DOCKET NUMBER: 06-12296G

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

Thomas F. "Slick" Jones, *et al,*
Appellants

v.

John P. Rowe, *et al,*
Appellees

Appeal from the United States District Court

for the Southern District of Georgia

Case Number: CV281-155

APPELLEES' BRIEF

Douglas W. Alexander
109 Shore Rush Drive
St. Simons Island, GA 31522
(912) 634-0436

CERTIFICATE OF INTERESTED PERSONS

AND CORPORATE DISCLOSURE STATEMENT

The undersigned certifies that, to the best of his information and belief, the following is a complete list of interested persons as set forth in Eleventh Circuit Rule 28-2 (b).

1. The Honorable Anthony A. Alaimo - Judge, United States District Court for the Southern District of Georgia;
2. Thomas F. “Slick” Jones - Named Defendant
3. Mansy Clark – Named Defendant
4. Ronald E. Dempsey – Named Defendant
5. Alton L. Wooten – Named Defendant
6. Wayne Hutcheson – Named Defendant
7. John M. McClurd – Named Defendant
8. Harold Pate – Named Defendant
9. Willou Copeland Smith – Named Defendant
10. Ronald E. Young – Named Defendant

11. Georgia Department of Offender Rehabilitation, David Evans, Commissioner, Georgia Dept. of Offender Rehabilitation
12. Carl R. Johnson - Current Glynn County Commissioner
13. Don Hogan – Current Glynn County Commissioner
14. Ulrich Keller – Current Glynn County Commissioner
15. Cap Fendig – Current Glynn County Commissioner
16. Tony Thaw – Current Glynn County Commissioner
17. Wayne Bennett – Current Glynn County Sheriff
18. Paul “Howard” Lynn – Current Glynn County Commissioner
19. Alan “Jerome” Clark – Current Glynn county Commissioner
20. John P. Rowe, Jr. – Plaintiff
21. Horace McDuffie – Plaintiff
22. Terry A. Richmond – Plaintiff
23. Mitchell S. Brody - Plaintiff

24. All persons who are, have been, and will be confined in the Glynn County Detention center under conditions which violate their rights under the First, Eighth, and Fourteenth Amendments to the United States Constitution – the Plaintiff class

25. Gary Moore – Attorney for Defendants/Appellants

26. Douglas W. Alexander – Attorney for Plaintiffs/Appellees

27. Glynn County, Georgia

Douglas W. Alexander
Georgia Bar No. 008859

ATTORNEY FOR APPELLEES

109 Shore Rush Drive
St. Simons Island, GA 31522
(912) 634-0436

STATEMENT REGARDING ORAL ARGUMENT

Pursuant to Federal Rules of Appellant Procedure 34, the Appellees make no request for oral argument. The questions of fact in this case are abundantly obvious and were correctly determined by the district court. There is no need for oral argument. The district court should be affirmed without written opinion.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Statutes:

Other Authority:

STATEMENT OF THE ISSUES PRESENTED FOR APPEAL

The ultimate issue to be decided in this appeal is whether the district court erred in denying Defendants' "Motion to Modify the Plan for Annual Donations from the Inmate Welfare Fund to Charitable Organizations in Glynn county, Georgia." Dkt. No. 316. The Inmate Welfare Fund (the Fund) was created by a "stipulation" (Dkt. No. 105) entered in 1985, and the permanent plan for annual donations therefrom originally promulgated by a district court order (Dkt. No. 180) entered on August 3, 1994. This case deals with a private settlement agreement between the parties which created the Fund and a trust to manage the excess funds derived from the fund. This court must determine whether the district committed error in its factual determination that the Fund and the trust were created by a private settlement agreement and therefore is outside the termination powers of the Prison Litigation Reform Act (PLRA), 18 U.S.C. § 3626.

STATEMENT OF THE CASE

I. Statement of Facts and Proceedings Below

Defendants' Statement of Facts and Proceedings Below is correct through the first paragraph on page three of their brief. It is at this point that the credibility of defendant's statement begins to fail because of errors of omission. As will be shown below, in Footnote 2 on page three of their brief, defendants improperly attempt to characterize the "Settlement Agreement" as a "Consent Decree."

As noted by the defendants, in 1985, the parties jointly submitted a stipulation that was approved by the district court on December 9, 1985. Dkt. No. 105. In addition to creating the "Inmate Welfare Fund," the stipulation included provisions to improve the health appraisal of inmates, provisions concerning housing and clothing of inmates, a provision to discontinue housing inmates in a cell known as "the hole" or the "supply room," a provision for the employment of a professional jail administrator having a bachelors degree in the field for which he was being hired, and a provision for establishing a contract with the library to provide library services for the inmates. While the defendants characterize the provisions for providing for the Fund as the "most notable" provision set out in the

stipulation, the other provisions of the stipulation as set forth above, are equally notable and perhaps more so.

Following the inception of the Fund in 1985, no funds were donated to any charitable organization until eight years later, in 1993, when the sheriff initiated the practice of donating excess funds to charity. On October 1, 1993, because the Fund was generating so much excess, on a motion from the sheriff, the district court entered an order authorizing charitable donations on behalf of the inmates to two charities – the United Way and the Boys Club of Glynn County. The sheriff wrote these checks. Dkt. 172, 173 and 332 at 35. Following the sheriff's example, on April 18, 1994, the inmates filed a "Motion for a Permanent Plan to Make Annual Donations from the Inmate Welfare Fund to Charitable Organizations in Glynn County." Dkt. No. 174. Although the sheriff himself had sought and obtained district court approval to make charitable donations from the Fund, the defendants opposed the inmates' motion to establish a permanent plan for such donations. Dkt. No. 177. Nevertheless, the district court granted the inmates motion by order dated June 15, 1994. Dkt. No. 179. Shortly thereafter, on August 3, 1994, the district court entered an order approving a trust agreement, establishing procedures whereby excess money in the Fund was to be distributed, in perpetuity, to charitable organizations. Dkt. No

180. Since the creation of the trust, some $500,000 in charitable donations have been donated to 38 charities. Dkt. No. 317, Ex. A.

On June 26, 1998, defendants filed their "Motion to Terminate the Decree of the Court Contained in the Consent Order of December 20, 1982, as Amended," relying on the Prison Litigation Reform Act, (hereinafter "PLRA") 18 U.S.C. § 3626. Dkt. No. 238. The plaintiffs did not oppose this motion. In response, the district court entered a "Final Order" on September 22, 1988, vacating the "Orders of this Court in this case (with the exception of the Order dated August 3, 1994, promulgating permanent plan for the Inmate Welfare Trust)." **The defendants consented to this order as evidenced by the signature of their attorney.** Dkt. No. 234. The defendants did not appeal this order, and the sheriff has continued to pay over the surplus funds in the trust.[1] Dkt. 244 – 309, 311 – 315, 319, 321, 322, 326, 328 and 330.

More than seven years later, on November 9, 2005, the defendants filed their "Motion to Modify the Plan for Annual Donations from the Inmate Welfare Fund to Charitable Organizations in Glynn County, Georgia." While the plaintiffs characterized this as a "motion to modify," what they seek is termination of the trust. Dkt. 316. In doing so, plaintiffs

[1] Although the sheriff has paid the surplus funds to the trust, he has withheld $10,000 recently paid to him as a signing bonus relating to the telephone service provided to inmates in the Detention Center, Dkt. 318 at 2.

again relied on the Prison Litigation Reform Act, this time attempting to avoid the fact that they had entered into a private agreement, which was excluded from the mandatory termination provided by the PLRA. On March 16, 2006, the district court dismissed defendants' motion finding that the defendants were not entitled to terminate the charitable trust under the PLRA. Dkt. No. 319. It is from this order that the plaintiffs now appeal.

II. Standard of Review.

The question to be decided by this appeal is whether the district court erred in its factual finding that the Inmate Welfare Fund and the obligation that excess funds derived from the Fund be donated to charity resulted from a private settlement agreement, thereby placing it outside the termination powers of the PLRA. Plaintiffs submit that the determination made by the district court is a question of fact. Thus, since this Court is being asked to review the district court's decision on a question of fact, this Court should apply the *clear error* standard of review. See Peebles v. Merrill Lynch, Pierce Fenner & Smith, Inc., 431 F.3d 1320, 1324 (11 CA (2005); Trustees of Central Pension Fund v. Wolf Crane Sv., Inc., 374 F.3d 1035, 1039 (11 CA 2004).

SUMMARY OF THE ARGUMENT

In its March 16, 2006 order, the district court correctly ruled that it does not have the power to terminate the requirement that monies in the Glynn County Inmate Welfare Fund be donated to charitable organizations. Dkt. No. 329. Fundamental to the district court's holding was the factual finding that the fund itself, and the obligation to make charitable donations therefore, resulted from a "private settlement agreement" as that term is defined in the Prison Litigation Reform Act at 18 U.S.C. § 3626(g)(6). The district court correctly noted that the creation of the Fund and the plan for permanent charitable donations therefrom were not necessary to correct a violation of a Federal right and could have been created only by a private settlement agreement. The district court correctly found that it lacked jurisdiction to terminate the Fund. The Inmate Welfare Fund was created in 1985 by a "stipulation" that is most aptly characterized as a private settlement agreement. Following the sheriff's charitable donations from the Fund, the obligation to make charitable donations from the Fund was established when the district court entered an order in 1994 promulgating a permanent plan for donations. Although the order was initially opposed by the defendants, the defendants ratified both the Fund and the trust by consenting to the continuation of both in 1998. Thus, both the Fund and the

plan for charitable donations arose out of a private settlement agreement, and are therefore beyond the termination powers of the PLRA.

ARGUMENT

I. The Inmate Welfare Fund And The Inmate Welfare Fund Charitable Trust Were Created As The Result Of A Private Settlement Agreement Between The Parties And Are Not Terminable Under The PLRA.

The plaintiffs correctly note that the starting point for analysis of this appeal is the text of the PLRA. However, in making their analysis the defendants overlook or ignore the operative language of the Act which controls the outcome of this appeal:

> Prospective relief in any civil action with respect to prison conditions shall extend no further than necessary **to correct the violation of the federal right** of a particular plaintiff or plaintiffs. . . . 18 U.S.C. §3626(a)(1)(A).

After quoting subparagraph (a)(1)(A), the plaintiffs proceed with a discussion of the reasons why the district court could not order the creation of the Fund. Indeed, the defendants claim that they "can envision no set of circumstances in which the existence of the fund or the payment of charitable donations there from would ever have been 'necessary to correct a violation of [a] Federal right.'" Brief, at 14. The plaintiffs agree.

It is more than obvious that the Fund was not created to correct the violation of a Federal right. Only a cursory examination of the stipulation

that created the Fund is necessary to observe that most, if not all, of the provisions of the stipulation do not address the correction of Federal rights. Paragraph three of the stipulation creates the Fund. It was clearly recognized that a profit would be generated from the operation of the inmate commissary and commissions paid on the pay telephone system used by the inmates. The Fund was created to manage and direct the use of these profits. Dkt. No. 105, p. 2-3. The creation of the Fund clearly could not have been ordered by the district court as **a correction of a violation of a Federal right**. The fund was created as part of a private settlement agreement to address the welfare needs of the plaintiffs.

After acknowledging that the existence of the Fund is not necessary to correct a violation of a federal right, and therefore is outside the provisions of the PLRA, the defendants devote the remainder of their argument attempting to concoct reasoning to bring the fund within the termination powers of the PLRA.

The stipulation provided for the employment of a professional administrator who was a college graduate to manage the new detention center. Dkt. No. 105, p.4. This provision also could not have been ordered by the district court. The agreements reached in the stipulation went far beyond the constitutional requirements relating to the confinement of

inmates. Such provisions could have been provided only by private agreement between the parties, which clearly lies outside the mandatory termination provisions of the PRLA. The fact that parties may enter into agreements upon such conditions to which they agree is clearly recognized by 18 U.S.C. § 3625(c).

As noted by the district court:

> Congress has made it clear, the Court is not a forum in which disappointed prison officials can return to reopen or avoid private compromises of which they have grown dissatisfied, even if those settlements were overly generous. "Nothing in this section shall preclude parties from entering into a private settlement that [is not narrowly tailored to correct the violation of a federal right], if the terms of that agreement are not subject to court enforcement other than the reinstatement of the civil proceeding that the agreement settled." 18 U.S.C.A § 3626 (c)(2)(A). Dkt. No 329 at 11-12.

The district court was correct in its determination that the termination of this private settlement agreement is not mandated by the PLRA.

In attempting to bring the stipulation within the termination powers of the PLRA, the defendants refuse to accept the factual evidence that the stipulation was drawn as a private settlement agreement. Indeed, the vast majority of plaintiffs' brief is devoted to their attempt to avoid the factual determination of the district court.

In making its determination of the fact that the Fund is a result of the private settlement agreement between the parties, the district court made a

careful and detailed examination of the facts leading to the creation of the trust. Dkt. No. 329. For the sake of brevity, that examination will not be repeated here. The operative language of the district court's findings state:

> The charitable trust is not the type of relief that the Court could have ordered to remedy constitutional violations at the Glynn County jail. Rather, the **facts of record** demonstrate that it was a private agreement between the parties that compromised uncertain litigation under the PLRA. While the trust was created by court order, it was continued and ratified in 1998 as a result of a private agreement to settle the case. Id. at 10.

It is critical to note that the plaintiffs consented to the 1998 order which continued and ratified the trust. The district court noted that "defendants have ignored the 1998 order wherein they consented to the maintenance of the trust," and further noted in footnote two on page eight of the order that Gary Moore, Glynn County Attorney and Attorney for the Defendants signed the order as consenting on behalf of the defendants. Id. at 8.

Moreover, this Court should note that from 1994, when the trust was created, until 1998, when defendants ratified the trust by consenting to the district court order, the plaintiffs did nothing to terminate the trust. Additionally, since ratifying the trust in 1998, plaintiffs have likewise brought no action to terminate the trust until November, 2005, when they filed their motion to modify/terminate the trust. Although they claim on page six of their brief to have "stiffly opposed" the motion to create the trust,

the plaintiffs made no attack on the trust for more than 10 years. One must question their motivation for doing so at this late date.

The language set forth in plaintiffs' brief in support of their motion to modify/terminate the trust is puzzling. On page three of their brief in support of their motion, plaintiffs suggest that the trust is somehow controlled by the inmates.

> The existing plan for a trust controlled by inmates provides inmates with a benefit which they would not have if they were not incarcerated as a criminal suspect or as a convicted criminal awaiting removal to a state prison. The benefit is that they can sit on the board of directors of a philanthropic institution to disburse money which is not their own. Such benefit is incompatible with their current status, unfair to taxpayers and encourages, to some degree, becoming an inmate. Anything which encourages behavior which would result in incarceration in the detention facility is contrary to the interests of society as a whole. Dkt. No. 316 at 3.

The suggestion that the trust is "controlled by inmates," or "provides inmates with a benefit," or would "encourage behavior which would result in incarceration" is preposterous.

More puzzling is Sheriff Bennett's attempt to explain this language in his oral testimony at the hearing on this motion before the district court. While on cross-examination Sheriff Bennett testified:

> Q How about page 3 of that same document [the brief], the first sentence on the page, Sheriff. "The existing plan for a trust controlled by inmates provides inmates with a benefit which they would not have if they were not incarcerated as a criminal

suspect or a convicted criminal awaiting removal to a state prison."

Tell me, sir, what is the benefit of which you speak here?

A In my opinion, what it's saying here is that the inmates – they do have a financial interest because they're making purchases and making telephone calls. Therefore, they're generating revenue.

By generating revenue, we're able to provide them with material items that they normally would not receive.

Q The first part of the sentence says, "The existing plan for a trust controlled by inmates."

Tell me, sir, what control do the inmates have over this fund?

A They are stockholders. They have a pretty good bit of control because if they do not purchase any items and do not make these phone calls, there's no funds generated that would be transferred to the Inmate Welfare Fund.

Q Are you suggesting that they control the Trust or that they control the money?

A I'm saying that they control the actual money that's being put into the Trust. Certainly they do not control the Trust Fund. They are incarcerated.

Q The second sentence says that they can sit on a board of directors.

A Here again, that would be a matter of interpretation. If they organize inside the facility and say, "We're not going to buy Roma noodles this week," therefore, the profits are going to go down.

"We're not going to make any phone calls." As you heard earlier, that's where all the money is coming from is the phone calls.

> Q You're talking about a board of directors to disburse money.
>
> Are you suggesting that the inmates can sit on this Board of Trustees?
>
> A That would be the opinion of the Court not mine because I did not write the ruling.
>
> Q Are you aware of any inmate ever sitting on this Board of Trustees?
>
> A To the best of my knowledge, Mr. Alexander, there are two gentlemen that are currently on the Board that I'm familiar with from the very beginning. As far as the third person goes – I'm almost positive those are the only three that have ever served on the Board. Dkt. No 332 at 38 – 40.

Sheriff Bennett's testimony demonstrates confusion or his lack of understanding of the issues. Sheriff Bennett's assertions are incredible and "dubious in the extreme." See Jones v. Berg, 374 F.3d 541, 545 (7 CA, 2004). Notably absent in defendant's brief is any reference to this portion of their motion or the sheriff's testimony concerning these issues.

The defendants ignore the district court's analysis of federal court jurisdiction set down by the supreme Court in Kakkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377-81 (1994). Having failed to challenge this issue, the defendants have conceded that the district court was correct in its analysis of this Supreme Court decision. The Fund and the trust are not within the termination provisions of the PLRA, and the federal court lacks jurisdiction over this matter.

II. **The Anti-Gratuities Clause of the Georgia Constitution has no Application in this Case.**

As correctly noted by the district court, where consideration is provided to the government, no gratuity has been given. Swanberg v. City of Tybee Island, 271 Ga. 23, 26 (1999); Haggard v. Bd. of Regents, 257 Ga. 514, 525-26 (1987). Dkt. No 329 at 12 – 13. Plaintiff's agreement to terminate other prospective relief was consideration for the continuation of the charitable trust. Garden Club of Georgia v. Schackelford, 274 Ga. 653 (2002). The trust does not violate the anti-Gratuities Clause of the Georgia Constitution.

CONCLUSION

For the reasons set forth herein, plaintiffs show that this Court should affirm the district court's order (Dkt. No. 329) denying defendants' "Motion to Modify the Plan for Annual Donations from the Inmate Welfare Fund to Charitable Organizations in Glynn County, Georgia." Dkt. No. 316.

Respectfully submitted, this ____ day of July, 2006.

BY:_____

Douglas W. Alexander
Georgia Bar No. 008859
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing pleading by addressing same to:

Gary Moore
701 "G" Street
Historic Glynn County Courthouse
2nd Floor
Brunswick, GA 31520

This _____ day of July, 2006.

BY:_____
Douglas W. Alexander
Georgia Bar No. 008859
Attorney for Plaintiffs

109 Shore Rush Dive
St. Simons Is., GA 31522
912 634-0436