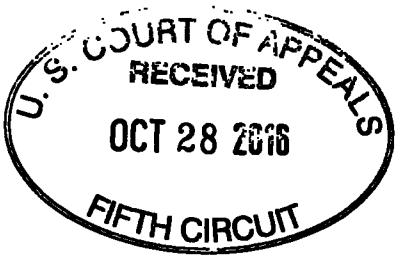
IN THE COURT OF APPEALS

FOR THE FIFTH CIRCUIT



No. 16-51148

SCOTT LYNN GIBSON/VANESSA LYNN,

V.

BRAD LIVINGSTON, ET AL.,

RESPONDANTS

APPEAL TO THE UNITED STATES COURT OF APPEALS

FOR THE 5TH CIRCUIT

SCOTT LYNN GIBSON/VANESSA LYNN TDCJ 699888

A. HUGHES UNIT

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BRIEF OF APPELLANT

Statement of Matter and Appellate jurisdiction

The District Court has subject matter jurisdiction under 43 U.S.C § 1331 (a) because the complaint raised a question whether the defendants violated Plaintiff's rights under the United States Constitution. This Court has Appellate jurisdiction under 28 u.s.c.§ 1291 because the grant of summary judgment and dismissal for failure to state a claim is a final judgment. Judgment was entered on 8/31/2016, and Plaintiff filed her notice of appeal on 9/8/2016.

Statement of Issues Presented For Review

1. Whether the district Court in granting Defendant's summary motion inproperly reviewed evidence that was not before the court either in farm of an affidavit or reports,

2. Whether the district court in granting summary judgment inproperly decided factual issues in favore of the Defendant,

3. Whether Gender Dysphoria is a serious medical condition

that triggers the protection of the Eighth Amendment,

4. Whether The Plaintiff's factual allegations that the Defendants denied her Sex Reassignment surgery (SRS) based on a blanket policy that denies her and other Transgender inmates SRS and other treatment and care that the Standard of care for Transgender Health care recommends, raised a matterial issue under the eighth Amendment,

5. Whether Plaintiff's allegations that Defendant Dr. Greene violated her Constitutional rights to medical care by denying her the care her Doctor recommended, stated a claim under **Estelle v. Gamble**, "that it's unconstitutional for prison Officials to interfere or deny Plaintiff medical care that was recommended by a specialist to treat her serious medical need",

6. Whether if because Plaintiff's Doctor's recommendation only stated " I recommend that Gibson be allowed to live as a female and have the items to freely express her gender", negate the right to receive the care because it did not specify exactly what Plaintiff needed,

7. Whether this court or the supreme Court has to set standards of care specifically for transgender inmates before their claims of denial of medical care can be reviewed by the courts,

8. Whether Transgender inmates are entitled to the Protection that **Estelle v. Gamble**s offers non-transgender inmates,

9. Whether **Praylor v. TDCJ** should apply to Plaintiff's case when it delt with "hormone Treatment" and care that was not recommended, and it is clearly contrary to established body of law that expressively states that it's unconstitutional to deny transgender inmates SRS based on a blanket policy that denies this care based on the policy rather then on their individualized medical needs,

10. Whether in light of evolving standard of deceny and acceptable Standard of Care for Transgender Health care, should the Court decide if gender dysphoria is a serious medical need, and reverse **Praylor v. TDCJ**- replacing it with a clear authority that will help the district courts to appropriately address transgender inmates claims,

11. Whether if Defendant Livingston can create a policy not

to answer a prisoner's complaints, then claim that he was not aware that Plaintiff was being denied medical care or was aware of facts that would put him on notice that TDCJ's ban on SRS placed Plaintiff's life in significant risk of serious harm,

12. Whether the Defendants were deliberate indifferent to Plaintiff's serious medical needs by refusing to have her evaluated to see if SRS would adequately treat her serious medical condition in light of facts that they knew it was effective treatment and that plaintiff was abusing herself,

13. Whether if it is unconstitutional for TDCJ to arbitrarily consider SRS elective treatment when it's contrary to the leading medical Associations, and done to make it impossible for SRS to ever be consider medically necessary-in a prison setting,

14. Whether if the District Court misconstrued Plaintiff's claim that her Doctor recommended the realife experience -has he recommended SRS, and that she is requesting SRS-- when her Complaint clearly states that she is requesting to be evaluated by a gender specialist to see (if) SRS would adequately treat her,

15. Whether if plaintiff's claims against The defendants constitutes a mere disagreement over medical care when Plaintiff is only requesting the care that her Doctor recommended to adequately treat her Gender Dysphoria, and when there has not yet been a sound medical judgment or decision reached concerning if based on Plaintiff's individualized medical needs, would SRS adequately treat her serious medical condition.

Statement of The Case

A. Statement of The Proceedings

This is a civil rights action under **42 U.S.C. § 1983** brought by a state prisoner who alleged that she was denied medical care based on a blanket policy that denies her and other transgender inmates medically necessary treatment. The district Court granted summary judgment based on the grounds that under **Praylor v. TDCJ** plaintiff does not have a right to medical care to treat her serious medical need. In addition, the Court dismissed her claims against Dr. Greene for failure to state a Claim, citing **Praylor v. TDCJ** and a lack of authority that expressively gave transgender inmates the right to medical care.

B. Statement of Facts

The Plaintiff alleged in her declaration under penalty of perjury that the Defendants denied her medical care by refusing to allow her Doctor to evaluate her to determine if SRS would adequatel treat her serious medical need, refused to provide her the realife experience that her Doctor Recommended, to enforce a systematic ban on SRS and the Reallife experience. Plaintiff also declared under penalty of perjury that she has severe Gender Dysphoria that causes her to abuse her gentials and to have realistic thoughts of self-casteration and committing suicide.

The Defendant-Mr. Livingston filed a summary judgment motion and stated that he was not denying Plaintiff medical care and that he acted reasonable. However, Mr. Livingston did not submit an affidavit supporting his claims. Dr. Greene and the other defendant refused to respond.

Summary of Argument

Plaintiff's affidavit and complaint clearly shows that she is being denied medically necessary treatment to enforce a systematic ban on SRS and the Reallife experience irregardless of her medical condition and what the SOC for Transgender Health Care recommends. The Court resolved the issues in

favor of the Defendants because the Court ruled that under **Praylor v. TDCJ**, Plaintiff cannot establish that she has a right to medical care, and rejected all the evidence she presented that showed the Defendant was aware of her serious medical condition-yet refused to resolve her problem because the Director does not answer inmates letters,the appropriate standard of care, and case law that showed it was unconstitutional to deny Plaintiff SRS and the Reallife experience based on a blanket policy.

Standard of Review

The court Of Appeals review dismissal of case for failure to state claim upon which relief can be granted de novo, and it accepts all material allegations of the complaint as true and construe them in,light most favorable to non-moving party. **Fed.Rules Civ.Proc.Rule 12(b)(6). Garrett v. commonwealth Montg. Corp. Of america, 938 F.2d 591 (C.A.5th cir 1991).**

If the district Court bases its findings of facts on erroneous legal standard, the court will review record de nono. **in re medrano, 956 F.2d 101 (5th Cir. 1992).**

ARGUMENT

POINT 1

THE COMPLAINT STATES A CLAIM UNDER THE EIGHTH AMENDMENT

The Supreme Court has ruled that "deliberate indifference to a serious medical needs of a prisoners' is cruel and unusual punishment. Estelle v. Gamble, 429 U.S. 97, 104 (1976). The Complaint alleges facts that states a constitutional claim under this standard.

A. pLAINTIFF HAS A SERIOUS MEDICAL NEED THAT TRIGGERS THE PROTECTION OF ESTELLE V. GAMBLE

The District Court dismissed Plaintiff's 1983 civil rights complaint for failure to state a claim ~~that~~ -citing Praylor v. TDCJ, 430 F.3d 1208, 1209 (5th Cir. 2005) and held"that because the Fifth Circuit has yet to recognize unequivocally that transsexualism presents a serious medical need Plaintiff cannot establish a right to medical care or that the Defendants violated her constitutional rights". see Court's ruling at 18. The Court is wrong because Praylor is not the controling authority to determine if Plaintiff's 1983 states a constitutional violation. and because, the Court is arbitrarily creating a distinction between right to med-

ical care when there is no sound underlying distinction in volved.

The Supreme Court gave [a]ll state prisoners the right to receive adequate medical care and treatment of their [s]-erious medical needs. **Estelle v. Gamble, 429 U.S. 97, 104 (1976).**

In **Partridge v. Two Unknown Police officers of the city of Houston, tex., 751 f.2d 1448 (5th Cir.1985)** the court **unequivocally** ruled that " there is no sound underlying distinction between right to medical care of physical ills and for psychological... afflications... is a "serious medical need" for the purpose of **Estelle...".**

The district Court is effectively excluding Gender dysphoria from the list of serious medical and psychological illness, and thus denying Plaintiff the protection of **Estelle v. Gamble.**

According to **Estelle v. Gamble,** a serious medical need is determined on a case-by-case basis. In general, a serious medical need is defined as one that has been diagnsed by a physicain as requiring treatment or one that is so obvious that a lay person would easily recognize the necessity for a Doctor's attention. **Momonth County correctional Institutional inmate v. Lanzaro,834 F.2d 326, 326 (3d Cir.1987).**

Plaintiff contends that her illness meets the requirement of **Estelle** because she was legally diagnosed with Gender dysphoria, and her Doctor thought her condition was serious enought to require treatment, and she was prescribed estrogen injections, spirolactone, finastride to treat it. In addition, Plaintiff's doctor recommended the Reallife experience which is the second phase of the treatment for Gender Dysphoria. See Plaintiff's complaint.

Plaintiff's claims and medical needs is distinguishable from the issues raised in **Praylor v. TDCJ** because as stated above, she has a legal diagnoses and her Doctor has prescribed treatment. Whereas Praylor's complaint was an attempt to self-medicate. This Court made it clear that" **upon the instant record and circumstance of praylor's complaint...her claims did not constitute constitutional violation".**

Plaintiff contends that this court did not in any way slam the door on any prisoner receiveing treatment for Gender Dysphoria. For this reason, Plaintiff ask the Court to rule that Gender dysphoria is a serious medical need that triggers the protection of the Eighth Amendment because Gender Dysphoria is a serious medical condition codified in the Diagnostis and Statistical manual of Mental disorders, 5th Edition ("DSM") and the International Classification of Disease-10 ("ICD-10").

If left untreated, Gender Dysphoria can lead to serious medical problems, including clinically sigificant psychological distress, dysfunction, debilitating depression, and, for some people without access to appropriate medical care and treatment, self-harm, suicidality, and death. Leading Medical and mental-Heath professionals groups-including the American Medical Association, the American Psychological Association, The American Psychiatric Association, The American Academy of Family Physicians, The American Congress of Obstetricains and gnecologist, the Endocrine Society, The national Association of Social worker, and The World Professional Association for Transgender Health care-all agree that gender Dysphoria is a serious medical condition, and that treatment for gender Dysphoria is medically necessary for many people.

Numerious Federal courts have ruled that gender Dysphoria is a serious medical need. **Praylor v. TDCJ; Delonta v. Johnson, 703 F.3d 520 (4th Cir. 2012); Allard v. Gomez, 9 Fed. appx. 993 (9th Cir. 2001).** In Fact, seven of the U.S. Court of Appeals that have considered the question have concluded that severe gender Dysphoria or transsexualism constitutes a serious medical need for the purpose of the Eight Amendment. Even this court was going to follow it's sister circuits, but withdrew the decision. **Praylor.** id ;

Federal courts also recognize that Gender Dysphoria can make a person commit suicide or self-casteration. **O'Donnabhain v. Comm'r of internation revenue, 134 T.C. 34, 70, 76-77 (U.S. Tax Ct. 2010).**

Numerous federal Courts have also ruled that the proper Standard of care to treat Gender Dysphoria is The WPATH Standard of Care. **kosilek v. spencer, 889 F.Supp. 2d 190 (U.S. Dis. 2012). Even the district Court recognizes the gained acceptance of the WPATH SOC. See Court's ruling at page 19.**

The World Professional Association for Transgender Heath ("WPATH", a professional Association dedicated to establishing the Standards for treating Gender Dysphoria. These Standards are accepted by the medical community and Federal courts. The Wpath standard of care identify clinical guidance for health Professionals to assist with safe and effective care for for individuals with Gender Dysphroia. The Current version of the Standard of care-version 7-was releasted in September 2011.

The Standard of care apply equally to inmates, and extpressly states:

> Health care for Transsexual, transgender,and

> gender-nonconforming people living in an institutional environment should mirror that which would be available to them if they were living in a non-institutional setting within the same community....all elements of assessment and treatment as described in the SOC can be provided to people living in institutions. Acc ess to these medically necessary treatments should not be denied on the basis of institutionalization or housing arrangementds.

Page 65.

The National Commission on Correctional HealthCare ("NCCHC") recommends that the medical managenment of prisoners with gender dysphoria "should follow accepted standards developed by Professionals with expertise in transgender health," citing tne **WPATH** standards of care. [1]

Under the **WPATH** Standard of Care, treatment for Gender

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[1] NCCHC policy statement, transgender Health Care in correctional settings (October 18, 2009; reaffirmed with revision April 2015), http:/www.ncchc.org/transgender-health-care-in-correctional-setting (visited Aug.15, 2016).

Dysphoria is designed to help individuals live congruently with their gender identity and thus eliminate the clinically signicant distress. The treatment protocols include socially transitioning (dressing, groomming, and presenting oneself to others in accordance with one's gender identity), hormone therapy, and surgeries. The particular course of medical treatment varies on the indivivualized needs of the person.

Plaintiff contends that TDCJ has a health care plan that is designed to provide hormone therapy, and thats it-basically one treatment plan that fits all Transgender inmates without actually basing the care on their individualized medical needs.

Federal courts have ruled that adequate care is based on the individualized needs of the particular inmate. **Roe v Elyea, 631 F.3d 843, 862-63 (7th Cir. 2011);; Soneeya, 2012 U.S.Dist. LEXIS 43542, 2012 WL 1057625, at * 10, *16**(holding that DOC violated a Transsexual prisoner's rights under the Eighth amendment by relying on a blanket policy denying certain treatment, and stating that "(a)dequate care is based on an individualized assessment of inmate's medical needs in light of relevant medical consideration").

In addition Federal courts have ruled that "Adequate

medical care is also treatment that is "the product of sound medical judgment" **Chance v. Armstrong, 143 F.3d. 698, 702 (2d Cir. 1998). Sound Medical judgment is based on the needs of the particular prisoner.**

Plaintiff Contends that her Doctor Based his recommendation to provide Plaintiff with the reallife experience ON sound medical judgment that follows the the Standard of Care for Transgender health care.

Plaintiff is not in disagreement with his choice of treatment. The district Court ruled that Plaintiff's complaint fails because she is disgreeing with the type of medical TDCJ is willing to provide. However, this is contrary to clearly established law that prohibits prison officials to deny a prisoner care or treatment that was prescribed to treat her serious medical condition. **Estelle v. Gamble, 429 U.s. 97, 102, 97 S.Ct. 285, (1976).**

Dr. Greene is not a Gender Specialist and legally and ethically Dr. Greene can not even treat Gender Dysphoria and any decision he makes in denying treatment is not based on sound medical judgment because he is not qualified to treat Plaintiff's medical condition. This is tandamount to a Dentist doing open Heart Sergury!

In **Johnson v. wright, 412 F.f.3d 398, 406 (2d. Cir.2005)** Held **"When a prisoner's treating physician recommends a course of action, and officials (even higher level medical administrators) ignore that recommendation, the result is not a mere disagreement over medical treatment but can be deliberate indifference".**

Plaintiff contends that Dr. Greene's denial of her Doctor's recommendation was deliberate indifference in the worse way because he is not a Gender specialist and he totally repuiated her Doctor's recommendation without even inquring if the reallife treatment would adequately treat Plaintiff's medical condition. In fact, Dr. Greene said " in all my years has being a Doctor i have never allowed a "[m]an to live as a female and I won't until TDCJ tells me I have to".

Dr. Greene even referred to Plaintiff's Doctor as a **quack**, and told her that he does not give inmates stuff like frount handcuff passes and alot other treatment that UTMB provides because TDCJ will not let him wear his back brace in.

In **Roe v. Elvea, id.** The court held **"the failure to consider an individual inmate's condition in making treatment decisions is... precisely the kind of conduct that constitutes a substantial departure from accepted professional**

judgment, or standards such as to demonstrate that the person responsible did not actually base the decision on such a judgment".

Plaintiff contends that Dr. Greene did not base his denial on acceptable standards,etc. In fact, he based it on TDCJ's lack of policy to treat Transgender inmates. See Plaintiff's amended complaint.

Plaintiff points out that TDCJ's health care policy G. 51.11 is mostly for evaluation purposes and lays the guild lines to receive hormones. however, it does not follow the treatment options recommended by WPATH. In fact, TDCJ does not provide any treatment but therapy and hormones to treat Gender Dysphoria.

In **Fields v. Smith, 653 F.3d 550, 556 (7th cir.2011)** The court held **"[s]urely, had the [] legislature passed a law that DOC inmates with cancer must be treated only with therapy and pain killers, this court would have no trouble concluding that the law was unconstitutional"**

The WPATH Standard of care emphasizes that treatment for Gender Dysphoria is highly individualized. See Appx. at page 8.and 9. In fact, the SOC states:

> **"Indeed, hormone therapy and surgery have been found to be medicall necessary to alleviate gender dysphoria in many peolpe...as the field matured, health professionals recognized that while many individuals need both hormones therapy and surgery to alleviate their gender dysphoria, others need only one of thes treatment options and some need neither..."**

As Stated above on page 14, TDCJ has designed a health care policy designed to fit all Transgender inmates without actually basing the care on their individualized medical needs, and it appears that based on Police G.51.11 Plaintiff and other transgender inmates treatment is froozen at the first phase of the treatment, and regardless of their medical needs, TDCJ will not even consider Phase 2 and 3 of the WPATH standard of care.

Plaintiff contends that this policy repuiates prudent professional standards of care, and totally prohibits her doctor from basing his medical judgment or treatment decisions on sound medical judgment because he cannot fully assess Plaintiff's medical needs.

Plaintiff emphasize that she knows that she cannot choose the care she desires, and if the court construes her

complaint fairly, the Court will see that plaintiff is requesting the care her doctor recommended and for TDCJ to left the Ban on SRS so her **Doctor can determine if SRS is medically necessary to adequately treat Plaintiff's Medical condition.**

TDCJ has also made it impossible for SRS to ever be considered medically necessary by arbitrarily classifying SRS as elective treatment.

In Fact, TDCJ's Spokensmen told Channel ten news That: **"I cannot comment on pending litigation. it should be noted that offenders cannot have gender reassignment surgery which would be considered elective and is not covered under the TDCJ offender Health care plan".**
See Appx.

This statment effectively establishes that TDCJ has Ban on SRS. Even when the Court decided PRAYLOR V. TDCJ, TDCJ would not consider SRS for any reason. In PRAYLOR the Court points out that PRAYLOR was examined by a Doctor and did not qualify for SRS. Plaintiff points out that if PRAYlor was examined for SRS it was purly perfunctorily done for documentation purposees without any real meaning because TDCJ will not provide SRS for any reason!

The Medical cummunity has ruled that SRS is medically necessary to treat many people with Gender Dysphoria. See SOC at page 8.

The main purpose of the Eighth amendment and **Estelle v. Gamble** is to make sure that Prison officials are not denying inmates adequate medical care or torturing them. This law applies equally to Transgender inmates and it would be an egregous miscarrage of justice for this court to rule that Gender Dysphoria is not a serious medical need or not compel TDCJ to follow the WPATH Standard of care because Plaintiff and other Transgender inmates are being abused by lack of medical care, and we have to abuse ourselfs. It is a fact that Transgender inmates in Texas have and continue to casterate themselves, attempt to commit suicide and cut theri bodies up to cope with the pain Dysphoria causes. One inmate cut her Testicles off and was in the hospital for three months, and TDCJ still refused to treat her, so she then cut her throat! only then did TDCJ treat her! Plaintiff has attempted to commit suicide three times, she abuses her Penis and Testicles and have 100s of cuts on her body, and she plans to casterate herself if she does not receive treatment because it is extremely plainful to have to live in a males body and it makes her sick to have a penis and testicles.

ARGUMENT

POINT 2.

The supreme court has ruled that " intentional denial or interference with prescribed treatment, violates the Eighth Amendment. Estelle v. Gamble. Plaintiff's complaint alleges facts that states a constitutional claim under this standard.

B. PLAINTIFF HAS A RIGHT TO RECEIVE THE CARE THAT WAS RECOMMEND TO TREAT HER SERIOUS MEDICAL CONDITION.

The district Court dismissed Plaintiff's 1983 civil rights complaint for failure to state a claim and held that **"Under 28 U.S.C. § 1915 (A COMPLAINT FILED IN FORMA PAUPERIS THAT LACKS AN ARGUABLE BASIS IN LAW SHOULD BE DISMISSED".** See court's ruling at page 21. The court is wrong because under **Estelle v. Gamble,** Plaintiff's complaint against Dr. Greene clearly states a claim and has an arguable basis in clearly established law that prohibits prison officials from denying or interfereing with the treatment her Doctor recommended.

Cf. Lawson, v. Dallas County, 286 F.3d 257, 263 (5th Cir. 2002).

Plaintiff contends that the district court erroneously believes that **Praylor v. TDCJ** supersedes **Estelle v. Gamble.**

The court ruled that Plaintiff never alleges Dr. Greene "refused to treat [her], ignored [her] complaints, intentionally treated [her] incorrectly, or engaged in any similar conduct that would clearly evince a wanton disregard for any serious medical needs".
See Court's ruling at 22.

however, this is not true, and the Court even points out that Plaintiff claims Dr. Greene " **alleges Dr.Greene, a medical doctor who is not a GD specialist, refused Dr.Mckinney's order, citing the TDCJ policy, which does not provide transgender inmates the reallife experience, nor does the TDCJ allow transgender inmates to live asfemales or express their gender.** See Court's ruling at page 5.

Plaintiff contends that her Complaint clearly states that Dr. Greene intentionally denied her the care her Dr. Mckinney recommended and that it was causing her severe depression.

Because the court over looked material facts that Dr. Greene denied her medical care, plaintiff ask the court to reverse the District court's ruling, and grant her motion for preliminary injuction.

ARGUMENT

POINT 3.

A consensus of persuasive authority shows that it is unconstitutional to deny Plaintiff SRS based on a blanket policy that fails to consider her individualized medical needs.

C. PLAINTIFF HAS A RIGHT NOT TO BE DENIED MEDICAL CARE BASED ON A BLANKET POLICY THAT MAKES IT IMPOSSIBLE FOR SRS TO BE CONSIDERED MEDICALLY NECESSARY.

At least 7 Federal Courts have ruled that it is unconstitutional for prison officials to deny transgender inmates medical care based on a blanket policy, rather then based on their individualized medical needs. **Fields v. Smith, 653 F.3d 550 (7th Cir.201); Barrette v. Coplan, 292 F.Supp. 2d 281, 286 (D.N.H. 2003), Kosilek v. Maloney, 221 F.Supp.2d 156 (D.Mass. 2002), Allard v. Gomez, 9 Fed.Appx 793, (9th Cir.2001), De'Lonta v. Johnson, 708 F.3d 520 (4th Cir.2001).**

The above authoritied create a consensus of persuasive authority that shows that TDCJ is and Continues to violate Plaintiff's and other Transgender inmates right to adequate

medical care.

In **kovacic v. Villarroal, 628 F.3d 209 (5th Cir.2010)** This court held " The Court of appeals consider the status of the law both in the Circuit and in it's sister Circuits at the time of the Defendants actions".

In **Petta v. Rivera, 143 F.3d 895, 899 (5th Cir. 1998)** the court held " The Plaintiff should seek to identify "**cases of controlling authority in [the] jurisdiction at the time of the incident which clearly establish the rule on which they seek to rely on, "or" a consensus of cases of persuasive authority such that a reasonable officer could not have believed his actions was lawful".**

Plaintiff contends that the Defendants knew that a blanket ban on SRS or their decision to arbitrarily make SRS elective violated Plaintiff's constitutional rights because she wrote numerous grievances and letters that put them on notice that a blanket ban on SRS might be unconstitutional as applied to her because it allows TDCJ to ignore her serious medical needs.

It is not Plaintiffs fault that Mr. Livingston has a policy not to answer inmates complaints! The law requires Plaintiff to excercise due diligence in putting the Defendants on notice, and the record shows that she did.

This Court should not allow Mr. Livingston to claim he was not aware of Plaintiff's medical needs or the law that shows that a blanket ban on SRS is unconstitutional because he enforces a ploicy not to answer inmates complaints which is unstitutional because it allows a major policy maker to ignor an inmate's complaints.

Plaintiff contends that at a unit level, she was told that only the Director or Huntsville-which means the Director-can make policy changes. so she wrote directly to Mr. Livingston and her letter was returned because the Director does not answer inamte's complaints. See Plaintiff's summary evidence.

The District court totally failed to even consider this evidence, and allows Mr. Livingston to claim he was not aware, etc., which over looks material evidence that creates a genuine issue of material fact about Mr. Livingston's liability for denying plaintiff medical care or allowing Plaintiff to be denied SRS or the Real-life experience based on a blanket policy.

Plaintiff contends that the district court misconstrue her complaint because her complaint clearly states that Mr. Livingston created and enforced a blanket policy that allows medical to deny her SRS. She is not saying that He told medical not to treat her personally, but the policy itself effectively

denies her medical care, and as a final policy maker, he is liable.

Plaintiff is aware of **Johnson v. Johnson, 385 f.3d 503, 526 (5th Cir. 2004)** where the Court held " high-ranking official can't be expected to intervene personally in response to every inmate letter".

However, this should not apply in Plaintiff's case because the Director doesn't answer inmates letters even when like in her case, only the director could resolve the problem or change the policy. Even thought she was told to submit a sick call request, however, that was perfunctorily because medical doesn't have authority to change a major policy like TDCJ's Ban on SRS and it would be worthless! See App. S

Plaintiff contends that Mr.Livingston was deliberate indifferent to her serious medical needs by enforcing a blanket ban on SRS because it ignores her individualized medical needs, and makes it impossible for her Doctor to make a complete evaluation of her medical needs, thus, stopping him from making sound medical judgment or decision based on her individualized medical needs. This effectively allows TDCJ to ignore her serious medical needs or the risk she faces. Plaintiff points out that Huntsvile Adminstators had her committed to TDCJ's mental hospital for threating to cut her penis off. See Plaintiff's summary evidence.

ARGUMENT

POINT 4.

THE DISTRICT COURT INPROPERLY REVIEWED EVIDENCE THAT WAS NOT PROPERLY BEFORE THE COURT AS REQUIRED BY FED.R.CIV. P. 56 (E).

D. THE DISTRICT COURT VIOLATED PLAINTIFF'S RIGHTS BY ALLOWING MR. LIVINGSTON TO MAKE UNSWRON ALLEGATIONS.

Plaintiff contends that Mr. Livingston did not submit competent summary judgment evidence to support his unsworn claims that he was not deliberate indifferent to her serious medical needs, that he was not aware, that he acted reasonable, and that he was not aware that she was abusing herself. because he did not submit an affidavit or any other sworn statement supporting his claims. In fact, the only evidence he submitted was tdcj's health care policy, and plaintiff's medical records. See summary judgment evidence.

According to Fed.R.Civ.P. rule 56 (e) the district court can only review evidence properly before it. Okoye v. Univ. of Tex. Houston, Health Sci. ctr., 245 F.3d 507, 515 (5th cir. 2001) (holding that an unsworn statement was not

competent summary judgment evidence because it did not meet the requirments of Rule 56 (e)).

Plaintiff contends that Mr. Livingston's defense is largely based on his unsworn statements or the Attorney General's belief. In fact, there is no evidence that Mr. Livingston made these claims because there is no affidavits,etc., signed by him. The Summary judgment motion is not proof especially when there is no supporting evidence.

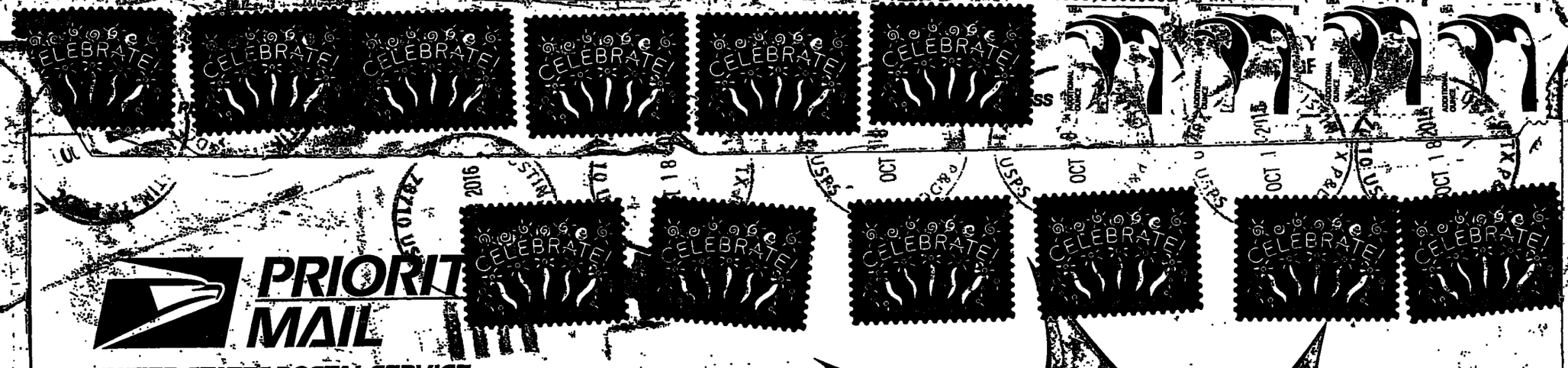
Because Mr. Livingston did not submit an affidavit or other competent summary judgment evidence to support his claims this Court should reverse the District Court's ruling because there are unresolved issues of whether or not Mr. Livingston was aware of Plaintiff's serious medical needs, the risk she faced, and if she was denied SRS and the Real-life experience for medical reason(s) or based on TDCJ's ban on SRS and the Real-life experience.

CONCLUSION

pLAINTIFF respectfully request the court to reverse the District Court's ruling, and rule that Gender Dysphoria is a serious medical need that TDCJ has to treat according to accepted Standards of care for Transgender Health Care.

10 8, 16

Respectfully,



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November 03, 2016

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No. 16-51148 Scott Gibson v. Brad Livingston, et al
USDC No. 6:15-CV-190

Dear Mr. Huntpalmer,

We filed the appellant's brief on 10/28/16. Appellee's brief is due within 30 days of that date, see FED R. APP. P. 31(a)(1). 5TH CIR. R. 31 and the Internal Operating Procedures following rules 27 and 31 state that except in the most extraordinary circumstances, the maximum extension for filing briefs is 30 days in criminal cases and 40 days in civil cases.

New Guidance Regarding Citations in Pleadings.

The court has approved an amendment to 5TH CIR. R. 28.2.2 granting the Clerk the authority to create a standard format for citation to the electronic record on appeal. You must use the new citation format when citing to the electronic record on appeal.

A. In single record cases, use the short citation form, "ROA" followed by a period, followed by the page number. For example, "ROA.123."

B. For multiple record cases, cite "ROA" followed by a period, followed by the Fifth Circuit appellate case number of the record referenced, followed by a period, followed by the page of the record. For example, "ROA.13-12345.123."

Important notice regarding citations to the record on appeal to comply with the recent amendment to 5TH CIR. R. 28.2.2.

Parties are directed to use the new ROA citation format in 5TH CIR. R. 28.2.2 **only** for electronic records on appeal with pagination that includes the case number followed by a page number, in the format "YY-NNNNN.###". In single record cases, the party will use the shorthand "ROA.###" to identify the page of the record

referenced. For multi-record cases, the parties will have to identify which record is cited by using the entire format (for example, ROA.YY-NNNNN.###).

Parties may not use the new citation formats for USCA5 paginated records. For those records, parties must cite to the record using the USCA5 volume and or page number.

In cases with both pagination formats, parties must use the citation format corresponding to the type of record cited.

Explanation: In 2013, the court adopted the Electronic Record on Appeal (EROA) as the official record on appeal for all cases in which the district court created the record on appeal on or after 4 August 2013. Records on appeal created on or after that date are paginated using the format YY-NNNNN.###. The records on appeal in some cases contain both new and old pagination formats, requiring us to adopt the procedures above until fully transitioned to the EROA.

The recent amendment to 5TH CIR. R. 28.2.2 was adopted to permit a court developed computer program to automatically insert hyperlinks into briefs and other documents citing new EROA records using the new pagination format. This program provides judges a ready link to pages in the EROA cited by parties.

Attention Attorneys: Direct access to the electronic record on appeal (EROA) for pending appeals will be enabled by the U S District Court on a per case basis. Counsel can expect to receive notice once access to the EROA is available. Counsel must be approved for electronic filing and must be listed in the case as attorney of record before access will be authorized. Instructions for accessing and downloading the EROA can be found on our website at www.ca5.uscourts.gov/attorneys/attorney-forms/eroa_downloads. Additionally, a link to the instructions will be included in the notice you receive from the district court.

Sealed documents, except for the presentence investigation report in criminal appeals, will not be included in the EROA. Access to sealed documents will continue to be provided by the district court only upon the filing and granting of a motion to view same in this court.

Pro se litigants may request the record from the district court to prepare your brief. If you wish to receive exhibits, you must specifically request them.

Once you obtain the record, you should check it within 14 days of receipt for any missing or incomplete items. If you need to request a supplemental record or order transcripts, do so promptly. The court will not grant extensions of time to file your brief because you did not timely check the record.

Important notice: 5TH CIR. R. 30.1.7(c) provides that the electronic PDF version of the record excerpts should contain pages representing the "tabs" identified in the index of the document. However, we remind attorneys that the actual paper copies of record excerpts filed with the court must contain actual physical tabs

that extend beyond the edge of the document, to facilitate easy identification and review of tabbed documents.

Sincerely,

LYLE W. CAYCE, Clerk

By: _____
Melissa V. Mattingly, Deputy Clerk
504-310-7719

Enclosure(s)

cc w/encl:
Mr. Scott Lynn Gibson

Case No. 16-51148

SCOTT LYNN GIBSON,

Plaintiff - Appellant

v.

BRAD LIVINGSTON; DR. D. GREENE,

Defendants - Appellees