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United States District Court, M.D. Alabama.

John Cook THOMAS, et al., Plaintiffs,
v.
TALLAPOOSA COUNTY, et al.,
Defendants/Third–Party Plaintiffs
v.
ALABAMA DEPARTMENT OF CORRECTIONS,
et al., Third–Party Defendants.

No. 87–C–1319–E. | Sept. 18, 1998.

Attorneys and Law Firms

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Opinion

MEMORANDUM OPINION AND ORDER

CARROLL, Magistrate J.

I. INTRODUCTION AND PROCEDURAL HISTORY

***1** This case began on November 19, 1987 when an inmate named John Cook Thomas filed a complaint, pro se, alleging that the conditions in the Tallapoosa County Jail were unconstitutional. On June 21, 1988, the court appointed counsel to represent Thomas and on July 14, 1988, counsel filed an amended complaint which, inter alia, added the Commissioner of the Department of Corrections as a defendant. The complaint contained two allegations against the Commissioner:

> 29. Defendant Thigpen[1] has placed in or left incarcerated in the Tallapoosa County Jail, state prisoners, thereby causing, contributing to, or exacerbating the unconstitutionally over-crowded conditions of confinement and other associated constitutional violations in the Tallpoosa County Jail.

[1] Morris Thigpen was the Commissioner at the time the complaint was filed. Joe S. Hopper currently holds that position.

> 30. Defendant Thigpen has further caused, contributed to, or exacerbated said constitutional violations by failing to make provisions to support or maintain such state prisoners as required to do so by law.

On October 2, 1991, the plaintiffs and the Tallapoosa County defendants filed a "Joint Motion of Plaintiff Class of Inmates Incarcerated in the Tallapoosa County Jail and Defendants for Additional Relief/Joint Motion for Preliminary and Permanent Injunction"[2] which sought an order from the court requiring the state to accept inmates who have been sentenced to the custody of the Department of Corrections. On October 18, 1991, the motion was set for submission without oral argument on October 28, 1991.

[2] On October 18, 1991, a class was certified by the consent of the parties under the provisions of Rule 23(b)(2). The class was defined as all inmates who are or will be incarcerated in the Tallapoosa County Jail.

On November 18, 1991, the court issued a detailed memorandum opinion and an injunction which required the Commissioner of Corrections to remove state prisoners from the Tallapoosa County Jail within 30 days "following receipt of the inmate's transcript by the Department of Corrections."

On June 24, 1993, the plaintiffs and defendants, including former Commissioner Thigpen, filed a "Joint Motion for Approval of Consent Order" seeking the entry of a consent order which would resolve all of the issues concerning the constitutionality of the Tallpoosa County Jail. The consent order called for the construction of a new jail and set forth detailed procedures to be utilized in the operation of that jail. The consent order also contained a provision relating to the removal of state inmates. Paragraph 9 of the proposed consent order stated:

> 9. While negotiating this settlement, in October of 1991, the Plaintiffs and Defendants filed a Motion for Preliminary Injunction against the State Defendants, seeking immediate removal of state ready inmates in order to reduce severe overcrowding at the Jail. The Court issued an order in response to that motion on November 18, 1991 requiring the State Defendants to remove state-ready inmates from

> the Jail within 30 days following receipt of the inmate's transcript by the Department of Corrections. State Defendants shall comply with the terms of that Order on a permanent basis. The Order and Memorandum Opinion are attached as Appendix A.

***2** The notice of proposed class settlement which was published specifically referenced this provision. The notice read, in pertinent part, "The proposed consent order requires the defendants to take the following steps in the new jail ... move state ready inmates from the jail to the state system within 30 days of the receipt of the inmate's transcript." On November 22, 1993, the court approved the consent order.

This case is currently pending before the court on the following motions: (1) "Motion to Terminate Consent Order Pursuant to the Prison Litigation Reform Act" filed on July 2, 1997 by the State Attorney General and the Commissioner of the Department of Corrections; (2) "Motion to Terminate Consent Order Pursuant to the Prison Litigation Reform Act" filed by the Tallapoosa County defendants on September 18, 1997; and (3) "Motion for Relief" filed by the Tallapoosa county defendants on September 1, 1998.

II. DISCUSSION

A. THE STATUTE

The motions to terminate filed by Tallapoosa County and the Department of Corrections are based on the provisions of the Prison Litgation Reform Act (PLRA), 18 U.S.C. § 3626(b)(2). That statute reads:

> 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.

There is, however, a limitation on the relief available to a defendant in § 3626(b)(3) which reads:

> Prospective relief shall not terminate if the court makes written findings based on the record that prospective relief remains necessary to correct a current and ongoing violation of the Federal right, extends no further than necessary to correct the violation of the Federal right, and that the prospective relief is narrowly drawn and the least intrusive means to correct the violation.

B. IS THE STATUTE CONSTITUTIONAL?

The plaintiffs argue that § 3263(b)(2) should not be applied because it is unconstitutional. Specifically, the plaintiffs argue that (1) the statute violates Article III and the Separation of Powers; (2) denies due process; and (3) violates the Equal Protection Clause. Those arguments have been rejected by the United States Court of Appeals for the Eleventh Circuit in *Dougan v. Singletary,* 129 F.3d 1424 (11th Cir.1997), *cert. denied,* 524 U.S. 956, 118 S.Ct. 2375, 141 L.Ed.2d 743 (1998).

In a supplemental memorandum filed on January 27, 1998, the plaintiffs argue that even if the consent decree is due to lose its character as a federal judgment it still should be enforceable as a contract arising under state law. The court in *Dougan* did not specifically address this issue. In a footnote, however, the court noted:

> ***3** The inmates have not argued that § 3626(b)(2) violates the principles of *United States v. Klein,* 80 U.S. (13 Wall) 128, 20 L.Ed. 519 (1872), by legislating the outcome of a particular class of cases. We therefore do not address the argument but note that other courts of appeals have rejected it. *Gavin v. Branstad,* 122 F.3d 1081, 1089 (8th Cir.1997); *Pyler v. Moore,* 100 F.3d 365, 372 (4th Cir.1996).

Id. at n. 10.

The Second Circuit has viewed the contract argument favorably. *See generally, Benjamin v. Jacobsen,* 124 F.3d 162, 176–80 (2d Cir.1997). The Eleventh Circuit decision in *Dougan* opines that the Second Circuit's analysis in *Benjamin* fails to "take into account the use of word

'terminate' [in § 3626(b)] to describe the remedy available under the section." *Dougan,* 129 F.3d at 1426 n .4. Based on this court's review of the applicable case law, the court concludes that in this circuit the plaintiffs' state law contract argument has no validity. Consequently, the court rejects the plaintiffs' argument that the termination provision of the Prison Litigation Reform Act is unconstitutional.

C. DOES THE STATUTE APPLY?

As noted above, § 3626(b)(2) provides for the termination of any consent decree entered in the absence of certain findings. The court made no findings with regard to any of the provisions of the consent order at issue in this case, except paragraph 9. Consequently, under *Dougan v. Singletary,* all portions of the consent decree except paragraph 9 are due to be terminated. The court did, however, make extensive findings with regard to the subject matter of paragraph 9. As noted previously, the court issued a preliminary injunction on November 18, 1991 requiring the Department of Corrections to remove inmates from the Tallapoosa County Jail within 30 days of the receipt of their transcript. It was this order that forms the basis for paragraph 9. In support of its issuance of the injunction, the court noted:

> To permit Commissioner Thigpen to continue to house large numbers of state prisoners in the Tallapoosa County Jail would be to violate the constitutional rights of all prisoners in that jail.
>
> The court has little trouble concluding on the undisputed evidence before it that the conditions in the Tallapoosa County Jail violate the Constitution of the United STates regardless of whether the standard of the fourteenth amendment or the eighth amendment is applied....
>
> The plaintiff and the Tallapoosa County defendants have asked this court [to] order the Commissioner of Corrections to remove state prisoners from the Tallapoosa County Jail. The court concludes that such a step is necessary.... While the removal of state inmates will not magically bring the Tallapoosa County Jail into constitutionality, it will eliminate a major source of unconstitutionality.
>
> The evidence before the court shows that the continued housing of state prisoners in the Tallapoosa County Jail has contributed significantly to the unconstitutionality of that facility. The overcrowding which exists, in part because state inmates are housed in the Tallapoosa County Jail, threatens the health and safety of each inmate confided there....

***4** Although the findings are not couched in the specific language of § 3626(b)(2), the court finds that the findings meet the requirements of the statute. *See Smith v. Arkansas Dep't of Corrections,* 103 F.3d 637, 647 (8th Cir.1996)([W]e are satisfied, and the parties agree, that the [PLRA] merely codifies existing law and does not change the standards for determining whether to grant an injunction). The court's findings satisfy the standards for issuing an injunction and, therefore, satisfy the requirements of the PLRA. *Cf. Touissant v. McCarthy,* 801 F.2d 1080, 1086–87 (9th Cir.1986)("Injunctive relief against a state agency or official must be no broader than necessary to remedy the constitutional violation."), *cert. denied,* 481 U.S. 1069 (1987); *Newman v. Alabama,* 683 F.2d 1312, 1319 (5th Cir.1982)(relief must be no broader than necessary to remedy the constitutional violation); *Ruiz v. Estelle,* 679 F.2d 1115, 1144–46 (5th Cir.)(court must fashion least intrusive remedy that will still be effective), *amended in part, denied* in *part,* 688 F.2d 266 (5th Cir.1982). As the plaintiffs correctly note in their brief, the court found that the conditions of confinement in the Tallapoosa County Jail violated the Constitution and found that the relief was necessary to eliminate a major source of [the jail's] unconstitutionality. Those findings preclude the termination of paragraph 9 of the consent order at this time.

That conclusion, unfortunately, does not end the inquiry. The findings which support the continuation of paragraph 9 of the consent order relate to the old Tallapoosa County Jail. Tallapoosa County has asked the court to enforce paragraph 9 because of overcrowding caused by the Department of Corrections in the new jail. See Motion for Relief filed July 1, 1998. Under the terms of the Prison Litigation Reform Act, a court may continue a consent order for prospective relief upon finding that the prospective relief "remains necessary to correct a current and ongoing violation" of a federal right and upon the additional findings required that the relief "extends no further than necessary to protect the violation of the Federal Right, and that the prospective relief is narrowly drawn and the least intrusive to correct the federal the violation." 18 U.S.C. § 3626(b)(3). The court, therefore, concludes that a hearing is necessary to determine whether the provisions of paragraph 9 of the consent order remain necessary to correct the violation of a federal right of either the plaintiff class or the Tallapoosa County defendants. *See Jensen v. County of Lake,* 958 F.Supp. 397 (N.D.Ind.1997).

III. CONCLUSION

For the foregoing reasons, it is here ORDERED:

(1) that the Motion to Terminate Consent Order filed by

the Tallapoosa County defendants on September 18, 1997 be GRANTED as to all paragraphs except paragraph 9;

(2) that the Motion to Terminate Consent Order filed by the Tallapoosa County defendants insofar as it relates to paragraph 9 and the Motion to Terminate Consent Order filed by the State Attorney General and the Commissioner of the Alabama Department of Corrections on July 2, 1997 be set for a hearing at a date to be determined following a scheduling conference; and

***5** (3) that a scheduling conference be set in this case for October 1, 1998 at 11:00 A.M. Third Floor Courtroom, The Frank M. Johnson, Jr. Federal Building and United States Courthouse, Montgomery, Alabama.