IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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NANCY DVORAK,

Plaintiff,

OPINION AND ORDER

v.

01-C-0450-C

MARATHON COUNTY and JOHN REED, SHAWN M. PIERCHALLA, DALE ZANDER, SARA TIMM and PAUL MERGENDAHL, in their individual capacities,

Defendants.

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This is a civil action for monetary relief brought pursuant to 42 U.S.C. § 1983, in which plaintiff Nancy Dvorak contends that while she was a Huber inmate at Marathon County jail, defendants violated her Eighth and Fourteenth Amendment right to be free from cruel and unusual punishment by (1) failing to provide her with timely medical attention for a back and neck injury and (2) failing to provide a catheter for approximately 12-15 hours so that she could urinate. In addition, plaintiff alleges that defendants violated her rights under the substantive due process clause of the Fourteenth Amendment by denying her reasonable privacy in which to urinate. Jurisdiction is present under 28 U.S.C. § 1331.

Presently before the court is defendants' motion for summary judgment. I find that it is a violation of the Eighth Amendment to put a person into a restraining cell for hours without a catheter, knowing that the person could not urinate without one. Whether defendants Zander and Pierchalla did this to plaintiff is disputed and must await resolution at trial. Defendants Zander and Pierchalla are not entitled to qualified immunity because the law was well established when their acts are alleged to have occurred that it was unconstitutional to deprive a person of the ability and opportunity to urinate for a lengthy period of time. Therefore, I will deny defendants' motion for summary judgment as to this claim as to these two defendants. Because defendant Marathon County was sued properly in its capacity as an indemnifying entity under Wis. Stat. § 895.46 and the claim against defendants Zander and Pierchalla is proceeding to trial, I will deny defendants' motion for summary judgment as to this defendant as well. However, I will grant defendants' motion for summary judgment as to the remaining claims and the remaining defendants. Plaintiff has failed to raise a triable issue of fact as to the claims or the defendants.

From the proposed findings of fact, and for the sole purpose of deciding defendants' motion for summary judgment, I find the following facts to be material and undisputed.

UNDISPUTED FACTS

A. Parties

Plaintiff Nancy Dvorak is a citizen of Wisconsin. At the time of the alleged incidents in the late spring of 2000, she was confined as a Huber (work release) inmate at the Marathon County jail located in Marathon County, Wisconsin. Defendant Marathon County is a Wisconsin municipal entity. Defendant John Reed is Captain of the Marathon County jail. Defendants Shawn M. Pierchalla, Dale Zander, Sara Timm and Paul Mergendahl were guards at the jail at all relevant times.

B. Plaintiff's Medical Background

On August 5, 1993, plaintiff suffered a work-related injury to her back and bladder when she fell into an eight-foot deep hole. As a result of her injuries, plaintiff underwent several surgeries for "C5-6" cervical fusion and bladder reconstruction. Afterward, she was plagued by urinary tract infections and incontinence. In late 1995, she began to self-catheterize in order to urinate. Plaintiff uses a straight catheter, which is individually wrapped and sterilized and inserted into her bladder to allow urine to be released. Plaintiff has had several operations on her right knee since she was 19 years old and continues to suffer from severe knee pain.

C. Marathon County Jail

On April 27, 2000, plaintiff was sentenced to the Marathon County jail for 60 days. The judgment of conviction provided that plaintiff was to be given Huber privileges, in part for obtaining therapy for her chronic health problems. In addition, the judgment provided that the jail was to give plaintiff her medications as prescribed by her doctors.

On May 10, 2000, plaintiff was booked into the Marathon County jail. At this time, plaintiff indicated on a Classification Interview Form that (1) she had medical problems, including back pain and bladder problems; (2) she was under the care of several doctors for these problems; and (3) she was taking medications including Nitrofurantoin, Prilosec and Premarin, as well as vitamins. Plaintiff also informed unnamed jailers that she needed to use a catheter, needed bottled water and needed therapeutic swimming sessions. That same day, plaintiff was given a pass to NorthCentral Healthcare Center. Like other inmates, plaintiff had access to a nurse and physician at the jail.

Typically, plaintiff would release urine from her bladder every two to four hours during the day by using a catheter. At night, plaintiff would catheterize herself as needed, trying to sleep through the night if possible by catheterizing herself just before she went to bed and when she awoke in the morning. In her cell, plaintiff kept catheters in the drawer of her bunk and in her jail locker, which she had access to when entering or exiting the jail.

On May 12, 2000, plaintiff slipped and fell in the shower. Lynn Buhmann, a nurse

at the jail, met with plaintiff and noted that she had fallen in the shower and was complaining of aches in her mid-back. Buhmann recommended that plaintiff be seen by the jail physician and be given a pass so that she could be seen by her treating physician. The jail's physician recommended Ibuprofen and rest. After seeing the jail's physician, plaintiff called her lawyer and told him that she was in severe pain and that she was not getting any assistance. Plaintiff's lawyer called S. A. Schwartz, a supervisor at the jail, who went to the cellblock to speak with plaintiff. After plaintiff told Schwartz that she was going numb in her back and neck, Schwartz called an ambulance and plaintiff was transported to the Wausau Hospital. At the hospital, plaintiff reported that she had fallen, striking her back and neck on the wall and right knee on the floor. Plaintiff complained of neck, lumbrosacral and right knee pain. Plaintiff was prescribed pain medication and discharged with a diagnosis of multiple contusions and upper extremity paresthesias.

On May 15, 2000, plaintiff called Dr. Bryant at the Wausau Hospital emergency room, complaining of some numbness in her feet. Bryant told plaintiff that she should go to the emergency room. Plaintiff was transported to the Wausau Hospital. Plaintiff reported tingling in her arms, legs, hands and feet. She was diagnosed with cervical strain, given Toradol for pain and instructed to use ice, rest and Tylenol as needed.

On May 16, 2000, Bryant examined plaintiff at Wausau Hospital as part of a follow-up visit regarding her neck and back injury. Bryant found that plaintiff's "neurological

examination does not really show any pathology but is difficult to fully interpret because of non-physiologic give-way weakness in the arms and legs." Bryant had difficulty performing a neurologic examination because of weakness in plaintiff's arms and legs. He recommended an MRI of the cervical, thoracic and lumbar spine as soon as possible. He wrote in his progress notes:

> [Plaintiff] was told that if she has any new symptoms, including true weakness or loss of control of bowels (patient already has a loss of control of bladder which is longstanding), that she should go to the emergency room. [Plaintiff] agrees to notify the authorities at the jail if she does have any of these symptoms.

On May 16, sometime between 7 and 8 p.m., defendants Zander and Pierchalla arrived at the Huber cellblock to distribute medication. Plaintiff complained that she had not received her dose of Premarin for the day. Plaintiff never refused any medications prescribed by her own doctors, but may have refused new prescriptions prescribed by jail doctors.

A little while later, plaintiff felt ill and experienced a new numbness in her arms and legs. Plaintiff activated the jail's emergency intercom in order to inform defendant Timm of the numbness she was feeling and to ask to go to the hospital. Defendant Timm ignored her requests. Defendant Timm told plaintiff not to use the intercom for non-emergencies. Plaintiff ignored that instruction and continued to activate the intercom. Defendant Timm could not recall the substance of plaintiff's request, but recalls that it was not an emergency.

Defendant Timm told defendants Zander and Pierchalla that plaintiff was pressing the intercom repeatedly.

Defendants Zander and Pierchalla cannot recall the substance of what plaintiff was saying when she was yelling, ranting and raving. Plaintiff ignored their repeated orders to exit the cellblock. Defendants Zander and Pierchalla determined that plaintiff was becoming a safety hazard to herself and others and decided to escort her to a segregated receiving cell. At this time, plaintiff's hands, arms and legs were tingling and going numb again.

Defendants Zander and Pierchalla placed plaintiff in receiving cell number 7, which is located in front of the booking desk. This cell can be viewed and heard from the desk.

While housed in the receiving cell, plaintiff asked unnamed guards repeatedly for her catheter. Plaintiff tried to get anyone's attention (presumably guards at or near the booking desk) by knocking on the door and window of the receiving cell. Unnamed guards refused to help her and laughed at her instead. At some point, without explanation, plaintiff was moved to a receiving cell at the end of the hallway. The pain from having to urinate was so intense that plaintiff began to heave and vomit bile, which made her feel worse.

At around 10 p.m. that evening, defendant Pierchalla reported plaintiff's transfer and her conduct to defendant Mergendahl, a supervisor, who was working the 2 p.m. to 10 p.m. shift. Defendant Mergendahl wrote in the jail log for that period on May 16 that "[plaintiff] - numerous complaints . . . needed to be escorted to receiving. See report." Defendant

Mergendahl notified the incoming third-shift supervisor about plaintiff and left for the evening. Defendants Zander and Pierchalla left work at 11 p.m. at the end of their shift. After placing plaintiff in the receiving cell 7, defendants Zander and Pierchall had no other contact with plaintiff while she was housed at the jail.

Officer Dennis Rothering could not locate plaintiff's catheters and asked for assistance. A short time later Officer Jeanette Stankowski located the catheters.

Around 5:30 a.m., plaintiff got the attention of an unnamed female guard and asked for a catheter. Instead of getting plaintiff a catheter, this unnamed officer moved plaintiff to a different receiving cell. (It is unclear whether plaintiff was moved once or twice after her arrival in receiving cell 7.)

Sometime during the morning of May 17, plaintiff was seen by the jail's physician, Dr. Heingl. Heingl noted that plaintiff complained of numbness in her arms and legs and wanted to go to the emergency room but that the officers would not take her. Heingl never examined plaintiff. Plaintiff was distraught and angry. Heingl's report makes no mention of complaints of vomiting, nausea, urinary difficulties or inability to use a catheter. The report noted that plaintiff insisted on bottled water. Heingl reported that plaintiff walked stiffly, was able to move her neck around in the soft neck collar and was able to pick up a piece of paper on the floor. Heingl stated in his report that he did not test for numbness because he believed that plaintiff's subjective answers to palpation or pinprick tests would

be unreliable.

On May 17, 2000, at approximately 12:10 p.m., plaintiff was seen at the Wausau Hospital for a scheduled MRI appointment. That same day, plaintiff called Dr. Babiarz at the Central Wisconsin Urology Clinic. Plaintiff complained of vomiting, teeth discomfort, dehydration, fever and chills. Plaintiff stated to an unnamed person at the urology clinic that she was feeling very weak and wanted to go to the emergency room. Plaintiff did not have blood in her urine. Babiarz recommended an urinalysis, which was administered at the urology clinic. The results of the urinalysis prompted Babiarz's nursing staff to tell plaintiff to go to the hospital.

On May 17, 2000, at 2:13 p.m., plaintiff was admitted to the Wausau Hospital. Plaintiff complained of intermittent nausea with episodes of vomiting, worn-out feelings and foul-smelling urine. Plaintiff was diagnosed with pyelonephritis and dyspepsia. (Pyelonephritis is defined as "[i]nflamation of the renal payenchyma, calices, and pelvis, particularly due to local bacterial infection." Stedman's Medical Dictionary 1489 (27th ed. 2000). Dyspepsia is defined as "[i]mpaired gastric function or 'upset stomach' due to some disorder of the stomach." Id. at 554.) The medical record indicates that plaintiff's "presentation [was] consistent with probable urinary tract infection and mild hydration [sic]." Plaintiff was monitored for four hours and given intravenous fluids, Pedcid for dyspepsia and Phenergan for mild nausea. Plaintiff was discharged with a prescription for

Bactrim and fluids. Plaintiff was told to return to the emergency room if she developed any fever, nausea, vomiting, pain or any other concerns. At plaintiff's request, Barbiarz wrote a prescription to "drink at least 3 quarts of bottled water every day." According to the Central Wisconsin Urology nursing notes, plaintiff asked a nurse to send a fax to her lawyer stating that "she needs to perform self catheterization every 2-6 hours as needed during the day to empty her bladder." In response to plaintiff's request, Dr. David Buestein wrote a "prescription" for plaintiff that she "may perform self catheterization every 2-6 [hours] as needed to empty her bladder."

Defendant Reed had no contact with plaintiff on May 16 or 17, 2000.

On May 18, 2000, plaintiff returned to the Wausau Hospital on a Huber pass, complaining of a burning stomach, which had worsened from the previous day. Plaintiff complained of dehydration and experiencing pain "everywhere." Plaintiff was diagnosed as having an urinary tract infection.

On May 19, 2000, plaintiff returned to the Wausau Hospital on a Huber pass, complaining of nausea and stating that her "pain meds wore off." Plaintiff said she had returned to the hospital because of continuing abdominal pain. Plaintiff was diagnosed with "[a]dominal pain, nonspecific at this point with other multiple complaints, which appear to be chronic also."

On May 20, 2000, plaintiff was admitted to the Wausau Hospital after complaining

of continuing stomach upset and vomiting. Plaintiff was diagnosed with a kidney infection and gastritits and remained hospitalized until May 23, 2000. Plaintiff was released from Marathon County jail while hospitalized.

OPINION

A. Deliberate Indifference

The Eighth Amendment requires the government "'to provide medical care for those whom it is punishing by incarceration.'" Snipes v. Detella, 95 F.3d 586, 590 (7th Cir. 1996) (quoting Estelle v. Gamble, 429 U.S. 97, 103 (1976)). To state a claim of cruel and unusual punishment, "a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." Estelle, 429 U.S. at 106. Therefore, plaintiff must allege facts from which it can be inferred that she had a serious medical need (objective component) and that prison officials were deliberately indifferent to this need (subjective component). Id. at 104; see also Gutierrez v. Peters, 111 F.3d 1364, 1369 (7th Cir. 1997). The Court of Appeals for the Seventh Circuit has held that "serious medical needs" encompass not only conditions that are life-threatening or that carry risks of permanent, serious impairment if left untreated, but also those in which the deliberately indifferent withholding of medical care results in needless pain and suffering. Gutierrez, 111 F.3d at 1371.

As for the subjective component, the Supreme Court has held that deliberate indifference requires that "the 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 the inference." Farmer v. Brennan, 511 U.S. 825, 837 (1994). Inadvertent error, negligence, gross negligence or even ordinary malpractice are insufficient grounds for invoking the Eighth Amendment. Vance v. Peters, 97 F.3d 987, 992 (7th Cir. 1996); see also Snipes, 95 F.3d at 590-91. Deliberate indifference in the denial or delay of medical care is evidenced by a defendant's actual intent or reckless disregard. Reckless disregard is characterized by highly unreasonable conduct or a gross departure from ordinary care in a situation in which a high degree of danger is readily apparent. Benson v. Cady, 761 F.2d 335, 339 (7th Cir. 1985). Finally, courts must "examine the totality of an inmate's care when considering whether that care evidences deliberate indifference to his serious medical needs." Gutierrez, 111 F.3d at 1375.

1. Back and neck injury

The parties dispute whether, as plaintiff alleges, she told defendants Pierchalla, Zander and Timm that she "needed to go to the hospital," that she was "experiencing a new numbness" and that "she did not feel well." However, even if plaintiff's allegations were true, such generalized statements do not demonstrate that defendants were "aware of facts

from which the inference could be drawn that a substantial risk of serious harm exist[ed]." Farmer, 511 U.S. at 837. Other than these statements, plaintiff has not adduced any evidence indicating that defendants Pierchalla, Zander or Timm had any other knowledge of her back and neck injury. Moreover, the fact that plaintiff asked to go to the hospital and was not taken right away does not show that defendants violated her constitutional rights. See Forbes v. Edgar, 112 F.3d 262, 266 (7th Cir. 1987) (inmate does not have constitutional right to specific type of treatment he or she prefers). Viewing the evidence in the light most favorable to plaintiff, I am convinced that no reasonable jury could find that defendants were deliberately indifferent to her back and neck injury. Accordingly, defendants will be granted summary judgment as to this claim.

2. Need for catheter

The undisputed fact that plaintiff must use a catheter in order to urinate (and has since 1995) establishes that she has a serious medical need. Defendants argue that plaintiff does not have a serious medical need to urinate *at night,* thus conceding that plaintiff's medical need is serious during the day. Defendants base their nighttime argument on the fact that according to the Central Wisconsin Urology nursing notes, dated May 17, plaintiff asked a nurse to send a fax to her lawyer stating that "she needs to perform self catheterization every 2-6 hours as needed *during the day* to empty her bladder." (Emphasis

added.) In short, defendants argue that because plaintiff's request concerned only daytime catheterization, her medical need was not serious during the overnight hours of May 16-17. It is preposterous to rely on a single comment a nurse to argue that plaintiff's serious medical need becomes less serious at night. In any event, (1) the actual "prescription" stated that plaintiff needs to empty her bladder every two to six hours and made no limitation as to daytime hours and (2) it is undisputed that plaintiff catheterizes herself just before bed and first thing in the morning but that, if needed, she uses a catheter during the night. Simply put, plaintiff's ritual seems in step with reality. Although plaintiff may need to use a catheter less often during the night, this does not diminish the seriousness of her medical condition.

Although plaintiff has established that she has a serious medical need, it is a question of fact whether defendants Zander and Pierchalla were deliberately indifferent to that need. The parties dispute (1) whether plaintiff asked Officer Rothering for a catheter shortly after 10 p.m.; (2) whether Officer Stankowski gave plaintiff a catheter around that same time; (3) whether plaintiff told defendants Zander and Pierchalla repeatedly that she needed a catheter in order to urinate as they took her to the receiving cell; and (4) whether defendant Pierchalla responded by stating that she did not need this equipment. In addition, the parties dispute some of the surrounding events as to these allegations.

Defendants Zander and Pierchalla argue that they lack personal participation because

they had no further contact with plaintiff after they placed her in the receiving cell. However, they would be involved if they placed her in segregation without a catheter after she had informed them that she needed one in order to urinate. In other words, if plaintiff's allegations are true, defendants Zander and Pierchalla became personally involved the moment they left her in the receiving cell without a catheter and with the knowledge that she needed one to urinate. This is a question of fact that will have to be resolved at trial. Accordingly, defendants' motion for summary judgment as to this claim against defendants Zander and Pierchalla will be denied.

As to plaintiff's allegations against defendant Mergendahl, she has not adduced evidence indicating personal involvement on his part. It is well established that liability under § 1983 must be based on the defendant's personal involvement in the constitutional violation. See Gentry v. Duckworth, 65 F.3d 555, 561 (7th Cir. 1995). Although plaintiff points to the jail's log in which defendant Mergendahl wrote "[plaintiff] - numerous complaints . . . needed to be escorted to receiving," this does not indicate that Mergendahl personally participated in withholding a catheter from her or that he knew she was without one. At most, this entry might indicate that defendant Mergendahl knew that plaintiff had been placed in segregation because she was complaining too much; it does not show that he

knew that she had been placed in segregation without her needed catheter. Accordingly, defendants' motion for summary judgment as to this claim will be granted as to defendant Mergendahl.

B. Right to Privacy

Defendants argue that as an inmate, plaintiff does not have a right to urinate in privacy. Plaintiff does not respond in any fashion to defendants' argument. Accordingly, defendants' motion for summary judgment will be granted as to plaintiff's right to privacy claim. See Central States, Southeast and Southwest Areas Pension Fund v. Midwest Motor Express, Inc., 181 F.3d 799, 808 (7th Cir. 1999) ("Arguments not developed in any meaningful way are waived."); see also Finance Investment Co. (Bermuda) Ltd. v. Geberit AG, 165 F.3d 526, 528 (7th Cir. 1998).

C. Qualified Immunity

Defendants argue that their actions are protected by the doctrine of qualified immunity, which involves a two-step inquiry. The "first inquiry must be whether a constitutional right would have been violated on the facts alleged; second, assuming the violation is established, the question [is] whether the right was clearly established." Saucier v. Katz, 533 U.S. 194, 200 (2001). In this case, plaintiff's allegations that she was left in

a segregation cell without the ability to urinate for a period of 12-15 hours because she was not given a catheter as requested would violate the Eighth Amendment if true. However, even if a plaintiff's allegations would establish a constitutional or statutory violation, public officials may be shielded from liability for civil damages for their impermissible conduct if their actions did not violate "clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). Qualified immunity operates "to ensure that before they are subjected to suit, officers are on notice their conduct is unlawful." Saucier, 533 U.S. at 206. Qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law." Malley v. Briggs, 475 U.S. 335, 341 (1986).

The rights alleged to have been violated must be sufficiently particularized to put potential defendants on notice that their conduct is unlawful. Anderson v. Creighton, 483 U.S. 635, 640 (1987). "For a constitutional right to be clearly established, its contours 'must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. This is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful [. . .] but it is to say that in the light of pre-existing law the unlawfulness must be apparent.'" Hope v. Pelzer, 122 S. Ct. 2508, 2515 (2002) (citations omitted). The relevant question is whether the state of the law at the time of the challenged acts gave the defendants fair warning that

the plaintiff's alleged treatment was unconstitutional. See id. at *6.

Viewing the evidence in a light most favorable to the non-moving party, I find that defendants Zander and Pierchalla are not entitled to qualified immunity as to plaintiff's claim that they violated her Eighth Amendment right to be free of cruel and unusual punishment by leaving her in the receiving cell without a catheter. The case law is well established as to deliberate indifference to a serious medical need. In essence, plaintiff alleges that defendants Zander and Pierchalla took away her ability to urinate, which is undeniably a basic human need. The Supreme Court has held that the government violates the Eighth Amendment when it "so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs." Helling v. McKinney, 509 U.S. 25, 32 (1993); see also Hope, 128 S. Ct. at 2514 (noting seven-hour deprivation of bathroom breaks created risk of particular discomfort and humiliation); Flakes v. Percy, 511 F. Supp. 1325, 1332 (W.D. Wis. 1981) ("when the Eighth Amendment is operative, its ban is violated by locking a person, for any significant period of time, in a cell lacking a flush toilet"). Although defendants did not have the benefit of Hope when they acted, the case law is sufficiently clear that a reasonable official would understand that it is a violation of the Constitution to leave an inmate in a cell for any significant length of time with no ability to urinate. Accordingly, defendants' motion for summary judgment on the basis of qualified immunity will be denied.

D. Defendants Marathon County and Reed

Plaintiff concedes in her brief in response to defendants' motion for summary judgment that she is not alleging 42 U.S.C. § 1983 liability against defendant Marathon County under Monell v. Department of Social Services, 436 U.S. 658 (1978) (local government unit is "person" under § 1983 and can be held liable only when constitutional deprivation arises from governmental custom or policy). Instead, plaintiff argues that she named Marathon County as a defendant because Wis. Stat. § 895.46 allows for a direct action against the indemnitor by the person in whose favor judgment against the indemnitee will be entered. See Bell v. City of Milwaukee, 746 F.2d 1205, 1268-72 (7th Cir. 1984); Hibma v. Odegaard, 769 F.2d 1147 (7th Cir. 1985); Graham v. Sauk Prairie Police Commission, 915 F.2d 1085 (7th Cir. 1990). Defendant does not contest plaintiff's stance as to Wis. Stat. § 895.46 and the surrounding case law. Instead, defendants argue that because no individuals defendant are liable, there is nothing for defendant Marathon County to indemnify. However, I have already determined that one of plaintiff's claims against defendants Zander and Pierchalla will proceed to trial. Accordingly, defendants' motion for summary judgment as to defendant Marathon County will be denied.

In addition, plaintiff does not allege in her brief or proposed findings of fact that defendant Reed participated personally in any of the alleged events. As stated earlier, § 1983 liability must be based on the defendant's personal involvement in the constitutional

violation. See Gentry, 65 F.3d at 561. Therefore, defendants' motion for summary judgment as to defendant Reed will be granted.

ORDER

IT IS ORDERED that

1. The motion of defendants Marathon County, John Reed, Shawn M. Pierchalla, Dale Zander, Sara Timm and Paul Mergendahl for summary judgment is DENIED in part and GRANTED in part: it is DENIED as to plaintiff Nancy Dvorak's claim that she was denied a requested catheter in violation of the Eighth and Fourteenth Amendments as to defendants Zander, Pierchalla and Marathon County; it is GRANTED in all other respects as to the remaining claims and the remaining defendants; and

2. Defendants John Reed, Sara Timm and Paul Mergendahl are DISMISSED from this case.

Entered this 29th day of July, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge