

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

[ELECTRONICALLY FILED]

PAMELA WALKER, Individually and	)	
on behalf of all others similarly situated,	)	
	)	
PLAINTIFF	)	
	)	
vs.	)	NO. 4:07-CV-0014-SEB-WGH
	)	
FLOYD COUNTY, INDIANA, et al.,	)	
	)	
DEFENDANTS.	)	

**MEMORANDUM IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION**

This is a class action for injunctive and declaratory relief and to recover actual and punitive damages for injuries incurred by Plaintiffs and the class they represent during their incarceration at the Floyd County Jail ("the Jail"). Plaintiffs' injuries were the direct result of the deplorable conditions currently existing in the Jail, conditions that are so dangerous, unsanitary, and cruel as to require immediate injunctive relief to protect those who have not yet been harmed.

FACTS

Plaintiff Pam Walker was incarcerated in the Jail in early October, 2006. Prior to her incarceration in the Jail, she had never experienced a staph infection. However, the Jail is overcrowded, and Ms. Walker was housed in a dormitory-style cell in which inmates were forced to sleep on mats on the floor, share toilets, use the same showers, and lived in such close proximity as to make it impossible to avoid physical contact with one another.

Within days of Ms. Walker's incarceration, she learned from fellow inmates that there was an outbreak of staph infection in the Jail. One of Ms. Walker's cellmates, Crystal Stubbs, had open, oozing boils on her buttocks as a result of a highly contagious, painful, disfiguring, penicillin-resistant form of staph infection. Ms. Stubbs had expressly informed the Jail's nurse that she had MRSA, but instead of isolating Ms. Stubbs and effectively treating her condition, the nurse prescribed Ms. Stubbs an antibiotic "Bactrim," gave her some gauze and epsom salts, and sent her back to the cell she shared with Ms. Walker and other healthy, uninfected inmates. In fact, despite numerous inmate requests that staph-infected inmates be segregated from the general population, the Jail has made no effort to segregate infected inmates, claiming that there is no room.

Because her open, draining abscesses were on her buttocks, Ms. Stubbs was unable to treat her own wounds. Because of Defendants' deliberate indifference to Ms. Stubbs' condition and the risk it presented to others, it fell to a fellow inmate, Angela Foster, to assist Ms. Stubbs with the treatment of the draining lesions on her buttocks, and to treat the open, suppurating sores that subsequently developed on other inmates after their exposure to Ms. Stubbs' MRSA. For example, Ms. Stubbs would routinely lay on her stomach on the mat on the floor on which she slept, and Ms. Foster would manually squeeze the pus out of Ms. Stubbs' abscesses and then change her bandages.

In an explicit acknowledgement of the harm to which they were knowingly exposing healthy, uninfected inmates, Defendants provided biohazard bags for the inmates' garbage (including soiled bandages) and would don disposable latex gloves before entering the communal cell in which Ms. Stubbs, Ms. Walker, Ms. Foster and others were housed. However, the inmates' repeated requests for bleach to clean their toilets were denied. In

addition, despite the infection and the overcrowded living quarters, inmates were provided with a clean uniform and clean bedding no more than once per week.

It did not take long for Ms. Walker to develop the suppurating boils indicative of MRSA, but she was advised by the Jail's nurse that she was suffering from *spider bites*, not a virulent, flesh-eating, penicillin-resistant staph infection, and she received no meaningful treatment. In fact, it appears common practice for the Jail's medical staff to misrepresent to female inmates who are suffering from staph infections that they had merely been "bitten by spiders", considering (1) that the Jail has made no known efforts to eradicate the spiders allegedly causing the bites, and (2) that if infected inmates persist long enough in their requests for medical treatment, the medical staff provides them with antibiotics that are commonly associated with the treatment of staph infections.

When Ms. Walker was released from the Jail on November 3, 2006, she promptly went to the hospital where she underwent several days of in-patient treatment, including but not limited to a surgical excision of her oozing MRSA sores. Since that time, Ms. Walker's MRSA has recurred twice, requiring medical treatment. Moreover, the chronic and unpredictable nature of her condition has significantly impaired her employability and her relations with loved ones.

ARGUMENT

I. Plaintiffs' Burden.

Plaintiffs were sentenced to a deprivation of their liberty to atone for their offenses. They were emphatically *not* sentenced to live their lives with a highly contagious, penicillin-resistant, flesh-eating bacteria. The Court cannot turn back the clock for Ms. Walker, or cure her of MRSA. But the Court must take action now to address the conditions that led to

Ms. Walker's infection in order to protect healthy inmates still incarcerated in the Jail, and persons who will be incarcerated there in the future.

The factors the Court considers in whether to grant a preliminary injunction favor issuance of injunctive relief in this case. In evaluating Plaintiffs' motion for a preliminary injunction, the Court must consider whether Plaintiffs have demonstrated that

1) [they have] a reasonable likelihood of success on the merits of the underlying claim; 2) no adequate remedy at law exists; 3) [they] will suffer irreparable harm if the preliminary injunction is denied; 4) the irreparable harm [Plaintiffs] will suffer without injunctive relief is greater than the harm the opposing party will suffer if the preliminary injunction is granted; and 5) the preliminary injunction will not harm the public interest.

Kiel v. City of Kenosha, 236 F.3d 814, 815-16 (7th Cir. 2000).

These criteria are not prerequisites that must be met but rather are factors to be balanced in preliminary injunction decisions. "The court...weighs all of these factors, 'sitting as would a chancellor in equity,' when it decides whether to grant the injunction." *Ty, Inc. v. The Jones Group, Inc.*, 237 F.3d 891, 895 (7th Cir. 2001) (quoting *Abbott Labs. v. Meade Johnson & Co.*, 971 F.2d 6, 11 (7th Cir. 1992)). This process involves engaging in what the Seventh Circuit terms "the sliding scale approach; the more likely the plaintiff will succeed on the merits, the less the balance of irreparable harms need favor the plaintiff's position." *Ty, Inc.*, 237 F.3d at 895. "The sliding scale approach is not mathematical in nature, rather 'it is more properly characterized as subjective and intuitive, one which permits district courts to weigh the competing considerations and mold appropriate relief.'" *Id.* at 895-86 (quoting *Abbot*, 971 F.2d at 11)).

II. Plaintiffs Will Likely Prevail On The Merits Of This Case.

The first factor that the Court must consider is whether Plaintiffs have reasonable likelihood of success on the underlying claim. See *Kiel v. City of Kenosha*, 236 F.3d at 815-16. The Seventh Circuit has also characterized this factor as follows: "A party seeking to obtain a preliminary injunction must demonstrate [that] its case has **some** likelihood of success on the merits...." *Ty, Inc.*, 237 F.3d at 895 (emphasis added).

The underlying claim in Count I is that the rights of the class under 42 U.S.C. §1983 were violated. To prevail on a §1983 claim, Plaintiffs must establish that they were deprived of a federal right by a person acting under color of state law. *Brown v. Budz*, 398 F.3d 904, 908 (7th Cir. 2005). Here, officials of the Jail permitted the conditions of the Jail to deteriorate to the point of the cruel and unusual punishment prohibited by the Eighth Amendment to the United States Constitution. "The Eight Amendment prohibits punishments that involve the unnecessary and wanton infliction of pain, are grossly disproportionate to the severity of the crime for which an inmate was imprisoned, or are totally without penological justification." *Caldwell v. Miller*, 790 F.2d 589, 600 (7th Cir. 1986). Conditions of confinement are part of the penalty imposed upon criminal offenders and are therefore "within the ambit of the Eighth Amendment." *Id.*

The United States Constitution does not permit inhumane prison conditions. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). Rather, the Constitution requires "humane conditions of confinement; prison officials must ensure that inmates receive adequate food, clothing, shelter, and medical care, and must take reasonable measures to guarantee the safety of the inmates." *Id.* (internal quotation marks omitted). Convicted prisoners are entitled to "adequate food, clothing, shelter, sanitation, medical care and personal safety." *Lareau v. Manson*, 651 F.2d 96, 106 (Conn. Cir. 1981).

To succeed on a claim that jail officials failed to protect inmates, a plaintiff must show 1) that he or she endured conditions posing a substantial risk of serious harm and 2) that jail officials acted with deliberate indifference to the risk. *Id.* at 834. The deprivation alleged first must be “objectively, sufficiently serious” and result in the denial of the “minimal civilized measure of life’s necessities.” *Id.* The second requirement requires the prison official or employee to have a “sufficiently culpable state of mind.” *Id.* That state of mind is one of “deliberate indifference to the inmate health and safety.” *Id.*

A jail official that disregards a known risk to an inmate's health is guilty of deliberate indifference. *Vaughn v. Greene County, Arkansas*, 438 F.3d 835, ____ (8th Cir. 2006). The facts of this case already show that Defendants failed to protect Plaintiffs from a known risk to their health, then compounded their grossly unconstitutional behavior but failing to provide Plaintiffs the medical treatment they needed for their condition -- indeed, the evidence suggests that Defendants knowingly *misled* Plaintiffs about the nature and severity of their medical condition to avoid the expense and inconvenience to Defendants that proper treatment would entail.

However, at the preliminary injunction stage, the Court is *not* required to determine whether the Defendants response to the conditions at issue amounted to deliberate indifference. *Austin v. Pennsylvania Dep't of Corrections*, 1992 WL 277511 at *8 (E.D. Pa. 1992).

III. Plaintiffs Have Amply Satisfied The Remainder Of The *Kiel* Factors.

There is no question but that under the circumstances of this case, Plaintiffs can show: that no adequate remedy at law exists; that they and others will suffer irreparable harm if the preliminary injunction is denied; that the irreparable harm they will suffer without

injunctive relief is vastly greater than the harm Defendants will suffer if the preliminary injunction is granted; and that the preliminary injunction will not harm the public interest.

MRSA is a harm that no award in damages can adequately compensate. There is no remedy at law adequate to "make whole" Plaintiffs or other inmates of the Jail who become infected with MRSA. The only remedy is to impose, through injunctive relief, health precautions at the Jail that Defendants are unwilling to undertake voluntarily, and which they have flagrantly disregarded despite the conditions described above.

Defendants would suffer no harm were the Court to grant Plaintiffs the injunctive relief they request. It is obvious that the injunctive relief requested by Plaintiffs, if granted, would protect not only Plaintiffs and others incarcerated at the Jail at present or in the future, but Defendants themselves as well as other members of the Jail's staff. Finally, given the public health implications of setting loose in the community person infected with the highly contagious, painful, disfiguring, penicillin-resistant flesh eating bacteria that is MRSA, injunctive relief in this instance not only will not harm the public interest, but will serve and protect the public interest.

FOR ALL THE FOREGOING REASONS, Plaintiffs respectfully request that the Court, after hearing, enter the attached Injunction.

Respectfully submitted,

s/ Gregory A. Belzley

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on counsel for Defendants, Richard T. Mullineaux and R. Jeffrey Lowe, Kightlinger & Gray, LLP, 4106 Charlestown Road, New Albany, IN 47150, via CM/ECF, this ____ day of April, 2007.

s/ Gregory A. Belzley

Counsel for Plaintiff