is well established, citing *United States v. Funke*, 846 F.3d 998 (8th Cir. 2017). The court stated, "Although predicting future psychological damages is notoriously difficult, the district court was required only to make a reasonable estimate, not to establish the victim's future treatment costs with certainty" (citing *United States v. Palmer*, 643 F.3d 1060 (8th Cir. 2011)). The court noted that, in the presence of already incurred expenses, the determination of future expenses could rely on the testimony of the victim and her mother, as well as "a basic knowledge of medical expenses," citing *United States v. Emmert*, 825 F.3d 906 (8th Cir. 2016), and found "no reason that an estimate of future medical expenses cannot be based on similar evidence, so long as the estimate is reasonable" (*Hoskins*, p 946).

Ms. Hoskins also claimed that the district court erred in relying on *Paroline* in determining that the defendant was the proximate cause of the victim's injury. She argued that a "traditional causal analysis" model should have been used because there was not as wide a distribution of the material as there was in *Paroline* (*Hoskins*, p 946). However, the Eighth Circuit Court of Appeals noted that, pursuant to *Paroline*, restitution is proper to the extent that the offense proximately caused a victim's losses. Although *Paroline* did not use a but-for causation model, the court found that this model was not required, and restitution could be awarded in an amount "that comports with the defendant's relative role in the causal process that underlies the victim's general losses" (*Paroline*, p 1727). In point of fact, the court noted that a but-for argument actually simplifies the case at hand, as all losses related to distribution can be traced directly to the actions of Ms. Hoskins. The court noted that the "real gravamen of Hoskins' argument" was that the medical and psychological treatment that the victim received was related to the sexual abuse she experienced and that Ms. Hoskins should not be responsible for damages from the "sexual exploitation and assault" (*Hoskins*, p 947). The court found that the evidence clearly identified aspects of the victim's injuries that were specifically attributable to the distribution of her images. The court again referenced *Paroline*, stating that "a court must assess as best it can from available evidence the significance of the individual defendant's conduct in light of the broader causal process that produced the victim's losses. This cannot be a precise mathematical inquiry and involves the use of discretion and sound judgment" (*Paroline*, p 1727–8). Therefore, the court did not clearly err in awarding restitution or deciding the amount.

Discussion

This case expounded upon the ability of courts to order restitution for future psychological expenses likely to be incurred by a victim as a result of a defendant's role in the causal process. In the first point of contention, the court of appeals supported the lower court's procedural estimation of damages, citing that the court is required only to make a reasonable estimate of future damages, not to predict them with certainty. In empowering the court to develop this estimate through sound judgment and whatever available evidence it deems necessary, this finding removes court reliance on expert testimony for estimation of future medical costs, as long as estimates are "reasonable." In regard to causation, the district court ordered Ms. Hoskins to pay a portion of the restitution based on her involvement in the victim's injuries, determining that she was the proximate cause of the damage through distribution of the video, despite having no direct physical participation in the assault itself. The ruling in this case allows future court decisions more laterality in determining estimates of future psychological expenses. In addition, by rejecting the argument that restitution is limited to the physical act of the offense, the case validated that distributing recordings of the offense can be a proximate cause of loss, warranting that a portion of the damages be awarded to the victim.

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Deliberate Indifference to Inmate Suicide Risk and Qualified Immunity in Correctional Settings

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A Private Medical Contractor Working in a Correctional Setting Is Not Entitled to Qualified Immunity; a Prisoner Has the Right to be Free From Deliberate Indifference to his Suicide Risk

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In the current case, *Estate of Clark v. Walker*, 865 F.3d 544 (7th Cir. 2017), Ryan Clark died by suicide after his admission to a county jail in Green Lake, Wisconsin. Despite being assessed as having a "maximum risk" of suicide upon admission, intake staff (a correctional officer employed by the jail and a privately contracted nurse) did not initiate the institution's suicide prevention protocol. Mr. Clark's estate brought a suit under 42 U.S.C. §1983 (1996), alleging that the staff violated Mr. Clark's Eighth Amendment rights, by acting with deliberate indifference toward his suicide risk. The defendants moved for summary judgment and invoked qualified immunity, which was denied by the district court. The Seventh Circuit affirmed the denial of summary judgment. It was determined that the nurse was not entitled to qualified immunity as privately contracted personnel and that the facts of this case were sufficient for a jury to determine whether there was deliberate indifference to the inmate's suicide risk.

Facts of the Case

Mr. Clark died by suicide five days after his admission to the Lake County Jail in Wisconsin. He had a history of alcohol abuse and depression; records from previous incarcerations at the current jail revealed that he received psychotropic medications regularly for depression and that he experienced "panic attacks." He also had five past offenses related to operating a vehicle under the influence of alcohol, and was intoxicated each time he was reincarcerated for violations of the conditions of supervision. In addition, records detailed a history of self-harm, including a suicide attempt in 2011. Mr. Clark had past documented instances of being placed on "special watch observation," where he was observed every 15 minutes for suicide prevention. Although Mr. Clark was assessed as having a "maximum risk" of suicide upon admission to the Lake County Jail, the intake staff members (Bruce Walker, a correctional officer employed by the jail, and Tina Kuehn, a nurse employed by a private health care company under contract with the jail) did not initiate the jail's suicide prevention protocol. Mr. Walker indicated that officers often made discretionary decisions regarding suicide risk; in fact, he testified believing at the time that the assessment measure rendered a maximum suicide rating for all intoxicated inmates. Therefore, Mr. Walker subsequently placed Mr. Clark in a holding cell pending Ms. Kuehn's medical assessment, without implementing the suicide prevention protocol (i.e., checking records for prior mental health/risk history, placing the inmate in a suicide prevention cell, initiating monitoring, or referring to a mental health provider). Ms. Kuehn subsequently completed a medical intake, put Mr. Clark's completed suicide risk assessment in the chart, and placed Mr. Clark in a detoxification cell (where inmates are alone 24 hours per day). She subsequently followed up with Mr. Clark several times. She later testified to having had the knowledge that alcohol detoxification increases the risk of suicide. Four days later, Mr. Clark killed himself by fashioning a noose with pieces of fabric, tying it to his bedroll, and hanging himself. The officer on duty at the time, who was not aware of Mr. Clark's suicide risk, discovered him approximately one hour later. Mr. Clark's estate brought a suit under 42 U.S.C. §1983 (1996), alleging that the intake staff violated Mr. Clark's Eighth Amendment rights, by acting with deliberate indifference toward his suicide risk.

The defendants (correctional officer and nurse) moved for summary judgment; they asserted that there was insufficient evidence for a jury to find deliberate indifference, and they invoked qualified immunity (i.e., protection for government officials "from liability for civil damages in regard to their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known" (*Clark*, p 549–50 citing *Pearson v. Callahan*, 555 U.S. 223 (2009)). The district court denied their motions. It found that there were genuine questions of material fact in the case that precluded summary judgment for the defendants; specifically, the officer and the nurse disputed who was responsible for initiating the suicide protocol. In addition, the court ruled that, as a private contractor, Ms. Kuehn was not eligible for a qualified immunity defense, and also concluded that there was sufficient evidence to allow a jury to find that the defendants acted with deliberate indifference to Clark's suicide risk. The defendants appealed to the United States Court of Appeals for the Seventh Circuit. The questions at hand in this case were 1) whether the nurse

was entitled to qualified immunity as a private medical contractor and 2) whether it was clearly established that Mr. Clark had a right to be free from deliberate indifference to his serious risk of suicide.

Ruling and Reasoning

The United States Court of Appeals for the Seventh Circuit affirmed the district court's denial of summary judgment for both defendants. The court did not rule on whether the district court erred by denying the defendants' motions for summary judgment on the merits of the deliberate indifference claim because of a lack of jurisdiction over that area. However, the court reviewed *de novo* the district court's denial of summary judgment based on qualified immunity.

In reviewing the motion for summary judgment based on qualified immunity, the court considered 1) whether facts show that the defendant violated a constitutional right and 2) "whether the constitutional right was clearly established at that time" (*Pearson*, p 232). In addition, the court addressed whether the nurse, as a private contractor, was entitled to invoke qualified immunity. The court determined that the nurse was unable to invoke qualified immunity, because she was a private contractor, not a government employee. The court cited recent Supreme Court cases (e.g., *Richardson v. McKnight*, 521 U.S. 399 (1997)) that established that private contract personnel in prisons are not eligible for qualified immunity.

Turning to the general question of qualified immunity, the court found that, when the facts are taken in the light most favorable to the plaintiff, Mr. Clark had a serious medical condition that posed a substantial risk (*Walker v. Benjamin*, 293 F.3d 1030 (7th Cir. 2002)), and Mr. Walker was aware of the risk and failed to act on this knowledge. In regard to the second step in establishing qualified immunity, the court stated that Mr. Clark's right to be free from deliberate indifference to his suicide risk was clearly established before the time of his death. The opinion also stated that the Supreme Court has long held that prisoners have an Eight Amendment right to treatment "for their 'serious medical needs," for which suicide risk qualifies (*Clark*, p 553, citing *Estelle v. Gamble*, 429 U.S. 97, 104 (1976)). Accepting the facts of the case provided by the district court, Mr. Clark's estate offered sufficient evidence of material facts for a jury to find that Mr. Walker was aware of Mr. Clark's risk of suicide (citing that Mr. Clark scored at maximum risk of suicide on the screening tool), and his failure to take action violated clearly established law. As such, the Seventh Circuit ruled that Mr. Clark's estate had offered sufficient evidence to defeat summary judgment.

Discussion

Several points in this case are pertinent to administrative and clinical practice in correctional settings, such as the importance of following appropriate suicide prevention protocols, and the limited protections for privately contracted medical personnel.

Clark reinforces the importance of current clinical standards, which do not conclude with suicide risk assessment. Indeed, suicide prevention hinges on the appropriate use of the information gleaned from risk assessments by fully implementing the relevant institutional suicide prevention protocol. Imperative steps in the protocol include placing the inmate in an environment that maximizes safety, monitoring the individual, conveying clinical data to other institutional staff (particularly between shifts, where the continuity of information is sometimes ruptured), continuing efforts to gain further clinical information on the individual (e.g., review of previous incarceration/treatment records), continuing assessment of the individual's risk of harm, and implementing appropriate interventions to reduce suicide risk. Of importance, discretionary decisions on clinical concerns such as suicide risk should not be made without appropriate training and credentials. Even with suitable training, it remains imperative to follow institutional protocol for suicide risk assessment, rather than use subjective judgment to override suicide risk data.

Cases often become more clinically complex when the use of substances is involved, particularly if the person under evaluation is in some form of substance withdrawal. Although it is important to stabilize the individual medically before using full mental health assessments or interventions, this necessity cannot diminish efforts at risk management. As testified to in this case, Mr. Clark was placed in a detoxification cell, presumably for medical stabilization, but at the expense of protocols to manage risk. Mr. Clark's suicide assessment results reflecting high risk, together with knowledge of heightened suicide risk during alcohol detoxification, was disregarded and therefore the suitable safeguards were not applied.

In addition, lack of immunity for contracted medical and mental health personnel is particularly relevant, as the use of privately contracted personnel providing care and services to detainees and prisoners is steadily increasing. It is important for administrators and practitioners to consider the limits of legal protections available to privately contracted staff, which further underscores the importance of appropriate training, clearly defined protocols, and adherence to standards of care.

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Qualified Immunity for Jail Health Care Staff: When Are Providers off the Hook for Claims of Deliberate Indifference?

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Facts Pertaining to a Jail Nurse's Provision of Mental Health Services to a Pretrial Detainee Preclude Summary Judgment for Qualified Immunity and Open the Door for a Claim of Deliberate Indifference

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In *Bays v. Montmorency County*, 874 F.3d 264 (6th Cir. 2017), the Sixth Circuit Court of Appeals considered the limits of qualified immunity for a jail nurse who evaluated the mental health needs of a pretrial detainee who later committed suicide at the jail. The parents of the detainee filed suit, pursuant to 42 U.S.C. § 1983 (1996), against the jail nurse, alleging that she violated their son's Fourteenth Amendment right to sufficient treatment for a serious medical condition, his mental illness. Their suit was also against Montmorency County, which was responsible for running the jail. The district court granted qualified immunity to the county jail but denied it to the nurse. The nurse appealed to the Sixth Circuit and the decedent's family filed a cross-appeal. The court affirmed the verdict of the lower court denying qualified immunity to the nurse but dismissed the Bays' appeal for lack of jurisdiction.

Facts of the Case

On March 28, 2013, 28-year-old Shane Bays was arrested for driving with a suspended license and was detained at the Montmorency County Jail. During the health screening, on April 9, he told jail nurse Donna Sigler that he was "bipolar," "paranoid," and "angry." He also said he had "panic attack[s]," a history of substance use, difficulty sleeping, and "severe rage." Ms. Sigler documented that Mr. Bays would require mental health treatment "[upon] discharge." She consulted with Amy Pilarski, a registered nurse specializing in mental health, telling her that Mr. Bays had "some issues with anxiety." At Ms. Pilarski's recommendations, Ms. Sigler ordered medication (Benadryl) for Mr. Bays, and on April 11, she scheduled an appointment for him on May 2. Although she could have scheduled an earlier appointment for him, as offered by the jail mental health center, Ms. Sigler did not do so, because she anticipated transportation difficulties related to a deputy being on vacation. She documented that day that Mr. Bays "denies suicide at this time" (*Bays*, p 267).

While Mr. Bays remained in the general population area, he requested to meet with Ms. Sigler on April 17, and she noted that he was "more relaxed and less anxious" than the previous week (*Bays*, p 267). By April 19, Mr. Bays' symptoms recurred: he reported "anxiety, agitation, paranoia, and troubling thoughts," including that he feared "he would hurt others," and that he had scraped his hands punching a wall (*Bays*, p 267). Although Ms. Sigler noted "Shane denied being suicidal," she attempted to call Ms. Pilarski twice and left a message asking her for an earlier appointment for Mr. Bays. Sometime between April 22 at 11:00 p.m. and April 23 at 1:30 a.m., Mr. Bays hanged himself in the jail showers.

Mr. Bays' parents filed a § 1983 civil rights action, claiming Ms. Sigler violated their son's "right to receive care for a serious medical need and that the County failed to train its personnel to provide proper health care to its inmates" (*Bays*, p 267–8) The United States District Court for the Eastern District of Michigan denied the nurse's motion for summary judgment, so she filed an interlocutory appeal challenging the denial of qualified immunity. The court granted the