IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

GARY E. BLIZZARD,	)	
	)	
Plaintiff,	)	
	)	C.A. No. 95-110-GMS
v.	)	
	)	
GERALD FLAHERTY, Lieutenant RICK KEARNEY, Warden, PAUL WALKER, Captain, JOE MAGRATH, Lieutenant, ANTHONY RENDINA, and UNKNOWN DEFENDANTS,	)	
	)	
Defendant.	)	

M E M O R A N D U M A N D O R D E R

I. INTRODUCTION

On February 2, 1995, the plaintiff Gary E. Blizzard ("Blizzard"), acting *pro se*, filed a complaint against the above captioned defendants alleging violations of 42 U.S.C. § 1983 (D.I. 2). Specifically, Blizzard alleges that defendants violated his Eighth Amendment rights by failing to protect him from another inmate. Blizzard also contends that the defendants knew of the inmate's propensity towards violence, of his mental and psychological disturbances, and that he should have been confined in a maximum security unit for these reasons.

On September 20, 2000, the court issued a notice of three month inactivity (D.I. 46). Defendants responded with a status report on September 29, 2000 (D.I. 47) but plaintiff failed to respond. The court subsequently dismissed the case for failure to prosecute pursuant to Local Rule 41.1 on February 8, 2001 (D.I. 49). *See* D. Del. L.R. 41.1 (1995). The case was reopened on April 18, 2001, however, due to

Blizzard's failure to receive the notice to show cause.

Presently before the court is the defendants' renewed Motion for Summary Judgment which asserts that they did not violate Blizzard's rights under the Eighth Amendment or that, in the alternative, they cannot be held liable due to sovereign immunity or qualified immunity. Defendants further contend that they are not liable under state law because they were not grossly negligent. Finally, defendants argue that they were not personally responsible for any alleged violation, and therefore cannot be liable under § 1983. Blizzard has failed to respond to this motion in any manner. The court finds that defendants are entitled to judgment as a matter of law, and will, therefore, grant the defendants' motion for summary judgment.[1]

II. BACKGROUND

The plaintiff Gary Blizzard was an inmate at Sussex Correctional Institution ("SCI") in 1994.[2] The defendants are corrections officers and officials who were employed in various capacities. Defendants Flaherty, Tyndall, Walker, and McGrath were lieutenants at the facility.[3] Defendant Rendino was a member of the Institutional Based Classification Committee ("IBCC"), which determines each inmate's security classification. Defendant Kearney was the warden.

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[1] Since the court, for reasons noted below, rejects Blizzard's Eighth Amendment claim, the court need not discuss the defenses (qualified immunity, sovereign immunity, state law immunity, lack of personal involvement) raised by the defendants.

[2] Blizzard has been released from prison and currently resides in Tennessee.

[3] Tyndall was dismissed as a defendant on July 15, 1997, and passed away on April 24, 2000.

Rodney Murray was another SCI inmate who was arrested for an alleged stabbing. In August 1994, Murray stabbed fellow inmate John Bennett with a fork. This attack was witnessed by several corrections officers and inmates, as well as Blizzard. Murray was subsequently removed from the Medium Security Building ("Medium") and placed in the Maximum Security Building ("Maximum"). The defendants, however, did not conduct an investigation of the incident or file criminal charges against Murray. Murray was subsequently returned to Medium.

On November 3, 1994, seventy-five days after his release from Maximum, Murray attacked Blizzard and a corrections officer without provocation. Murray stabbed Blizzard with a fork, causing Blizzard to require stitches. Approximately five days after the incident, Flaherty began an investigation of the fork stabbing which included an interview with Blizzard. Although Blizzard's complaint alleges that Murray had psychological problems, there are no facts in the record to substantiate this allegation. Murray was reassigned to Maximum again, and was kept there until he was transferred to another facility.

III. STANDARD OF REVIEW

Summary judgment is appropriate when the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is not any genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law." FED. R. CIV. P. 56(C); *see also Omnipoint Communications Enterprises, L.P. v. Newton Township*, 219 F.3d 240, 242 (3d Cir. 2000). An issue is "genuine" if a reasonable jury, given the evidence, could return a verdict for the non-moving party. *See Blizzard v. Hastings*, 886 F. Supp. 405, 408 (D. Del. 1995). A fact is "material" if it could possibly affect the outcome of the case. *See*

Boyle v. County of Allegheny, Pennsylvania, 139 F.3d 386, 392 (3d Cir. 1998). When deciding a summary judgment motion, the court must view the evidence in the light most favorable to the nonmoving party and draw all reasonable inferences in that party's favor. *See Pacitti v. Macy's*, 193 F.3d 766, 772 (3d Cir. 1999).

Where the motion for summary judgment is unopposed, and the moving party "does not have the burden of proof on the relevant issues, the district court must determine that the deficiencies in the opponent's evidence designated in or in connection with the motion entitle the moving party to judgment as a matter of law . . . [Thus,] the court need only examine the pleadings, including the complaint and the evidence attached to Defendant's Motion for Summary Judgment." *Bardaji v. Flexible Flyer Co.*, No.Civ.A. 95-CV-0521, 1995 WL 568483, at * 2 (E.D. Pa. Sept. 25, 1995) (quoting *Anchorage Assocs. v. Virgin Islands Bd. of Tax Review*, 922 F.2d 168, 175 (3d Cir. 1990)).

Upon review of the complaint and the affidavits submitted by defendant, the court is assured that the facts presented above fairly represent uncontroverted facts. Nevertheless, even under this set of facts, the court finds that defendants are entitled to judgment as a matter of law.

IV. DISCUSSION

A. Eighth Amendment Claim

Prison officials have a duty to protect prisoners from violence at the hands of other prisoners. *See Farmer v. Brennan*, 511 U.S. 825, 833 (1994). In order to prevail in an Eighth Amendment claim, however, a plaintiff must demonstrate that defendants acted with "deliberate indifference" to plaintiff's safety. *See id.* at 828. Thus, prison officials cannot be held liable for failure to prevent an attack under the

Eighth Amendment "unless the official knows of and disregards an excessive risk to inmate health or safety." *See id.* at 837. In other words, an inmate must prove that "the defendants had *actual knowledge of an substantial risk of serious harm*." *Haley v. Gross*, 86 F.3d 630, 641 (7th Cir. 1996).

Blizzard has failed to demonstrate either actual knowledge or substantial risk. Blizzard has not demonstrated actual knowledge because there is nothing in the record that indicates that any of the defendants had reason to know of Murray's alleged psychological problems or his original arrest charge. Certainly, some of the defendants had actual knowledge of Murray's attack on Bennett. However, this actual knowledge of a prior incident involving another inmate does not translate into actual knowledge of a risk to another inmate who was not involved in the initial altercation and who had no history of hostility with the aggressor. *See e.g.*, *Haley*, 86 F.3d at 642 (finding deliberate indifference where inmate informed corrections officer that he was being threatened and officer did nothing). Blizzard's complaint appears to assert that because Murray was arrested for a stabbing, the defendants should have known that he was violent. However, "it is not enough that the official 'should have known' of a substantial risk or that a reasonable officer in that situation would have known of the risk." *Id.* at 641. Therefore, the court finds that the defendants had no actual knowledge that would require them to keep Murray in maximum security or otherwise act to protect Blizzard.

Although actual knowledge is the touchstone, knowledge may be inferred where the risk is obvious. *See id.* (citing *Farmer*, 511 U.S. at 843). Even assuming that Blizzard's allegations regarding Murray's arrest charge and psychological history are true *and* the defendants were aware of these facts, the risk here was not obvious. Even if Murray were arrested for stabbing, it is not a forgone conclusion that once incarcerated, he would inflict similar harm on other inmates. Moreover, assuming that Murray had

psychological problems (and Blizzard does not indicate what the alleged problems were),not all persons in poor psychological health are violent. Finally, even after the Bennett stabbing, it was not clear that Murray presented an obvious risk. The fact that an inmate engages in one attack does not make it obvious that he will repeat the conduct, especially after being punished for the violent conduct as was Murray. Moreover, after being released into the regular inmate population, Murray interacted with his peers for over two months without incident. Thus, the court cannot conclude that the risk of harm to Blizzard was an obvious one to any of the defendants.

Additionally, even if Blizzard could prove that the defendants had actual knowledge of Murray's violence or the risk of violence was obvious, he cannot prove that the harm involved was serious. Stabbing by fork, while certainly uncomfortable and painful, does not present a serious risk to life or limb. *See e.g.*, *Haley*, 86 F.3d at 633 (inmate set on fire by cell mate). Blizzard was not irreparably or seriously harmed. The fact that he was treated with a few stitches rather than surgery demonstrates that the injury was minor. Therefore, Blizzard cannot meet either prong of the *Farmer* test.

Finally, even if Blizzard could meet the *Farmer* test, the *Farmer* court further noted that "prison officials . . . may be found free from liability if they responded reasonably to the risk, even if the harm ultimately was not averted." *Farmer*, 511 U.S. at 844. The defendants acted reasonably here. First, after the Bennett stabbing, Murray was immediately placed in maximum security and was kept there for a reasonable time. Although Blizzard asserts that defendants' failure to keep Murray in maximum security was unreasonable, at the time, it was reasonable for the defendants to conclude that the first stabbing was an isolated incident. This is so because the record does not reveal that Murray had a history of prior violent acts while incacerated. More important, after the Blizzard stabbing, the defendants again placed Murray

in maximum security and conducted a full investigation, including an interview with Blizzard. Murray was also kept in the maximum security unit until he could be transferred to another prison, away from both Bennett and Blizzard. Although this did not prevent the harm Blizzard suffered, the defendants acted reasonably to ensure that Murray would not harm Blizzard, Bennett, or any other inmates again. The court, therefore, finds that defendants' response was reasonable in light of the facts known to them at the time of each incident. Since Blizzard cannot meet the *Farmer* test and the defendants responded reasonably, his Eighth Amendment claim must be denied.

VI. CONCLUSION

For the reasons listed above, Blizzard has failed to establish that the defendants were deliberately indifferent to his safety. His Eighth Amendment claims are, therefore, rejected and the court will enter summary judgment for all of the defendants.

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The Defendants' "Motion for Summary Judgment" is GRANTED;
2. Judgment BE AND IS HEREBY ENTERED in favor of the all of the Defendants;
3. The clerk shall close this case.

Dated: February 1, 2002

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE