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United States District Court, N.D. Indiana, South Bend Division.

Charles Everett WINSTON, Jeffrey A. Farler, Jackie Owen Scott, Jr., Todd Allen Williams, Thomas Brian Johnson, Charles Williams, Stafford Okokon, Edward Lee Skelton, Anthony P. Kamerman, Donald Joseph Dockery, Lonnie Garner, Jr., Donald R. Anderson, Derrikes Lamont McRae, Ray G. Stewart, Ikeelee Jason Lottie, Sammy L. Jones, Clarence D. Hurmon, Sr., Daniel Stephen Hopkins, John Banks, Ronald G. Davis, Shawn C. Williams, Brent Lee Houck, Michael T. Orr, Clarence D. Hurmon, Sr., Michael Paul Barton, Scott Frederick, Ryan James Dials, Alex C. Liggins, Daniel Alan Terhorst, David Elmer Oblinger, Brian Scott Divens, Ronald Renee Avance, James Robert Hemingway, Phillip G. Helpin, Michael M. Chatman, and Marcus Cannady, Plaintiffs,
v.
Joseph SPEYBROECK, Sheriff of St. Joseph County, Joseph Nagy, in his official capacity, St. Joseph County Commissioners: Richard Jasinski, Joseph Zappia, Richard Larrison; St. Joseph County Council: James Rienebold, Hank Keultjes, Rafael Morton, Joe Baldoni, Larry Jasinski, Dennis Schafer, Gatha Vaughn, George Nome, Jim Reinholtz, Terry D. Wilson, Phillis Martin, Cynthia Dwyer, Foley, Dr., St. Joseph County Commissioner, Phil Canoy, and Bill Goss, Defendants.

No. 3:94CV0150AS. | Aug. 14, 1996.

Attorneys and Law Firms

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Michael Lynn, Columbia City, IN, pro se.

Opinion

ORDER

ALLEN SHARP, Chief Judge.

***1** The Report and Recommendation filed by the Honorable Robin D. Pierce, United States Magistrate on June 5, 1996, is APPROVED without reservation. Thus, the partial interim consent decree is APPROVED and CONFIRMED. IT IS SO ORDERED.

REPORT AND RECOMMENDATION

PIERCE, United States Magistrate Judge.

This class action, brought on behalf of all past, present and future prisoners incarcerated in the St. Joseph County Jail (the "Jail") in South Bend, Indiana, challenges conditions of confinement, including alleged overcrowding, at the Jail. Following negotiations the parties reached a settlement agreement, which has been

reduced to the form of a partial interim consent decree, placing limitations upon the Jail's population. The court conducted a fairness hearing concerning the proposed settlement on May 31, 1996. For the reasons which follow, it is recommended that the proposed settlement agreement be approved and that the partial interim consent decree (Dkt. # 191) be approved and entered.

Adequacy of Notice

On May 7, 1996, the parties filed a "Stipulation and Order Approving Form and Plan and Notice of Proposed Consent Decree," which was approved by the court on the same date. The stipulation and order required that notice of the proposed consent decree be "served personally, by the Sheriff of St. Joseph County, upon every person currently being held at the St. Joseph County Jail;" that the Sheriff make provisions that all persons arriving through the Jail be served with a copy of the notice; and that on or before May 20, 1996, the clerk of this court cause to be published on two separate occasions, at least five days apart, the notice in the South Bend Tribune. According to the notice, the partial interim consent decree provided that the court would "continue to have subject matter jurisdiction over the St. Joseph County Jail;" that the maximum inmate population of the Jail be 300; that the Sheriff provide daily reports of the inmates to counsel for the plaintiff class; that the Sheriff file with this court, within 120 days of approval of the partial interim consent decree, "a report detailing any progress on a work-release center or other detention alternatives which would be designed to accommodate population increases of non-violent inmates" at the Jail; and that the Sheriff also file a "report on progress and plans and site availability for a new St. Joseph Count Jail facility" within 90 days of approval of the partial interim consent decree. The notice further stated that the court would conduct a fairness hearing on May 31, 1996 at 10:00 a.m., and advised class members that they had a right at the fairness hearing to comment on or object to the partial interim consent decree. Class members were also advised as follows:

> If you wish to object or comment on the consent decree in writing prior to the hearing, you must present such comments to the plaintiffs' counsel prior to May 24, 1996. If you desire to appear in person, you must file an appearance by counsel or obtain the permission of plaintiffs' counsel to appear and address the court. If you have no objections to this consent decree, you need not file anything with the court or plaintiffs' counsel.

***2** Based upon its review of the procedures the parties have adopted for notifying class members of the proposed settlement, the court finds that the class members have been fully and accurately advised of the terms of the proposed consent decree, as well as the procedure for bringing comments supporting or opposing the consent decree to the attention of the court. In addition, the comment period provided in the notice fully satisfied the requirements of Rule 23(e) of the Federal Rules of Civil Procedure. *See e.g. Van Horn v. Trickey,* 840 F.2d 604, 606 (8th Cir.1988); *Diaz v. Romer,* 801 F.Supp. 405, 408 (D.Colo.1992).

Approval of Settlement

Before a court can approve a class action settlement, it must determine that the settlement is lawful, fair, reasonable and adequate. *E.E.O.C. v. Hiram Walker & Sons, Inc.,* 768 F.2d 884, 889 (7th Cir.1985); *Gautreaux v. Pierce,* 690 F.2d 616, 631 (7th Cir.1982); *Armstrong v. Board of Sch. Directors, etc.,* 616 F.2d 305, 313 (7th Cir.1980). Among the factors that a court should consider in making this "fairness" determination are: the strength of the plaintiffs' case compared to the defendants' offer; the likely length, complexity and expense of further litigation; the amount of opposition to the settlement among affected parties; the opinion of competent counsel; and the stage of the proceedings and the amount of discovery already completed. *E.E.O.C.,* 768 F.2d at 889; *Armstrong,* 616 F.2d at 314. In considering a proposed class action settlement, a court may either approve or disapprove of the settlement; it may not rewrite the parties' agreement. *Armstrong,* 616 F.2d at 315; *Harris v. Pernsley,* 654 F.Supp. 1042, 1049 (E.D.Pa.1987). A court "may not deny approval of a consent decree unless it is unfair, unreasonable, or inadequate." *E.E.O.C.,* 768 F.2d at 889.

The first factor—the strength of the plaintiffs' case compared with the defendants' offer—is considered the most important. *E.E.O.C.,* 768 F.2d at 889; *Armstrong,* 616 F.2d at 314. In this regard, the court believes that plaintiffs' chances of success in obtaining the type of preliminary injunctive relief reflected in the interim consent decree—a specific cap on the number of Jail inmates—would have been relatively low. A party seeking a preliminary injunction must, as a threshold matter, demonstrate some likelihood of success on the merits, and that it has no adequate remedy at law and will suffer irreparable harm if the injunction is not issued. *Roth v. Lutheran General Hospital,* No. 94–2382, slip op. at 12 (7th Cir. June 27, 1995); *Vencor, Inc. v. Webb,* 33 F.3d 840, 845 (7th Cir.1994); *Storck USA, L.P. v. Farley Candy Co.,* 14 F.3d 311, 313–14 (7th Cir.1994); *Abbott*

Lab. v. Mead Johnson & Co., 971 F.2d 6, 11 (7th Cir.1992). If the party seeking a preliminary injunction cannot establish either of these prerequisites, the court's inquiry is over and the injunction would be denied. *Id.* Here, in order to demonstrate some likelihood of success on the merits, plaintiffs would have to produce evidence suggesting that defendants maintained overcrowded conditions at the Jail to inflict wanton pain, or that the defendants were deliberately indifferent to whether the conditions at the Jail had such an effect. *Farmer v. Brennan,* 511 U.S. 825, 114 S.Ct. 1970, 1979, 28 L.Ed.2d 811 (1994); *Wilson v. Seiter,* 111 S.Ct. 2321, 115 L.Ed.2d 271 (1991); *Steele v. Choi,* 82 F.3d 175, 178 (7th Cir.1996); *Steading v. Thompson,* 941 F.2d 498 (7th Cir.1991). The task of demonstrating some likelihood of success on the merits based upon an Eighth Amendment or Fourteenth Amendment claim for jail overcrowding would thus be formidable. It is further apparent that plaintiffs would have difficulty establishing irreparable harm at this stage in the proceedings.

***3** The second factor—the likely length, complexity and expense of further litigation—is essentially inapplicable to the type of interim agreement involved in the present case. At the same time, however, there is a strong possibility that the parties' agreement upon the partial interim consent decree would provide a basis for an overall settlement of the plaintiffs' claims, thereby obviating the considerable time and expense involved in a trial.

The third factor—the amount of opposition to the settlement among affected parties—strongly favors approval. Indeed, opposition to the proposed interim consent decree is essentially non-existent. No objection has been received from any current inmate at the Jail.

The fourth factor is concerned with the opinion of competent counsel. In the present case, all of the parties are represented by very capable and competent counsel. It is clear that counsel have represented their clients ably throughout the negotiation process which led to the present agreement. There is no indication that the proposed partial interim consent decree, or any aspect of it, is the product of collusion among or between counsel for the plaintiff class and the attorneys for defendants. The court has no reason to doubt the judgment of counsel in recommending the approval and adoption of the partial interim consent decree.

The last factor calls for consideration of the stage of the proceedings and the amount of discovery completed. This factor, however, is more pertinent to an evaluation of a final or global settlement agreement, as opposed to the type of interim agreement involved here. Still, the record suggests that the parties have completed sufficient investigation to give them a clear insight into the facts underlying plaintiffs' claims, as well as the strengths and weaknesses of those claims.

Having reviewed the terms of the proposed partial interim consent decree, and having considered the matters presented at the fairness hearing, the court finds that the settlement embodied in the partial interim consent decree is lawful, fair, reasonable, and adequate. Accordingly, it is RECOMMENDED that the partial interim consent decree be approved and entered.

ANY OBJECTIONS to this report and recommendation must be filed with the Clerk of courts within ten (10) days of receipt of this notice. Failure to file objections within the specified time waives the right to appeal the district court's order. See *Thomas v. Arn,* 474 U.S. 140, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985); *Lockert v. Faulkner,* 843 F.2d 1015 (7th Cir.1988); *Video Views, Inc. v. Studio 21 Ltd.,* 797 F.2d 538 (7th Cir.1986).

Dated this 5th day of June, 1996.