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United States District Court, N.D. Illinois.

Jimmy DOE, Willie Roe, Johnny Woe and Danny Zoe, on behalf of themselves and all others similarly situated Plaintiffs,
v.
COOK COUNTY and Jesse Doyle, Superintendent, Cook County Juvenile Detention Center, Defendants.

No. 99 C 3945. | Nov. 22, 1999.

Opinion

MEMORANDUM OPINION AND ORDER

NORDBERG, J.

***1** Plaintiffs Jimmy Doe, Willie Roe, Johnny Woe, and Danny Zoe, juveniles housed at the Cook County Juvenile Temporary Detention Center ("JTDC"), brought this action pursuant to 42 U.S.C. § 1983 seeking declaratory and injunctive relief against certain practices and conditions at the JTDC. Plaintiffs maintain that defendants have failed violated their rights to safety, freedom of punishment without trial, reasonably nonrestrictive confinement conditions, and reasonable care (including adequate food, shelter, education, and medical care). Defendants Cook County and Jesse Doyle have moved to dismiss the action pursuant to F.R.C.P. Rule 12(b)(1) (*Younger* abstention) and Rule 12(b)(6). Plaintiffs have moved to have their case certified as a class action.

DISCUSSION

A. Motion to Dismiss

Evaluating the legal sufficiency of a plaintiff's factual allegations requires courts to adhere to a strict standard. A court may grant a motion to dismiss only if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Cushing v. City of Chicago,* 3 F.3d 1156, 1159 (7th Cir.1993)(quoting *Hishon v. King & Spalding,* 467 U.S. 69, 73 (1984)). When considering a Rule 12(b)(6) motion,[1] the court must accept as true all well-pleaded factual allegations in the complaint and view them, along with the reasonable inferences to be drawn from them, in the light most favorable to the plaintiff. *Cornfield v. Consolidated High School District No. 230,* 991 F.2d 1316, 1324 (7th Cir.1993). However, the court need not accept as true conclusory legal allegations. *Baxter v. Vigo County School Corp.,* 26 F.3d 728, 730 (7th Cir.1994). "The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims. Indeed it may appear on the face of the pleadings that a recovery is very remote and unlikely, but that is not the test." *Pickrel v. City of Springfield,* 45 F.3d 1115, 1118 (7th Cir.1995) (quoting *Scheuer v. Rhodes,* 416 U.S. 232, 236 (1974)).

[1] Defendants' motion to abstain under the *Younger* doctrine is appropriately analyzed under Rule 12(b)(1) standards, which permit the court to look beyond the pleadings to ascertain jurisdiction/appropriateness of abstention. *See generally Beres v. Village of Huntley,* 824 F.Supp. 763 (N.D.Ill.1992); *Nudell v. Nevius,* No. 98 C 3719, 1999 WL 608717 (N.D.Ill. Aug. 5, 1999).

B. Younger Abstention

Defendants argue that the court should abstain from hearing the case under the *Younger* doctrine.[2] Defendants maintain that abstention is appropriate because the plaintiffs are involved in pending state proceedings, that the health and welfare of juveniles in Illinois custody is an important state interest, and that the plaintiffs can raise their claims in the state forum.

[2] Referring to the principles set forth in the U.S. Supreme Court's decision in *Younger v. Harris,* 401 U.S. 37 (1971).

In ascertaining whether a *Younger* abstention is appropriate, the court must address three questions: (1) whether there is some ongoing state judicial proceeding; (2) whether any such proceedings implicate important state interests; and (3) whether the state proceedings provide an adequate opportunity to raise constitutional claims. *Middlesex County Ethics Committee v. Garden State Bar Association,* 457 U.S. 423, 432 (1982). *See also A.T. v. Cook County,* 613 F.Supp. 775, 777–78 (N.D.Ill.1985). "The principle of *Younger* is that a party to a state proceeding affecting important governmental interests must resolve the dispute in the state's preferred tribunal." *Nelson v. Murphy,* 44 F.3d 497, 501 (7th Cir.1995). *Younger* does not create an exhaustion requirement for conditions of confinement litigation, but it does require "an inmate already participating in state litigation" to "make his stand there rather than attempt the

equivalent of federal-defense removal by filing an independent § 1983 suit." *Id.* at 502.

***2** The second *Younger* factor is the easiest to evaluate in this case. The individuals held at the JTDC are generally either charged in delinquency petitions or facing criminal charges as adults. As such, the state proceedings deal with an important state interest. *See A.T.,* 613 F.Supp. at 778 ("the state obviously has a strong interest in figuring out what to do about alleged delinquents"). The first and third factors are more problematic for the defendants.

As to the first factor, while there are pending state court proceedings involving the plaintiffs, they do not deal with the conditions of confinement that are the subject of this suit. The pending state court proceedings deal simply with the adjudication of the plaintiffs' criminal charges/delinquency. Moreover, the plaintiffs are not seeking to delay or otherwise effect those proceedings, nor do they challenge the juvenile detention statutes. As such, this federal court case in no way duplicates or interferes with the state's pending criminal/delinquency proceedings. *See A.T .,* 613 F.Supp. at 778–79 (abstention not warranted). Therefore, the court is not persuaded that the first *Younger* factor is satisfied.

Regarding the third factor, this court notes that criminal defendants do not typically challenge the conditions of their confinement in their criminal trials, so defendants' contention that plaintiffs can raise their claims in the pending state proceedings is suspect. Further, defendants even hedge on the availability of this avenue of relief: "Under the Act, the power and responsibility for determining whether a juvenile should be detained in a JTDC is placed with the Juvenile Court. Arguably, this same power could be employed to remove a juvenile from detention if his or her safety and/or welfare warrants removal." Defendants' Motion to Dismiss at 10 n. 5 (emphasis added). Significantly, defendants do not cite any specific statutory provisions providing plaintiffs with possible relief in their state proceedings nor elaborate on any procedures the plaintiffs could use to obtain such relief in their state court proceedings. *See A.T.,* 613 F.Supp. at 779–80 (abstention not warranted as relief sought not obtainable in juvenile proceeding). As such, the court must conclude that the third *Younger* factor is not satisfied.[3]

[3] Two recent Seventh Circuit cases relied upon by the defendants do not alter the result. In *David B. v. McDonald,* 156 F.3d 780 (7th Cir.1998), the court did not address a *Younger* abstention. In *Nelson v. Murphy,* 44 F.3d 497 (7th Cir.1995), the Illinois courts regularly reviewed the mental patients' treatment plans and patients utilized this review process.

Abstaining under *Younger,* on the current record, is not appropriate.

B. Exhaustion of Remedies under the Prison Litigation Reform Act ("PLRA")

Defendants maintain that the case must be dismissed because the plaintiffs have not exhausted their administrative remedies, as required under the PLRA. Plaintiffs respond that they are not "prisoners" as defined in the PLRA because as juvenile pretrial detainees have not yet been "adjudicated" delinquent, that the PLRA should not apply to them, and that the current record is unclear as to whether any administrative remedies were exhausted (foreclosing dismissal).

***3** The PLRA amended portions of the Civil Rights of Institutionalized Persons Act, the relevant portions of which are found at 42 U.S.C. § 1997e. Section (a), "Applicability of administrative remedies," provides:

> No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

42 U.S.C. § 1997e(a). Section (h), "Definition," provides:

> As used in this section, the term "prisoner" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

42 U.S.C. § 1997e(h).

Exhaustion is a necessary precondition to bringing a suit. *Perez v. Wisconsin Department of Corrections,* 182 F.3d 532, 535 (7th Cir.1999). There is no futility exception to this requirement, nor does the unavailability of a certain forms of relief in the administrative process relieve the plaintiff of his obligation. *Id.* at 537–38. *See also Wyatt v. Leonard,* No. 98–4161, 1999 WL 791669 at *1 (6th Cir. Oct. 6, 1999); *Harris v. Garner,* No. 98–8899, 1999 WL 777308 at *5 (11th Cir. Sept. 30, 1999). Once the defendants assert[4] their rights under this provision, the district court "must address the subject immediately." *Id.* at 536. "[A] suit filed by a prisoner before administrative

remedies have been exhausted must be dismissed; the district court lacks discretion to resolve the claim on the merits, even if the prisoner exhausts intraprison remedies before judgment." *Id.* at 535.

[4] The exhaustion requirement is not jurisdictional, and the court need not dismiss the case if the defendant wishes to contest the suit on the merits. *Perez,* 182 F.3d at 535–36.

In interpreting the word "prisoner," the courts have applied the statute as written, as the "language does not leave wiggle room...." *Kerr v. Puckett,* 138 F.3d 321, 323 (7th Cir.1998). The statute applies to those who (a) seek a civil remedy for injuries suffered while in custody, and (b) file suit to seek the remedy while they are still incarcerated. *Harris,* 1999 WL 777308 at *3. "It does not apply to persons who have never been prisoners; nor does it apply to former prisoners who seek civil relief for injuries suffered while they were prisoners." *Id. See also Kerr,* 138 F.3d at 323; *Doe v. Washington County,* 150 F.3d 920, 924 (8th Cir.1998)(juvenile released from custody before he filed suit was not "prisoner" under PLRA). At least one federal appellate court has held that the PLRA applies to juveniles detained in juvenile detention facilities because they are" prisoners" held in "a prison, jail, or other correctional facility." *Alexander S. v. Boyd,* 113 F.3d 1373, 1385 (4th Cir.1997), *cert. denied,* 118 S.Ct. 880 (1998).

Plaintiffs first argument, that they are not "prisoners" as defined under the PLRA because as juvenile pretrial detainees they have not yet been "adjudicated" delinquent,[5] is not persuasive for several reasons. First, it is at odds with the well-reasoned opinion of the Fourth Circuit in *Alexander S.,* which, contrary to the plaintiffs' suggestion, did not limit its holding to "adjudicated" delinquents.[6] Second, plaintiffs' essentially semantic argument appears to be odds with the statutory language. The phrase "who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law" clearly deals with pretrial situations ("accused of") and juveniles ("delinquent"). As written, "adjudicated delinquent" is simply the juvenile alternative for "convicted of, sentenced for" in a criminal case, not an affirmative exclusion of juvenile pretrial detainees from the statute's reach. As such, the past tense "adjudicated" is irrelevant, as the juvenile pretrial detainees are still "accused of" criminal behavior and therefore within the provision's scope. Third, plaintiffs argument that Illinois juvenile delinquency proceedings are civil rather than criminal proceedings, rendering the statute inapplicable, falls flat. The Seventh Circuit has taken the contrary view:" ' Delinquency' in Illinois means crime ." *David B. v. McDonald,* 156 F.3d 780, 782 (7th Cir.1998). *See also A.T.,* 613 F.Supp. at 778 (juvenile detention proceedings "are criminal in nature"). Fourth, plaintiffs attempt to analogize juvenile pretrial detainees to parolees and former prisoners is not persuasive; the later two groups are not "incarcerated" or "detained" and therefore explicitly excluded from the statute's coverage.

[5] Plaintiffs appear to indicate in their brief that not all the class members/class representatives fall into this category, implying that some are facing criminal charges and therefore fall squarely within the statutory language. This potentially raises issues about both possible subclasses and the viability of doctrine of "vicarious exhaustion." *See e.g., Hartman v. Duffey,* 88 F.3d 1232, 1235–36 (D.C.Cir.1996)(exhaustion of administrative remedies by one member of class satisfies requirement for others).

[6] Plaintiffs' reliance on the Eighth Circuit's opinion in *Doe* is misplaced; that court concluded that the PLRA did not apply to the juvenile because he was released, not because he was a juvenile. *See* 150 F.3d at 924.

***4** Plaintiffs' contention that the PLRA should not apply to them is similarly unpersuasive. There is no basis for concluding Congress intended to exclude juvenile detainees from the impact of the PLRA. *See generally Alexander S.,* 113 F.3d at 1384.

In sum, the court concludes the PLRA applies to the plaintiffs' case, and that the case must be dismissed if plaintiffs have not exhausted their administrative remedies. However, this conclusion does not complete our task.

Plaintiffs have not definitively represented in their response whether they (or any one of them) have exhausted their administrative remedies. Plaintiffs have argued that the record needs further development on this issue, which they maintain warrants denying the motion and proceeding with discovery. Moreover, immediately dismissing the case, without prejudice, does not seem warranted given the ambiguity in the complaint and current record. Nonetheless, this court is bound by the *Perez* court's command to "immediately" address the exhaustion issue; a command which does not appear to contemplate proceeding to full discovery (which would neutralize most of the benefits of dismissing a case for failure to satisfy a precondition to filing suit). Therefore, the court directs the plaintiffs to file an amended complaint properly alleging exhaustion of administrative remedies, if plaintiffs have in fact done so. *See generally Wyatt,* 1999 WL at 791669 at *2 (prisoner must allege that he has exhausted all administrative remedies and should attach a copy of any administrative decision (if available) to his complaint).[7] If no amended complaint is filed, the court will dismiss the case, without prejudice, for failure

to exhaust administrative remedies.

[7] Theoretically, a given juvenile facility may not have any administrative review procedures, in which case a plaintiff may meet his burden by alleging that no administrative procedures exist. As plaintiffs have referred to administrative procedures in their complaint, that is apparently not the situation here.

C. Other Bases for Dismissal

While defendants' arguments are not entirely clear, they appear to maintain that plaintiffs lack standing to bring this action because it is too speculative whether they could benefit from any order, that the named plaintiffs lack standing to bring this action because they do not allege that the complained of practices injured them, and that the claimed wrongs are not of constitutional magnitude. Given this court's holding regarding exhaustion of administrative remedies, these contentions will be addressed only briefly.

As to defendants' first claim, because the plaintiffs are current detainees at the correctional facility where the complained of practices allegedly take place, there is nothing speculative regarding their potential benefit if an order were to issue addressing those practices. Defendants' second argument appears unpersuasive given the case is styled as a class action. All putative class members are not required to share identical claims. *See Baby Neal v. Casey,* 43 F.3d 48, 56 (3 rd Cir.1994). As to the third, it would be difficult to conclude at this stage of the proceedings that plaintiffs could prove no set of facts consistent with their complaint that would warrant relief, given their allegations regard such basic issues as safety and medical care. Further, it has been noted that the 14 th amendment due process standard should, as a general matter, be more liberally construed when applied to juvenile pretrial detainees. *See A.J. v. Kierst,* 56 F.3d 849, 854 (8 th Cir.1995). Defendants are obviously free to renew these arguments against the amended complaint, if appropriate.

D. Class Certification

***5** Given the potential dismissal for failure to exhaust administrative remedies, the court will hold its decision on the plaintiffs' motion for class certification in abeyance pending the filing of the amended complaint. While the court is well-aware of the importance of deciding a class certification question promptly, it is bound by the *Perez* court's admonition not to proceed with the case until the exhaustion issue is resolved. "[S]tatutes forbidding the commencement of a suit are too clear to tolerate revisionism in the name of efficient litigation management." 182 F.3d at 535. Further, if the exhaustion hurdle is not cleared, the class certification issue is moot.

CONCLUSION

Plaintiffs are directed to file an amended complaint, if appropriate, by December 3, 1999. If an amended complaint is not filed by that time, the Court will dismiss the action, without prejudice, for failure to exhaust administrative remedies as required by the PLRA. The Defendants' motion to dismiss is DENIED IN ALL OTHER RESPECTS.