

2008 WL 11358048

Only the Westlaw citation is currently available.

United States District Court, C.D. Illinois.

Edward J. ROE, Anthony P. Stasiak, Timothy J.
Stephen, Jackson Walker, Plaintiffs,

v.

Willard O. ELYEA, in his individual capacity, and
Michael Puisis, in his official capacity as Medical
Director of the Illinois Dep't of Corrections,
Defendants.

06-3034

Signed 06/26/2008

Attorneys and Law Firms

David Stevens, David Stevens, Law Offices of David
Stevens, Charleston, IL, H. Kent Heller, Heller Holmes &
Associates PC, Mattoon, IL, for Plaintiffs.

Joseph N. Rupcich, Cassiday Schade LLP, Springfield,
IL, for Defendants.

Order

HAROLD A. BAKER, UNITED STATES DISTRICT
JUDGE

***1** A jury trial was held on February 14–15, 2007, on the plaintiffs' claims that Defendant Elyea, individually and in his official capacity as Medical Director of the Illinois Department of Corrections, implemented a policy that amounted to deliberate indifference to the plaintiffs' serious medical needs regarding their Hepatitis C.

The jury returned a verdict against Defendant Elyea, awarding each plaintiff twenty thousand dollars in compensatory damages, plus two million dollars in punitive damages. Michael Puisis, the current Medical Director of IDOC, was substituted in his official capacity for Defendant Elyea in his official capacity.

After the trial, the court directed the plaintiffs to file written requests for whatever injunctive relief they deemed appropriate. (d/e 51). The defendants filed a

post-judgment motion for judgment as a matter of law or for a new trial, which will be ruled on in a separate order. (d/e 53).

In response to the court's order, the plaintiffs filed a motion for a permanent injunction (d/e 56), asking the court to order the IDOC to comply with the current treatment protocol for Hepatitis C published by the National Digestive Disease Information Clearinghouse. The plaintiffs also ask the court to order the IDOC to coordinate a continuation of treatment for those inmates with Hepatitis C that cannot complete the treatment while incarcerated but who are covered by public aid. The plaintiffs also seek an order requiring the IDOC to sue Wexford and others for unjust enrichment resulting from the failure to treat inmates with Hepatitis C and establish a fund for those inmates. Lastly, the plaintiffs ask for the appointment of an independent physician to serve as a "prisoner's advocate" regarding Hepatitis C treatment.

"When there is no continuing violation of federal law, injunctive relief is not part of a federal court's remedial powers." Al-Alamin v. Gramely, 926 F.2d 680, 685 (7th Cir. 1991). "Evidence of past wrongs alone is insufficient to merit equitable relief. Stewart v. McGinnis, 5 F.3d 1031, 1037 (7th Cir. 1993), citing City of Los Angeles v. Lyons, 461 U.S. 95, 102, 103 (1983).

On this record the court cannot conclude that any of the plaintiffs are still being, or are likely to be, injured by the defendant's treatment policy for Hepatitis C, as applied to them. Only one of the four plaintiffs is still incarcerated, Plaintiff Walker. Two of the plaintiffs are no longer incarcerated, Plaintiffs Stasiak and Stephen. Plaintiff Roe was incarcerated, but, sadly, the plaintiff's counsel has informed the court that Roe died while incarcerated in Graham Correctional Center on June 9, 2008, from cirrhosis of the liver. (d/e's 63, 64). The court denied the plaintiffs' motion for class certification on the grounds that the plaintiffs had not demonstrated commonality and typicality for class certification or that they adequately represented the class they were trying to certify. (d/e 27). Thus, any injunctive relief can only be targeted to the four named plaintiffs in this case, not to other inmates who did not participate in the litigation.

***2** Injunctive relief might be available for Plaintiff Walker, the one remaining plaintiff who is still incarcerated. However, Walker did receive treatment for Hepatitis C after filing this case. According to the final pretrial order, Walker received interferon treatment for his Hepatitis C in December 2006. (Final pretrial order, d/e 36, uncontested fact #12). Defendant asserts that Walker's

treatment is completed, but the record is not developed on that score. Walker testified at trial that he had received treatment and was feeling better, but that he had not been monitored since that treatment. Walker does not address what treatment or testing he still needs, if any. The court is restricted by 18 U.S.C. § 3626 as to the kind of injunctive relief that can be granted with respect to prison conditions; the relief must be narrowly tailored and the least intrusive way of correcting the violation. As the court stated at the telephone conference on June 25, 2008, Walker will be given an opportunity to specify what injunctive relief he seeks, if any.

The plaintiffs also move for reconsideration of the court's denial of class certification. They assert that, "having heard the evidence the Court now knows that the policy ... was in fact identical to each proposed Plaintiff, that is that not even the testing would be done." (d/e 61, p.2). The defendant is correct, however, that Fed. R. Civ. P. 23(c)(1)(C) permits changing an order granting or denying class certification "before final judgment." See also *Advisory Committee Notes to 23(c)(1)*, 1996 *Amendments* ("A determination once made can be altered or amended before the decision on the merits if, upon fuller development of the facts, the original determination appears unsound."); *Note to 23(c)(3)*(rule prevents "one-way interventions," where potential class members do not seek to intervene until after a favorable judgment). To transform this case into a class action after the jury found for the plaintiffs would violate Rule 23 and severely prejudice the defendant. The plaintiffs' counsel asserts that he has "more than two dozen Hepatitis C inmates who are desirous of filing suits and in the interest of judicial economy, said suits should either be consolidated under multi-district litigation provisions or alternatively, handled as part of a class." That may be so, but those are questions for a new case, not for this case.

IT IS THEREFORE ORDERED:

- 1) The plaintiffs' motion for a permanent injunction is denied (d/e 56).
- 2) The parties' motions to appoint an expert for purposes of injunctive relief are denied as moot (d/e's 52, 60).
- 3) The defendant's motion for an extension of time to identify an expert is denied as moot (d/e 59).
- 4) The plaintiff's motion for reconsideration of class certification is denied (d/e 61).
- 5) The plaintiffs' motion for the release of the plaintiff Roe is denied as moot (d/e 63). The plaintiffs' motion to withdraw the motion for release is denied as moot (d/e 64).
- 6) By July 17, 2008, Plaintiff Walker is directed to file a motion for the injunctive relief he seeks for himself, if any.
- 7) Pursuant to Fed. R. Civ. P. 25(a), the parties have 90 days after service of a statement noting the death of Plaintiff Roe to move for substitution. It appears that the statement noting death was served on June 12, 2008 (d/e 64).

All Citations

Not Reported in Fed. Supp., 2008 WL 11358048

Footnotes

¹ Michael Puisis (IDOC's current Medical Director) was substituted for Defendant Elyea (IDOC's former Medical Director) for purposes of injunctive relief. (2/20/08 Court Order).

