UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JAY LEE GATES, et al.,

Plaintiffs,

v.

JAMES GOMEZ, et al.,

Defendants.

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NO. CIV. S-87-1636 LKK

O R D E R

Pursuant to the stipulation of the parties to this action, this court entered a consent decree addressing, inter alia, the conditions of confinement at the California Medical Facility at Vacaville ("CMF").[1] The defendants, relying on the Prison Litigation Reform Act ("PLRA"), 18 U.S.C. § 3626, have moved for the termination of an order issued by this court under the provisions of that decree.

[1] The history of the negotiations leading to the decree are briefly discussed in this court's recent decision in the instant case. See Order entered July 12, 1996.

For the reasons explained below, that motion will be denied.

I.

THE ORDER AND THE MOTION

A. THE ORDER

The plaintiffs herein contested the defendants' policy of placing mentally ill patients requiring psychotropic medication in the Willis Unit, an administrative segregation unit at CMF. See Mediator's Findings and Recommendations Re: Perceived Violation A-13 filed March 21, 1995. This court, after de novo review of the findings and recommendations of the mediator, concluded that the policy violated various provisions of the consent decree and a subsequent stipulated order of enforcement. See Consent Decree §§ V.F.1. and V.G.3.; Stipulation and Order Re: Resolution of PV-506. Consistent with that determination, the court ordered the defendants to cease housing psychiatric patients taking psychotropic medication on the Willis Unit until they adopted appropriate policies and procedures relative to treatment of such patients. See Gates v. Gomez, No. 87-1636 (E.D. Cal. April 9, 1996). That order was not appealed.

B. THE MOTION

Defendants move to immediately terminate the order. They argue that 18 U.S.C. § 3626(a) prohibits prospective relief which corrects conditions of confinement not prohibited by the federal constitution, and note the statute's rigorous standard concerning

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the scope of relief.[2] Because the statute provides for immediate termination of prospective relief in excess of the standards set forth in section 3626(a)(1)(A), see 18 U.S.C. § 3626(b)(2)[3], and because the amendment is intended to apply to all prospective relief whether the judgment was entered prior or subsequent to adoption of the statute, see PLRA Section 802(b)(1)[4], the defendants conclude that they are entitled to immediate

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[2] The section provides in pertinent part:

> Prospective relief in any civil action with respect to prison conditions shall extend no further than necessary to correct the violation of a federal right of a particular plaintiff or plaintiffs. The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the federal right, and is the least intrusive means necessary to correct the violation of the federal right . . . ."

18 U.S.C. § 3626(a)(1)(A)

[3] The section provides:

> In any civil action with respect to prison conditions, a defendant or intervenor shall be entitled to the immediate termination of any prospective relief if the relief was approved or granted in the absence of a finding by the court that the relief is narrowly drawn, extends no further than necessary to correct the violation of the federal right, and is the least intrusive means necessary to correct the violation of the federal right.

18 U.S.C. § 3626(b)(2).

[4] The Congress provided that the statue "shall apply with respect to all prospective relief whether such relief was originally granted or approved before, on, or after enactment of this Title." § 802 of Title VII of the Appropriations for, inter alia, the Judiciary.

termination.

II.

ANALYSIS

In a related matter, this court noted its duty to construe statutes to avoid constitutional questions if the language of the statute permits such a construction. See Coleman v. Wilson, __ F. Supp. __, No. 90-520, slip op. at 8, n. 7 (E.D. Cal. July 12, 1996). Relying upon this principle, plaintiffs, noting the possible constitutional issue created by construing the statute to apply to final judgments, see Plaut v. Spendthrift Farm Inc., 514 U.S. __, 131 L.Ed.2d 328 (1995), argue that the statute does not apply when the consent decree upon which prospective injunctive relief is based was entered prior to adoption of the PLRA. As I explain below, although I come to a conclusion having a result similar to that which plaintiffs argue for, I do so for reasons distinct from those advanced by them.

Plaintiffs' argument that the PLRA does not apply to the April 9, 1996 order because the PLRA does not address final judgments entered prior to its adoption ignores the requirement that a construction avoiding a constitutional question be "fairly possible." Crowell v. Benson, 285 U.S. 22, 62 (1932). As the Supreme Court has explained, "'[w]e cannot press statutory construction to the point of disingenuous evasion' even to avoid a constitutional question." Public Citizen v. U.S. Department of Justice, 491 U.S. 440, 467 (1989)(quoting U.S. v. Locke, 471 U.S. 84, 86 (1985)). The language of the PLRA is uncompromising in this

regard; there is simply no question that Congress intended to address relief whenever the judgment had been entered.[5]

While the language of the PLRA pertaining to its applicability to past judgments appears uncompromising, it does not follow that I must come to grips with the constitutional issue. Indeed, construction of another term of the statute and the language of the consent decree permits the court to avoid the constitutional issue. I turn first to the statute.

Defendants apparently take the position that the term "federal right" is the equivalent of constitutional right; however, they tender no reason to read the statute that way. Thus, clearly a federal statute creates a federal right, and it appears to this court that the final judgment of a federal court, valid at the time it was entered, also creates rights which can fairly be characterized as "federal rights." Neither the statutory definition of relief to include "consent decrees," 18 U.S.C. § 3626(g)(9)[6], nor its application to relief whenever the decree

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[5] Although the definition of relief and prospective relief found in 18 U.S.C. § 3626(g) is less than helpful, see Coleman v. Wilson, __ F. Supp __, No. 90-520 (E.D. Cal. July 12, 1996), that ambiguity is not pertinent to this motion. As this court explained in Coleman, relief appropriately looks to the equitable orders of a court. Whatever else is true, an order of the sort in issue here is relief within the meaning of the statute.

[6] The section provides:

> (9) The term 'relief' means all relief in any form that may be granted or approved by the court, and includes consent decrees, but does not include a private settlement agreement."

18 U.S.C. § 3626(g)(9).

issued, see n. 4, supra, appears to undermine a construction of the term "federal right" to include those rights embodied in a final decree of a federal court. Thus, to the extent that this court found that defendants' policy violated a right embodied in the consent decree, the April 9, 1996 order "correct[s] the violation of a federal right of a particular plaintiff or plaintiffs," as required by 18 U.S.C. § 3626(b)(2). Moreover, as I now explain, the agreement of the parties and the language of the consent decree embodying that agreement demonstrate both that the absence of a federal right antecedent to entry of the decree is irrelevant, and that the PLRA's standards relating to the construction of orders of relief do not apply to orders issued pursuant to that decree.

In the consent decree, the parties expressed their agreement that "it is not the intent of this consent decree to prescribe the minimum standards required by the United States Constitution." Consent Decree § I.24 Accordingly, this court has repeatedly explained in the course of this litigation, and the Ninth Circuit has at least twice affirmed, that the consent decree established contractual standards exceeding those required under the Eighth Amendment. See Gates v. Rowland, 39 F.3d 1439, 1444 (9th Cir. 1994); Gates v. Gomez, 60 F.3d 525, 531 (9th Cir. 1995). In sum, the defendants, pursuant to agreement, forswore limiting plaintiffs to relief defined by the Eighth Amendment.[7]

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[7] While it seems self evident, the court pauses to note that unless the parties stipulated otherwise, the plaintiffs were limited to such relief as is afforded under the Eighth Amendment

The consent decree also provides that "the parties agree that in entering into this consent decree they waive specific findings of fact and conclusions of law and any determination whether the remedies provided are legally required." Consent Decree § I.21. Thus, by its plain language, the parties entered into an agreement waiving a right to a determination of whether an order conforms to a legal requirement.[8]

Given the agreement of the parties, the only question that is raised is whether the parties may waive the limitations of the Eighth Amendment, specific findings and conclusions, and the restriction on the scope of the order. Although the PLRA adds stringent standards for relief, nothing in the statute precludes the parties from exercising their traditional right to settle on any terms, including waiver of legal rights they might otherwise have.

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or relevant federal statutes. Accordingly, no question is raised in this motion about whether the state may waive a statutory right which did not exist at the time the consent decree was entered.

[8] Fed. R. Civ. P. 52 makes findings of fact and conclusions of law mandatory "[i]n all actions tried upon the facts without a jury," and Fed. R. Civ. P. 56 requires them when injunctive relief is granted. Those provisions existed at the time the consent decree was entered in this case, so that once again there is no issue of the waiver of a right which did not exist at the time of the parties' agreement. Of course, a consent decree, because it embodies an agreed disposition by the parties is not a trial upon the facts, thus excusing the need for findings and conclusions. See 5A Moore's Federal Practice ¶52.03[3](citing United States v. Scholnick, 606 F.2d 160, 165-66 (6th Cir. 1979)); Bowater North American Corp. v. Murray Machinery, Inc. 773 F.2d 71 (6th Cir. 1985).

Clearly, that is what the defendants did in this case.[9]

The law of this case makes clear that the waivers are proper. Although the Eighth Amendment and federal statutes applied to the violations alleged in the plaintiffs' action, the parties were "free to negotiate to do more than those laws require." Gates v. Rowland, 39 F.3d at 1444. Thus, it is established that the state was able to and did waive its right to have this case determined under a constitutional or federal statutory standard. Id.[10]

The Circuit's determination is consistent with governmental waiver jurisprudence generally. Thus, in Harris v. City of Fort Myers, 624 F.2d 1321, 1323 (5th Cir. 1980), a municipal defendant subject to a previously entered consent decree sought to have subsequent Supreme Court authority applied to its case thus avoiding an obligation to paying attorney's fees. The Fifth

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[9] I also note that defendants have not moved for modification or termination of the consent decree. Accordingly, the decree need not be reviewed under the standards set forth in Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367 (1992). Even if they had moved for such modification, the passage of the PLRA does not alter the legality of the underlying conduct alleged by plaintiffs such that modification based on a change in law would be appropriate. Cf. Sweeton v. Brown, 27 F.3d 1162, 1166 (6th Cir. 1994), cert. denied, 115 S.Ct. 1118 (1995)(holding that where new law makes legal what a consent decree was designed to prevent, the decree should be terminated).

[10] Indeed, it is established that a state may waive its sovereign immunity protected under the Eleventh Amendment. See Port Authority Trans-Hudson v. Feeney, 495 U.S. 299, 304-307(1990). Without suggesting that the stringent standards for Eleventh Amendment waiver, see also Micomonaco v. State of Washington, 45 F.3d 316, 321 (9th Cir. 1995), Actmedia, Inc. v. Stroh, 830 F.2d 957, 963 (9th Cir. 1986), apply to the waiver of rights under PLRA, even if they did the language of the Decree suffices. See Consent Decree §§ I.21 and I. 25.

Circuit explained that regardless of the legal standards applicable under 42 U.S.C. § 1988, the fact that defendant chose to enter into a consent decree served as a waiver of the standards enunciated in a subsequent decision. Id at 1324. The situation before me is analogous. Defendants entered into an agreement prior to enactment of the PLRA. The agreement provided that the terms of the consent decree would govern, and that determinations concerning what, but for the agreement, would otherwise be legally required would not be made. Consent Decree at § I.21. Defendants having waived the right to raise defenses under federal statutes cannot now rely on the PLRA as a basis for termination of relief that was issued pursuant to the agreement.[11]

III.

CONCLUSION

Accordingly, for the reasons stated above defendants' motion to immediately terminate the relief ordered on April 9, 1996, is DENIED.

IT IS SO ORDERED.

DATED: July 22, 1996.

LAWRENCE K. KARLTON
CHIEF JUDGE EMERITUS
UNITED STATES DISTRICT COURT

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[11] Indeed, to the extent that the PLRA appears to constrain the ability of a state to settle its litigation on terms satisfactory to itself, the statute raises questions under the Tenth Amendment. See United States v. Begins, 304 U.S. 27, 52 (1937) ("It is of the essence of sovereignty to be able to make contracts and give consents bearing upon the exertion of governmental power").