, violates the Eighth Amendment's prohibition against the inhumane treatment of detainees. *Doe v. Hommrich*, 2017 WL 1091864 at * 2 (M.D. Tenn. March 22, 2017). However, *Doe* was decided more than three years after the behavior alleged in this case, and the court limited its holding in *Doe* to solitary confinement for punitive or disciplinary reasons.

Plaintiff has not shown that it was clearly established in 2013 that placing a juvenile detainee in a single cell would violate his constitutional right to be free from cruel and unusual punishment.[12] For purposes of qualified immunity, even if McMahon did violate J.H.'s constitutional rights, which the court does not find, those rights were not clearly established. Therefore, McMahan is entitled to qualified immunity, and Plaintiff's "solitary confinement" claim against Defendant McMahan will be dismissed.

Williamson County's Motion

Defendant Williamson County has also moved for summary judgment on this issue, arguing that the Complaint fails to contain allegations supporting municipal liability. Municipalities are not vicariously

---

[12] To the extent the parties have tendered expert opinions concerning this issue, no expert testimony is needed. Whether the law on solitary confinement for juveniles was "clearly established" is a question of law.

liable for the actions of their employees. *Bible Believers v. Wayne Cty., Mich.*, 805 F.3d 228, 260 (6th Cir. 2015). To establish municipal liability under Section 1983, a plaintiff must demonstrate that the alleged constitutional harm occurred because of a municipal policy or custom. *Burgess v. Fischer*, 735 F.3d 462, 478 (6th Cir. 2013). The plaintiff must establish that his harm was caused by a constitutional violation and that a policy or custom of the municipality was the "moving force" behind the deprivation of the plaintiff's rights. *Miller v. Sanilac County*, 606 F.3d 240, 255 (6th Cir. 2010). Municipalities are liable for harms resulting from a constitutional violation only when the injury resulted from an implementation of the municipality's official policies or established customs. *Miller*, 606 F.3d at 255. The plaintiff must also demonstrate a direct causal link between the policy and the alleged constitutional violation in order to show that the municipality's deliberate conduct can be deemed the "moving force" behind the violation. *Abriq v. Hall*, 295 F.Supp.3d 874, 878 (M.D. Tenn. 2018).

"Official policy" often refers to formal rules or understandings—often but not always committed to writing—that are intended to, and do, establish fixed plans of action to be followed under similar circumstances consistently and over time. *Spears v. Ruth*, 589 F.3d 249, 256 (6th Cir. 2009). A municipality can be shown to have a "custom" causing constitutional violations, even if that custom was not formally sanctioned, provided that the plaintiff offers proof of policymaking officials' knowledge of and acquiescence in the established practice. *Spears*, 589 F.3d at 256. A plaintiff can make a showing of an illegal policy or custom by demonstrating one of the following: (1) the

existence of an illegal official policy or legislative enactment; (2) that an official with final decision making authority ratified illegal actions; (3) the existence of a policy of inadequate training or supervision; or (4) the existence of a custom of tolerance of, or acquiescence in, federal rights violations. *Burgess v. Fischer*, 735 F.3d 462, 478 (6th Cir. 2013).

The Complaint alleges that the policies and customs of the officials and policy makers for the juvenile detention center were the moving force behind the constitutional violations perpetrated against the Plaintiff. Docket No. 1, ¶ 11. Plaintiff also alleges that Williamson County's deliberate indifference to the supervision and training of juvenile detention personnel was a moving force behind the constitutional violations perpetrated on the Plaintiff. *Id.*, ¶ 12. Plaintiff asserts that the "events that occurred" constituted a continuing course of conduct of treatment in the juvenile detention facility that violated the constitutional rights of the Plaintiff. *Id.*, ¶ 16. Count I of the Complaint, "Violations of Constitutional Rights," however, does not mention a policy, custom or practice of Williamson County. Docket No. 1, p. 18.

Plaintiff contends that the Complaint sufficiently alleges that Adgent and McMahan both worked in supervisory/policymaker roles at the Center and that the decision to hold J.H. in solitary confinement was made by one or both of them. Docket No. 334, p. 5. As noted above, Plaintiff has conceded that Adgent was not responsible for housing and classification decisions in the Center, Docket No. 333-1, ¶ 203, and the "solitary confinement" claims against both Defendants Adgent

and McMahan have been dismissed.[13] Moreover, Plaintiff has not alleged or shown that Williamson County had a practice or custom of placing juvenile detainees in "solitary confinement." The Complaint does not allege any other instance of a juvenile being placed in a solitary cell so as to show a practice or custom.

Plaintiff alleges that Williamson County was deliberately indifferent in its supervision and training of juvenile detention personnel, resulting in the alleged violation of Plaintiff's right to be free from solitary confinement. Because the court has dismissed the claims against Adgent and McMahan for placing Plaintiff in a single cell, the supervision and training of Adgent and McMahan were not moving forces behind any constitutional violation related to this placement.

Moreover, the Sixth Circuit has held that when a municipality's alleged responsibility for a constitutional violation stems from an employee's unconstitutional act, the city's failure to prevent the harm must be shown to be deliberate under rigorous requirements of culpability and causation. The violated right in a deliberate indifference case thus must be clearly established because a municipality cannot deliberately shirk a constitutional duty unless that duty is clear. *Arrington-Bey v. City of Bedford Heights, Ohio*, 858 F.3d 988, 995 (6th Cir. 2017).

---

[13] With regard to McMahan, even if Plaintiff's allegation that McMahan made the decision to place J.H. in a solitary cell is accepted as true, there is no allegation that McMahan made that decision pursuant to a policy of Williamson County. Plaintiff has not pointed to a specific policy of Williamson County that caused McMahan to take any actions related to J.H.'s housing at the Center.

For these reasons, Plaintiff's claims against Williamson County with regard to the alleged solitary confinement will be dismissed.

Denial of Medical/Mental Health Care

The Complaint alleges that Defendants specifically and knowingly failed to assure that J.H. had adequate medical and mental health treatment while he was incarcerated. A prisoner's Eighth (or Fourteenth) Amendment right is violated when prison officials are deliberately indifferent to the prisoner's serious medical needs. *Quigley v. Thai*, 707 F.3d 675, 681 (6th Cir. 2013).

As noted above, a constitutional claim for deliberate indifference contains both an objective and a subjective component. The objective component requires a plaintiff to show the existence of a "sufficiently serious" medical need. *Burns v. Robertson Cty.*, 192 F.Supp.3d 909, 920 (M.D. Tenn. 2016). A medical need is objectively serious if it is one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention. *Id.*; *Villegas*, 709 F.3d at 579. To satisfy the subjective component, a plaintiff must show that the defendant subjectively perceived facts from which to infer substantial risk to the prisoner, that he did in fact draw that inference, and that he then disregarded that risk. *Quigley*, 707 F.3d at 681. The term "deliberate indifference" describes a state of mind more blameworthy than negligence. *Harrison v. Ash*, 539 F.3d 510, 518 (6th Cir. 2008).

The Complaint alleges that Defendants failed to provide adequate medical and mental health treatment

to J.H. while he was incarcerated. Docket No. 1, ¶ 69.[14] J.H. also avers that, after the alleged sexual assault by Defendant Cruz on December 7, 2013, he was put back into "isolation" without any medical attention and was not provided any counseling. *Id.*, ¶¶ 54 and 57. Plaintiff argues that there was ample evidence in his detention records to indicate that he suffered from severe mental health issues. He states that Defendants knew J.H. had a treating psychiatrist, Dr. Sparks-Bushnell, and a neurologist, Dr. Latimer, and yet they failed to report J.H.'s condition to either physician. He alleges that his numerous and documented behaviors reflected a serious need for mental health intervention. Those behaviors were, in fact, documented for Dr. Moore, who evaluated J.H. at The Guidance Center. She did not recommend emergency counseling or crisis intervention care in response.

Plaintiff has admitted that, throughout the time he was housed at the Center, no medical provider made any written request to Defendants for any accommodation of Plaintiff's diagnosis of PANDAS,[15] other than his prescribed medication. Docket No. 333-1, ¶ 29. Plaintiff has admitted that personnel at the Center administered oral antibiotics as prescribed by J.H.'s doctor, Dr. Latimer, and psychiatric medications as prescribed by his treating psychiatrist, Dr. Sparks-Bushnell. *Id.*, ¶¶ 30 and 98. Plaintiff asserts

---

[14] The Complaint also alleges that Defendants violated the PREA by failing to provide adequate medical care (Docket No. 1, ¶ 62k), but the PREA claim has been dismissed.

[15] PANDAS stands for Pediatric Autoimmune Neuropsychiatric Disorders Associated with Streptococcal Infections. Docket No. 1, ¶ 20.

that his mother gave a handwritten note to detention personnel regarding his medication, but McMahan testified that detention personnel followed the instructions of physicians on the prescription bottle, not notes provided by a detainee's mother. *Id.*, ¶¶ 100-101; Docket No. 344, ¶ 82.[16] Plaintiff's mother also told detention personnel that she was supposed to be adjusting J.H.'s medications and experimenting based upon his reactions, but she produced no medical documentation supporting this contention, and the detention staff was required to give medication based upon medical direction. *Id.*, ¶ 118.

Plaintiff was examined at the Center by a licensed practical nurse on December 5, 2013. Docket No. 333-1, ¶ 96. He was taken by detention staff to undergo an MRI ordered by Dr. Latimer and transported by detention staff to an appointment with his treating psychiatrist. *Id.*, ¶¶ 27 and 104. Plaintiff complains that McMahan did not make arrangements for J.H. to attend one of his appointments with Dr. Latimer, but that appointment was after Guffee's Order requiring J.H. to remain detained in a single cell. McMahan had no authority to release him without another court order.[17]

Plaintiff's parents did not request counseling for him after the alleged assault. Docket No. 333-1, ¶ 166. Plaintiff's mother stated that she did not know of any

---

[16] Indeed, the reason J.H.'s mother's visits were restricted by Judge Guffee is because she attempted to bring him medication not prescribed for him. Docket No. 333-1, ¶ 88.

[17] Plaintiff agreed that Judge Guffee's November 22, 2013 Order blocked him from attending a December 5, 2013 appointment with Dr. Latimer. Docket No. 333-1, ¶ 90.

request by J.H.'s attorney, his guardian ad litem, or his advocate from the Disability Law Advocacy Center that Defendants provide counseling to J.H. after the alleged assault. *Id.*, ¶ 165. J.H. did see a psychologist at The Guidance Center, Dr. Moore, who conducted a court-ordered evaluation of J.H. after the alleged assault. She did not recommend any emergency counseling or crisis intervention care for J.H. *Id.*, ¶¶ 189 and 193.

In this Circuit, providing grossly inadequate medical care to an involuntary detainee *may* amount to deliberate indifference. *Burns*, 192 F.Supp.3d at 920. In *Burns*, the detainee committed suicide while in detention. The court stated that mental illness that places an individual at risk of committing suicide satisfies the objective component of a deliberate indifference claim. *Id.*, p. 921. There is no indication here that J.H. was at risk of committing suicide or that he did, in fact, attempt to harm himself in any way.

In *Quigley*, the plaintiff alleged that the prison psychiatrist caused an inmate's death through reckless and grossly negligent care resulting in a fatal drug interaction. *Quigley*, 707 F.3d at 677-78. The inmate was given two medications for his depression. Medical experts testified that the two drugs exponentially increased the potency of one another, led to toxic levels and were deadly. *Id.* at 682. The court found a genuine issue of material fact as to whether the prison psychiatrist consciously exposed the patient to an excessive risk of serious harm. *Id.* Here, there is no allegation that Defendants created or allowed a similarly serious risk of harm or that J.H. did, in fact, suffer anything close to death.

In fact, Plaintiff's evidence of harm caused by any failure to provide medical/mental health care is weak. J.H.'s treating psychiatrist's records indicate that, on December 6, 2013, after he had been in the Center for several weeks, Plaintiff was calm, his paranoia was "much better," his compulsions to engage in bad behavior had gone from a ten out of ten to a zero out of ten, and he no longer felt the need to secretly hoard his medication and take several doses at once. Docket No. 333-1, ¶ 105. The Complaint alleges that Dr. Sparks-Bushnell opined, on December 6, 2013, that J.H.'s psychotic symptoms had dramatically reduced after his IVIG (intravenous immunoglobulin) treatments prescribed by Dr. Latimer. Docket No. 1, ¶ 44. The competency evaluation by Dr. Moore, dated December 17, 2013, indicates that J.H. did not evidence delusional thoughts or beliefs and that he was competent to proceed to adjudication. Docket No. 344, ¶ 252. In addition, the medical records of Dr. Latimer from December 20, 2013 state that J.H. appeared more calm and in less distress. *Id.*

Even in cases where prison officials actually know of a substantial risk to inmate health and safety, they may nonetheless be found free from liability if they reasonably respond to the risk. *Harrison*, 539 F.3d at 519 (citing *Farmer v. Brennan*, 511 U.S. 825, 844 (1994)). The court finds that it was reasonable for Adgent and McMahan to follow the instructions of medical providers concerning J.H.'s medication and to believe that any additional counseling or mental health treatment would be set up by J.H.'s parents or guardian ad litem or ordered by his medical providers. J.H. was under the care of at least two private physicians, presumably paid for by his parents. It is

not unconstitutional for municipalities and their employees to rely on medical judgments made by medical professionals concerning inmate care. *Graham v. County of Washtenaw*, 358 F.3d 377, 384 (6th Cir. 2004). Here, Defendants relied on the medical judgments, prescriptions and directions from J.H.'s treating psychiatrist, his PANDAS doctor, and a counselor at The Guidance Center.

Plaintiff was provided medical and mental health treatment while he was at the Center. That treatment may not have been exactly what his mother wanted, but he was provided treatment, and there is no medical evidence of harm from that treatment.[18] For these reasons, Plaintiff's Motion on the issue of medical and mental health services will be denied, and Defendants' Motions on this issue will be granted. Plaintiff's claims for denial of medical and mental health services will be dismissed.

Alleged Sexual Assault

Plaintiff's Motion

Plaintiff alleges that Defendant Cruz violated his constitutional rights[19] by sexually assaulting him on December 7, 2013, while he and Cruz were cleaning the intake room. The Complaint alleges that, as a result of this assault, J.H. suffered "emotional decom-

---

[18] Plaintiff cites to the deposition of Ann Nelsen concerning the lack of screening, assessments, and other medical care and mental health services provided to Plaintiff, but both Nelsen and Plaintiff have admitted that Nelsen is not a medical expert. (Docket No. 308-38, p. 39; Docket No. 333-1, ¶ 198).

[19] There is no state law claim in the Complaint for sexual assault.

pensation" and, four days later, his anxiety level was "exaggerated." Docket No. 1, ¶¶ 54 and 58. Plaintiff's Motion for Summary Judgment asks the court to find that Cruz sexually assaulted Plaintiff. Clearly there are genuine issues of material fact as to this issue.

Cruz has maintained since the alleged assault that he did not, at any time, assault J.H. Plaintiff is unable to show that there are no genuine issues of material fact with regard to the alleged assault or that he is entitled to judgment as a matter of law on this issue. Accordingly, Plaintiff's Motion as to the alleged sexual assault Cruz will be denied.

Because there are disputed facts as to this alleged assault, Plaintiff also is not entitled to summary judgment on his claim against Williamson County, Adgent and McMahan for failure adequately to train or supervise Cruz so as to prevent a sexual assault. If no sexual assault occurred, nothing about the training or supervision or lack thereof was a proximate cause of any harm. Therefore, Plaintiff's Motion for Summary Judgment against all Defendants will be denied.

Adgent and McMahan's Motions

Plaintiff's claims concerning the hiring of Defendant Cruz have been dismissed. In addition, Plaintiff has agreed that his claims for failure to train and supervise are against Adgent and McMahan in their official capacities only, so those claims are against the county. Therefore, there are no claims for failure to train and supervise against Adgent and McMahan individually, their Motions for Summary Judgment as to those claims will be granted, and those claims,

against them in their individual capacities, will be dismissed.[20]

County's Motion

As noted, Plaintiff's claim against Williamson County concerning the hiring of Defendant Cruz has been dismissed. There are genuine issues of material fact as to whether this alleged sexual assault actually occurred. Even accepting that it did occur, however, in order to show municipal liability, Plaintiff must still demonstrate that the alleged assault was proximately caused by a policy, practice or custom of Williamson County.[21] Certainly Williamson County had no policy that juvenile detention personnel should sexually assault detainees. Plaintiff's claim is that Williamson County failed to train and supervise Cruz, resulting in the alleged assault.

To state a municipal liability claim under an "inaction" theory like this, Plaintiff must establish: (1) the existence of a clear and persistent pattern of sexual assault by Center employees or by Cruz in particular; (2) notice or constructive notice on the part of the County; (3) the County's tacit approval of the unconstitutional conduct such that its deliberate

---

[20] The Complaint purports to allege a claim against Adgent and McMahan in their personal capacities for "their negligence in the hiring, training, retention, and supervision of Juan Cruz. Docket No. 1, ¶ 15. It is well established that negligence does not give rise to a constitutional violation. *Dotson v. Correctional Medical Services*, 584 F.Supp.2d 1063, 1067 (W.D. Tenn. 2008).

[21] A municipality cannot be held liable for constitutional violations based solely on a *respondeat superior* theory. *Radvansky v. City of Olmsted Falls*, 395 F.3d 291 (6th Cir. 2005) (citing *Monell v. Dep't of Soc. Servs*, 436 U.S. 658, 691 (1978)).

indifference in its failure to act can be said to amount to an official policy of inaction; and (4) the County's policy or custom of inaction was the moving force or direct causal link in the constitutional deprivation. *Doe v. Claiborne County, Tenn.*, 103 F.3d 495, 508 (6th Cir. 1996). The evidence must show that the need to act is so obvious that the municipality's decision not to act can be said to amount to a policy of deliberate indifference to the plaintiff's constitutional rights. *Cole v. City of Memphis*, 97 F.Supp.3d 947, 959 (W.D. Tenn. 2015) (citing *Doe*, 103 F.3d at 508).

As indicated above, to be "deliberately indifferent," an official must know of, and disregard, a substantial risk of serious harm facing the detainee. The evidence must show that the need to act is so obvious that the defendant's "conscious" decision not to act can be said to amount to a "policy" of deliberate indifference to the plaintiff's constitutional rights. *Doe*, 103 F.3d at 508. Even if the court accepts that the assault occurred, Plaintiff has failed to show that Williamson County knew of any substantial risk of Cruz sexually assaulting J.H. In other words, Plaintiff has failed to show notice or constructive notice to the County that such an incident would likely occur. Plaintiff has shown no pattern or practice of <u>any</u> sexual assaults at the Center, let alone any such assaults by Defendant Cruz.

Plaintiff contends that the County created an "intolerably dangerous exposure" to sexual assault, but he fails to establish how this occurred. Plaintiff has not shown facts to support that any prior misconduct by Cruz would have provided actual or constructive notice to the County. Plaintiff has also failed to show that any other sexual assaults occurred at the Center or that Defendants had notice of a substantially

serious risk of such misconduct. The court finds that Plaintiff has failed to demonstrate, for purposes of summary judgment, that, even if this alleged assault did occur, any policy, custom or practice of Williamson County was the "moving force" behind that assault. Accordingly, Williamson County's Motion for Summary Judgment on this issue will be granted.

Conclusion

For the reasons stated herein, Plaintiff's Motion for Summary Judgment (Docket No. 305) will be denied; Defendant Williamson County's Motion for Judgment on the Pleadings or, Alternatively, Motion for Summary Judgment (Docket No. 310) will be granted; Defendant McMahon's Motion for Judgment on the Pleadings or, Alternatively, Motion for Summary Judgment (Docket No. 311) will be granted; and Defendant Adgent's Motion for Judgment on the Pleadings or, Alternatively, Motion for Summary Judgment (Docket No. 312) will be granted.

Accordingly, Plaintiff's claims for violations of the Fourteenth Amendment for placement in solitary confinement, denial of medical and mental health services, and for sexual assault against Defendants Williamson County, Adgent and McMahan will be dismissed. The remaining claim is Plaintiff's claim against Defendant Cruz for violation of his constitutional rights by sexually assaulting him.

IT IS SO ORDERED.

ENTER this 5th day of July 2018.

/s/ Aleta A. Trauger
United States District Judge

ORDER OF THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE (JULY 5, 2018)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

J.H., by Conservator BETTY HARRIS,

Plaintiff,

v.

WILLIAMSON COUNTY, TENNESSEE, BETSY ADGENT, STEVE MCMAHAN, and JUAN CRUZ,

Defendants.

No. 3-14-2356

Before: Aleta A. TRAUGER,
United States District Judge.

Pending before the court are Plaintiff's Motion for Summary Judgment (Docket No. 305); Defendant Williamson County's Motion for Judgment on the Pleadings or, Alternatively, Motion for Summary Judgment (Docket No. 310); Defendant McMahon's Motion for Judgment on the Pleadings or, Alternatively, Motion for Summary Judgment (Docket No. 311); and Defendant Adgent's Motion for Judgment on the Pleadings or,

Alternatively, Motion for Summary Judgment (Docket No. 312).

For the reasons stated in the accompanying Memorandum, Plaintiff's Motion for Summary Judgment (Docket No. 305) is DENIED; Defendant Williamson County's Motion for Judgment on the Pleadings or, Alternatively, Motion for Summary Judgment (Docket No. 310) is GRANTED; Defendant McMahon's Motion for Judgment on the Pleadings or, Alternatively, Motion for Summary Judgment (Docket No. 311) is GRANTED; and Defendant Adgent's Motion for Judgment on the Pleadings or, Alternatively, Motion for Summary Judgment (Docket No. 312) is GRANTED.

Accordingly, Plaintiff's claims for violations of the Fourteenth Amendment for placement in solitary confinement, denial of medical and mental health services, and for sexual assault against Defendants Williamson County, Adgent and McMahan will be dismissed. The remaining claim is Plaintiff's claim against Defendant Cruz for violation of his constitutional rights by sexually assaulting him.

IT IS SO ORDERED.

ENTER this 5th day of July 2018.

/s/ Aleta A. Trauger
United States District Judge

ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT DENYING PETITION FOR REHEARING EN BANC (APRIL 20, 2020)

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

J.H., by Conservator BETTY HARRIS,

Plaintiff-Appellant,

v.

WILLIAMSON COUNTY, TENNESSEE; STEVE MCMAHAN; BETSY ADGENT,

Defendants-Appellees.

No. 18-5874

Before: COLE, Chief Judge, STRANCH and READLER, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

/s/ Deborah S. Hunt
Clerk