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United States District Court, N.D. Illinois, Eastern Division.

Kenya GARY and Tania Hayes, individually and on behalf of a class, Plaintiffs,
v.
Michael SHEAHAN, Sheriff of Cook County, in his individual and official capacity, Defendant.

No. 96 C 7294. | Nov. 3, 1999.

Opinion

MEMORANDUM OPINION AND ORDER

COAR, J.

***1** For the following reasons, the defendant Michael Sheahan, Sheriff of Cook County, in his official capacity, and his employees, are permanently enjoined from strip searching female inmate court returnees who have been judicially discharged from the Cook County Department of Corrections.

Background

This case was brought by a class of plaintiffs comprising of female inmates of the Cook County Department of Corrections ("Jail") who were judicially discharged but were strip searched when they returned to the Jail to wait for their release ("plaintiffs").[1] The procedural and factual history of this case is laid out in significant detail in previous opinions.[2] However, a brief overview of the holdings in this case is necessary background for this permanent injunction.

1 The certified class was defined as follows: "All female inmates who have been or will be subjected to a strip search at the Cook County Department of Corrections (Jail) upon returning to the Jail from court after there is a judicial determination that there is no longer a basis for their detention, other than to be processed for release." (Mem. Op. and Order, April 10, 1997).

2 See *Gary v. Sheahan,* 1998 WL 547116 (N.D.Ill. August 20, 1998); *Gary v. Sheahan,* 1998 WL 245875 (N.D.Ill. May 4, 1998); *Gary v. Sheahan,* 1997 WL 201590 (N.D.Ill. April 18, 1997).

On March 17, 1997, after a hearing on the issue, this court entered a preliminary injunction that stated in part:

> "A. The Defendant, Michael Sheahan, Sheriff of Cook County, individually and in his official capacity and his employees are enjoined from strip searching female inmate court returns with a mittimus indicating that as to their court case they should be discharged, unless after their return a computer check of their records indicates there are other reasons for holding the inmate or unless the female court return wants to return to her living quarters to recover her personal items.
>
> B. All female inmate court returns with a mittimus indicating that as to their court case they should be discharged, are to be held in a holding cell while there is a computer check done of their records to determine whether there is a further need to hold them. If there is no further need to hold the female inmate court return, then her clothing shall be brought to her in the holding cell and she shall be given the option to either retrieve her personal items from her living quarters or to recover her personal items and any other personal property from the property room at a later time." (Order, March 17, 1997, pp. 2–3).

On August 20, 1998, this court granted summary judgment to the plaintiffs on their Fourth Amendment unreasonable search and seizure claim and their Fourteenth Amendment equal protection claim. (Mem. Op. and Order, August 20, 1998). In particular, this court found that for a period dating back to at least 1991, there was a municipal policy that required routine strip searching of female inmates of the Jail returning from court, while there was no such uniform strip searching of returning male inmates. (Id., p. 6). Relying on the reasoning of the Seventh Circuit in *Mary Beth G. v. City of Chicago,* 723 F.2d 1263, 1273 (7th Cir.1983), this court found that the defendant did not show that the differing treatment of male and female inmate returnees was related to any important governmental objectives. (Id., p. 7). This court also found that balancing the invasiveness of the strip search versus the need to perform it for security reasons, there is no need to perform the strip search for those returnees who have no pending charges or holds, there is no need to return them to the Division, and therefore no need to perform a strip search. (Id., p. 14).

***2** On September 13, 1999, this court granted a second motion for summary judgment on the same Fourth and Fourteenth Amendment claims, but for the period between March 17, 1997, when the preliminary injunction

went into effect, and October 17, 1997. The defendant had argued in the previous summary judgment motion that since the injunction went into effect, 90 percent of the female inmate discharged returnees chose to return to the Division and be strip searched. (Mem. Op. and Order, August 20, 1998, p. 2, n. 2). However, in the second motion for summary judgment, the plaintiffs presented evidence of blatant violations of the preliminary injunction order. For example, the plaintiffs presented evidence of female returnees who did not want to return to the Division being told that they must sign a form in order to be released. That form was a consent to a strip search. (Mem. Op. and Order, September 13, 1999, pp. 3–5). Therefore, these female returnees were not informed that they had the option of not returning to the Division and thus not being strip searched, an intentional distortion of this court's preliminary injunction order.

Analysis

A court must consider four traditional criteria in deciding whether to grant a permanent injunction: 1) whether the plaintiffs have prevailed on the merits of its claim; 2) whether there is no adequate remedy under law or the plaintiffs will be irreparably harmed if the injunction is not issued; 3) whether the threatened injury to the plaintiffs outweighs the threatened harm the injunction may inflict on the defendant; and 4) whether the issuance of the injunction will harm the public interest. *Plummer v. American Institute of Certified Public Accountants,* 97 F.3d 220, 229 (7th Cir.1996) (citing *Amoco v. Village of Gambell,* 480 U.S. 531, 546, n. 12, 107 S.Ct. 1396, 1404, n. 12 (1987)). A permanent injunction is not provisional in nature, but instead is a final judgment. *Id.*

1. Prevail on the Merits

The plaintiffs have obviously met the first criteria for a permanent injunction, for they have prevailed on the merits of their claims. This court granted the plaintiffs summary judgment on their Fourteenth Amendment equal protection claim and their Fourth Amendment search and seizure claim. (Mem. Op. and Order, August 20, 1998; Mem. Op. and Order, September 13, 1999). Not only did this court find that the defendant violated plaintiffs' Fourteenth and Fourth Amendment rights during the period of 1991 until the implementation of the preliminary injunction, but also that the defendant violated the preliminary injunction from the date of its inception, March 17, 1997, until October 17, 1997. It was only when this court entered another order in October of 1997 that stated that the preliminary injunction was clear and that the defendant must comply that the defendants began to follow the injunction. (Mem. Op. and Order, September 13, 1999, pp. 8, 10–11).

2. Irreparable Harm

***3** The defendant's behavior has made it clear to this court that the defendant, and subsequently the Jail, must have the orders of this court clearly spelled out or they will continue these unconstitutional searches. This court has already ruled that the defendant's municipal policy of routinely strip searching female inmates and not male inmates violated the plaintiff class' Fourth and Fourteenth Amendment rights. The deprivation, or the threat thereof, of a constitutional right is enough to show irreparable harm. Wright, Miller and Kane, Federal Practice and Procedure: Civil 2d § 2948.1 1995). See, e.g., *Elrod v. Burns,* 427 U.S. 347, 96 S .Ct. 2673 (1976).

3. Balance of Harms and the Public Interest

The defendant has argued throughout this case that the potential security threat of not strip searching inmates when they return to the Jail outweighs any harm caused to the individual plaintiffs by the search. (See, e.g., Dft's Motion for Reconsideration of Prel. Inj., p. 10). However, this potential security threat could not be that overwhelming since the defendant does not strip search returning male inmates on a regular basis. In fact, the defendant admits to as much through defendant witness testimony that male inmate returnees are not searched because of the large size of the male inmate population. (Transcripts, March 13, 1997, pp. 118–120, 150, 210–213). Also, defendant witnesses admitted that it is not necessary for plaintiff class members to return to the living quarters in the Division, and thus the security risk would be eliminated if the personal belongings of discharged female inmate returnees were brought to them in the holding cell. (Mem. Op. and Order, August 20, 1998, p. 14).

In contrast, the plaintiffs throughout this case have presented evidence that female inmate returnees are regularly strip searched when they are returned to the Jail after they have been judicially discharged. (Mem. Op. and Order, August 20, 1998, pp. 3–6). Female inmate returnees were even strip searched after the implementation of the preliminary injunction and without their consent. (Mem. Op. and Order, September 13, 1999, pp. 3–5). There is a significant public interest in protecting the Fourth and Fourteenth Amendment rights of the plaintiff class. Therefore, the threatened harm to the plaintiff class of strip searches continuing is significantly greater than the security risk caused from informing female inmate returnees that they will be strip searched if they return to the Division living quarters.

Conclusion

For the foregoing reasons, the defendant Michael Sheahan, Sheriff of Cook County, in his official capacity, and his employees, are permanently enjoined from strip searching female inmate court returnees who have been judicially discharged from the Cook County Department of Corrections. The text of the permanent injunction follows in a subsequent order.