UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INMATES AT THE INDIANA STATE FARM, et al.,	)	
Plaintiffs,	)	
v.	)	
EVAN BAYH, et al.,	)	CAUSE NO. IP 82-0477-C M/S
Defendants.	)	

ORDER

This matter is again before the Court on a motion to show cause why the defendant, Evan Bayh, et al., (the "State") should not be held in contempt for failure to comply with the 1986 and 1988 orders granting prospective relief. Also at issue is the effect on this institutional reform case of the 1996 Prison Litigation Reform Act (the "Act" or "PLRA"), passed on April 26, 1996, which applied to all prospective relief whether granted or approved on, before, or after the date of the enactment. 18 U.S.C. § 3626 et seq.; Pub.L. 104-134, Title I, § 101[(a)][Title VIII, § 802(b)(1)], Apr. 26, 1996, 110 Stat. 1321-70 (renumbered Title I Pub.L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327).

To avoid the application of one provision of the new law, the Inmates at the Indiana State Farm ("Inmates") moved for a preliminary injunction against operation of the automatic stay provision. The issues relating to the contempt allegation and the applicability of the PLRA have been fully briefed and are ready to be resolved. The issues with respect to the constitutionality of

the PLRA have not been fully addressed by the parties, but that issue may not need to be reached to resolve this dispute.

I. FACTUAL & PROCEDURAL BACKGROUND

In 1982 the Inmates sued the State of Indiana because of overcrowding and lack of sufficient medical care and other staffing. On February 18, 1986, the Court approved an Agreed Entry submitted by the parties, and entered an order requiring the renovation of the facility, an increase in staffing and minimum levels of medical staffing. By October 19, 1988, the Court modified its earlier order to allow for the construction of new buildings at the State Farm, rather than renovation of the old ones. This order also reduced the minimum number of hours a psychiatrist was required to be on-site. The State was required to file monthly population statements with the Inmates' counsel, and to immediately notify said counsel if the population limit was ever exceeded.

By January, 1994, the Inmates asked for this Court's additional assistance because the State had not yet completed the fourth new dormitory at the State Farm as required by the 1988 order. Specifically, they requested a court order imposing further restrictions on the population at the State Farm until said completion. In June, 1994, the Inmates filed a motion for an order to show cause because the fourth dormitory was still incomplete and the population had exceeded the limit. That motion also alleged a failure by the State to employ at least one full-time and one half-

time medical doctor at the facility. That level of medical staffing was required by the Court's order of February 18, 1986.

On October 13, 1995, the Court approved a Joint Report that indicated the new facilities had been completed and the shortage of health care givers had been alleviated. The state specifically represented that a full-time medical doctor was on staff at the facility. According to the report, the population limit was set at 1,650 in light of the completion of the fourth dormitory, which limit had not been exceeded in October, 1995.

The current matter before the Court arose in September, 1996, at which time the Inmates moved for another order to show cause why the State should not be held in contempt for violating the consent decree. Again, the State is accused of not complying with the requirement that they employ a full-time and a part-time physician at the State Farm. On September 24, 1996, the Court entered an Order to Show Cause, and set a hearing for November 14, 1996. In the meantime, the State moved, on October 15, 1996, to terminate all prospective relief in this action pursuant to the PLRA. 18 U.S.C. § 3626, et seq.

Termination was sought because the prospective relief was granted, according to the State, without the Court having made the specific findings required by the new Act. See 18 U.S.C. § 3626(b)(2). Once a motion has been filed to terminate, the Court has thirty days in which to rule before the statute mandates a suspension of the former prospective relief. If a court fails to rule on the motion within those thirty days, the prior order

granting prospective relief will be automatically stayed by operation of law until the court makes its final ruling. See 18 U.S.C. § 3626(e). It is that provision that the Inmates seek to enjoin until the Court decides the termination issue.

These provisions apply to prospective relief of any kind, whether it resulted from a final judgment on the merits, or from an order approving an agreement between the parties as to future conduct. See 18 U.S.C. § 3626(c)(1),(g)(1) (including consent decrees among the remedies the court shall not approve without making the required findings, and defining a consent decree as any relief entered by a court based upon the consent or acquiescence of the parties). Prospective relief means all relief other than compensatory monetary damages. 18 U.S.C. § 3626(g)(7). Consequently, the consent decree entered in 1986, and modified in 1988, falls within the purview of the statute.

On November 12, 1996, the Inmates filed a motion for a preliminary injunction in an effort to stay the automatic stay provision of the Act. They also filed, on November 14, 1996, a response to the State's motion to terminate prospective relief, challenging the constitutionality of the Act's automatic stay and termination provisions, and a memorandum in support of their request for a stay. A show cause hearing was held that same day to determine the contempt issue, but the Court also heard some argument on the preliminary injunction request. In light of the fact that no ruling was entered by the date the PLRA automatic stay

went into effect, the motion for a stay of that provision should be considered moot.

II. DISCUSSION

A. PRELIMINARY INJUNCTION

A preliminary injunction is an extraordinary remedy. In order to be entitled to such relief, a plaintiff must show:

> (1) [a] reasonable likelihood of success on the merits;
> (2) irreparable harm;
> (3) the balance of hardships tipping in its favor; and
> (4) the impact of the injunction on the public interest.

Hybritech Inc. v. Abbott Lab., 849 F.2d 1446, 1451 (Fed. Cir. 1988). These factors must be balanced against each other and against the magnitude of the relief sought. Id. The injunction will not issue if the factors do not favor the movant. In addition, the party seeking the injunction has the burden of proving entitlement to such relief. Reebok Intern. Ltd. v. J. Baker, Inc., 32 F.3d 1552, 1555 (Fed. Cir. 1994).

Although courts should make findings with respect to each of the four factors and then weigh each against the other, it is not always necessary to make findings with respect to the relative harms and the public interest when a movant has failed to carry its burden on the first two crucial factors. Id. at 1556. A movant who clearly establishes the first factor, however, will enjoy the benefit of a presumption on the second. The presumption is rebuttable. Moreover, it does not even arise unless there is a strong showing of a likelihood of success on the merits. Id. Logically then, any preliminary injunction analysis should begin

with determining the plaintiff's likelihood of success on the merits.

The Inmates attempted to make a showing of a strong likelihood of success on the merits concerning whether the PLRA would be constitutional as applied to this case.[1] Because their brief was not filed until the day of the hearing, making it difficult for the State to adequately address its arguments, the Court made no ruling on that date. The hearing was held on the thirtieth day following the State's motion for termination of prospective relief. According to the statute, if the Court has not ruled on the motion within the thirty day period, an automatic stay becomes effective, and will remain in place until the Court's final ruling. In the absence of a ruling by this Court on either the motion for termination or the motion for a preliminary injunction (staying the stay), the automatic stay became effective on November 14, 1996, by operation of law. Consequently, the Inmates' motion for a preliminary injunction is moot and will therefore be **DENIED**.

B. CIVIL CONTEMPT MOTION

To determine whether the State has violated the 1988 modified consent decree, the Court must consider the terms of the decree to ascertain whether it "sets forth in specific detail an unequivocal command." See Goluba v. School Dist. of Ripon, 45 F.3d 1035, 1037

[1] For a recent decision addressing each of the arguments raised by the Inmates see Plyler v. Moore, ___ F.3d ____, 1996 WL 659352 (4th Cir. Nov. 14, 1996); accord Benjamin v. Jacobsen, 935 F. Supp. 332 (S.D.N.Y. 1996).

(7th Cir. 1995). Next it must evaluate whether the Inmates have offered clear and convincing evidence that the State violated that command. Id. A violation does not have to be wilful in order to provoke a contempt finding; rather, it is enough to show that the State has not been "reasonably diligent and energetic in attempting to accomplish what was ordered." Id. (citing Stotler and Co. v. Able, 870 F.2d 1158, 1163 (7th Cir. 1989)). Civil contempt is coercive in nature, intended to force a party's compliance with a court order, and is thus avoided by demonstrating an inability to comply. United States ex. rel. Thom v. Jenkins, 760 F.2d 736, 738 (7th Cir. 1985).

Initially the Inmates have the burden of showing the State's non-compliance with the decree. Once that burden is met, the State must come forward with an explanation for their failure to comply. See Citronell-Mobile Gathering, Inc. v. Watkins, 943 F.2d 1297, 1301 (11th Cir. 1991). If the State can show that they have been reasonably diligent and energetic, or that compliance is factually impossible, they may avoid a contempt finding. See American Fletcher Mortgage Co. Inc. v. Bass, 688 F.2d 513, 517 (7th Cir. 1982); Badgley v. Santacroce, 800 F.2d 33, 36 (2d Cir. 1986) (citing United States v. Rylander, 460 U.S. 752, 757 (1983)), cert. denied, 479 U.S. 1067 (1987). Political difficulties with compliance are not sufficient to avoid contempt, nor is the likelihood that compliance might be in violation of state law or state court orders. Badgley, 800 F.2d at 37-38 (noting that the

Supremacy Clause would render the federal court judgment a complete defense in the state courts).

The Inmates demonstrated at the hearing and otherwise, that the State is not in compliance with the requirement that they maintain one full-time and one half-time physician at the Farm. In fact, no evidence was offered by the State to contradict that finding. Instead, the State moved to have the consent decree requiring this level of medical staffing terminated. Alternatively, the State suggested at the hearing that the current medical staffing was sufficient to satisfy the spirit, if not the letter of the consent decree. The scope of a consent decree, however, is interpreted within its "four corners," and not with reference to the specific purposes of the parties who entered it. United States v. Huebner, 752 F.2d 1235, 1243 (7th Cir.), cert. denied, 474 U.S. 817 (1985).

The agreed entry specifically required that the State provide one full-time and one part-time medical doctor at the Farm. It also required the staffing of four physician assistants or registered nurses, one full-time pharmacist, two psychiatric social workers, one licensed psychologist, one hospital administrator, one behavioral clinician, twelve medical technicians, two substance abuse counselors, two dentists and one psychiatrist for not less than six hours a week. Subsequently, in an Agreed Entry dated November 29, 1989, the parties and the Court agreed that the Department of Corrections would designate one person to be responsible for monitoring the population of the Farm on a daily

basis, to ensure compliance with the decree. This requirement was specifically designated an additional requirement, rather than a substitution for any previous requirements.

At the time of the hearing, the State had one medical doctor on contract, not a full-time employee, who was contracted to work up to thirty hours a week. As of October 4, 1996, this doctor actually worked twenty-four to twenty-eight hours a week. A second medical doctor, who is a full-time employee at another correctional facility, was contracted to work up to twenty hours a week (as overtime) at the Farm. By the time of the October 4, 1996, report this doctor worked for sixteen hours a week. By the State's own witnesses and reports, they have not met the requirements of the decree.

In light of the above, this Court has no choice but to find that the State of Indiana has been and was at the time of the hearing in contempt of the Court's prior orders. More troublesome than the lack of compliance, however, is the fact that the State has argued that its current staffing of the facility, by contract physicians working at most fifty hours a week, but more likely only forty-four hours, is sufficient to satisfy the decree. If the State wants to use part-time contract medical doctors to meet the needs of the Inmates, the proper course would be to seek a modification of the consent decree and prove that such staffing would be adequate. Choosing another route, the State attempts to avoid the entire issue by obtaining a termination of the prospective relief altogether. It is that issue that next attracts

the Court's attention, for an adequate remedy for the contempt finding cannot be determined without considering first whether the PLRA should terminate the decree.

C. TERMINATION REQUEST

Section 3626(b) provides that a state may seek immediate termination of prospective injunctive relief, if that relief had been approved by the court without certain specified findings. Before granting such a remedy, a court is to find that the relief was narrowly drawn, necessary to correct the violation of a federal right, and the least intrusive means of correcting the violation. 18 U.S.C. § 3626(b)(2). If the court makes written findings, based on the record, that the relief "remains necessary to correct a current or ongoing violation of the Federal right," that it is narrowly drawn and the least intrusive means, then such relief shall not terminate. 18 U.S.C. § 3626(b)(3).

The Inmates address the issue of whether a termination is appropriate primarily by arguing against the statute's constitutionality. These arguments seem aimed not only at preventing the application of the PLRA, but also at demonstrating the likelihood of success on the merits in support of a preliminary injunction. A constitutional issue should not be considered by a district court, however, unless it is necessary to resolve the matter. See Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg. & Constr. Trades Counc., 485 U.S. 568, 575 (1988); Jean v. Nelson, 472 U.S. 846, 854 (1985) ("Prior to reaching any constitutional

questions, federal courts must consider non-constitutional grounds for decision."); Hadix v. Johnson, 933 F. Supp. 1362, 1365 (W.D. Mich. 1996).

Two possible candidates exist for non-constitutional grounds that would allow a decision in this case. The Court could examine the record and determine whether it contains sufficient evidence to facilitate making the required findings that permit a continuation of the prior consent decree. Alternatively, the Court could allow the parties to present new evidence and argument in support of the original or a modification of the consent decree to render it acceptable under the new law.

With respect to the first alternative, the Court notes that none of the required findings were made at the time any of the agreed entries were approved. In fact, the original entry contains the following language:

> This Agreed Entry . . . shall not constitute an admission or finding on the merits of the case, and the Defendants deny that there has been a deprivation of a right, privilege, or immunity secured by the Constitution or laws of the United States.

Feb. 18, 1986 Entry at 2. Subsequent entries were either modifications of or additions to the original one, which was never determined to have been satisfied in full.

In addition, the Court was not aided in making the necessary findings by the presentation of evidence at the November 14, 1996, hearing. Instead, the evidence was focused on proving that the State had not complied with the existing decree. What was needed was some evidence about the effects of the absence of a full-time

physician and the provision of approximately forty hours a week of contract medical services to a prison population of 1,645 inmates.[2] Given this paucity of evidence on which to base any current findings with respect to the need to correct an ongoing violation of federal law, and whether the consent decree is sufficiently narrow and the least intrusive means, the Court cannot follow this non-constitutional avenue to a decision.[3]

Since the primary conflict between the parties seems to be the absence of medical staffing in compliance with the decree, the Court is inclined to follow the second alternative. Assuming that it was not Congress' intent to destroy valid consent decrees based

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[2] The Inmates cited two cases to encourage a finding that the current medical staffing at the Farm violates the Eighth Amendment. See French v. Owens, 777 F.2d 1250, 1254 (7th Cir. 1985), cert. denied, 479 U.S> 817 (1986); Inmates of Occoquan v. Barry, 717 F. Supp. 854 (D. D.C. 1989). Each of these cases, however, contained sufficient evidence from which the court could make a constitutional finding. That is not the situation here.

In addition, the Inmates' effort to frame the original consent decree as the federal right that is being violated currently is unavailing. When the issue is to determine whether that decree was necessary to correct a violation of federal rights, and whether it was narrowly drafted and the least intrusive means, it would be circular to use the decree itself as the source of the federal right allegedly being violated. Under such an analysis a district court would never be able to terminate a consent decree, which would conflict with Congress' purpose in enacting the PLRA. See Plyler v. Moore, ___ F.3d _____, 1996 WL 659352, *3 (4th Cir. Nov. 14, 1996).

[3] The Court acknowledges the logic of the Inmates' argument that for the PLRA to require a finding that the defendant has actually violated the prisoners' federal rights it would have to have a full-blown trial. It would be highly unlikely that a defendant would stipulate to that fact during a settlement. Moreover, conducting a trial to determine the existence of a violation would defeat the purpose of a settlement. Apparently, something less than a full adversarial hearing was contemplated by Congress. All that is needed, in fact, is a finding that the remedy sought would be aimed at correcting a violation.

on settlements that were freely reached by both sides after years of litigation, the Court now orders both sides of this controversy to do one of three things. First, they may request a hearing at which both sides will present evidence that would enable the Court to have a basis to find that the original agreed entry met the requirements of the PLRA. Given that the building construction that had been mandated originally has been completed, the parties may not find this alternative acceptable.

Second, they could request a hearing at which each side would present evidence and defend a proposed modification of the original consent decree. See Rufo v. Inmates of Suffolk Cty. Jail, 502 U.S. 367 (1992). If either of these first two alternatives is employed, the parties are cautioned that the Court would expect to be presented with evidence with which to make written findings that the relief remains necessary to correct a current or ongoing violation of a federal right, that it is narrowly drawn and the least intrusive means of correcting the violation.

If neither of these alternatives is acceptable, the Court will have no choice but to find that non-constitutional grounds do not exist for deciding the dispute, and will turn to the constitutional issues raised by the Inmates. In order to proceed with a constitutional analysis of the termination provision of the PLRA, the Court is obliged to give the United States notice and an opportunity to be heard on the validity of its statute. See 28 U.S.C. § 2403; Hadix v. Johnson, 933 F. Supp. at 1365, n.2. Moreover, the State has not addressed any of the constitutional

issues raised by the Inmates. Consequently, the parties will be ordered to fully brief the Court on these issues prior to a decision being rendered on the constitutionality of the § 3626(b).

III. CONCLUSION

In response to the Inmates' motion for an order to show cause why the State should not be held in contempt for not complying with the consent decree issued in this case, the Court finds that the State was in contempt until November 14, 1996, when the decree was suspended by operation of law. The relief sought by the Inmates, should a contempt finding be rendered, was for the Court to order the State to comply with the decree. That relief cannot be given in light of the recent changes in federal law. Such an order could not be issued without the Court making certain findings that it is not in a position to make at this time. No relief other than a declaration that the State was in contempt has been granted.

The Inmates sought to prevent the operation of the automatic stay provisions of § 3626(b) of the PLRA by filing a motion for preliminary injunction two days before the expiration of the statutory thirty day period. That motion has been **DENIED** as moot. Finally, the motion to terminate the prospective relief granted in this case in 1986 and 1988, cannot be decided in the absence of evidence that would allow the Court to make certain findings as required in the statute.

Because of the newness of this law, and the uncertainty about its constitutionality, the Court has offered the parties three

alternative avenues for assisting it in reaching a decision. They have thirty days from the date of this order to decide which procedure they wish to follow, and so inform the Court by filing a written request for that procedure. It is hoped that the parties will agree, but if they do not the Court will choose which procedure to follow based on the persuasiveness of the arguments presented in the requests. If the Court proceeds to a determination of the constitutionality of the statute, an additional delay will be encountered while the United States is being notified and given an opportunity to be heard on the subject. The parties are ordered to draft a written notice in compliance with 28 U.S.C. § 2403 for the Court's use in that eventuality.

IT IS SO ORDERED this 20 day November of 1996.

LARRY J. McKINNEY, JUDGE
United States District Court
Southern District of Indiana

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