1997 WL 383024
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Court of Chancery of Delaware.

Joseph BIROWSKI, Brian Winward et al.,
Petitioners,
v.
Walter REDMAN, et al., Respondents.

No. CIV. A. 12402. | Submitted: July 10, 1996. | Draft Report: Sept. 4, 1996. | Final Report: Feb. 21, 1997.

Attorneys and Law Firms

Brian Winward, Pro Se

Gregg Wilson, Esquire, Department of Justice, for Respondents

Opinion

KIGER, MASTER

***1** This is a report on the motion of Brian Winward, one of the plaintiffs in this case, to reopen this case and, if successful in so doing, to compel the State to abide by the terms of an agreement reached in settlement of it. He claims that certain provisions of that agreement have been ignored and that the State, in consequence thereof, is in violation of the agreement and so in contempt of court. The State denies any such violation and maintains that it has fully complied with the agreement so far as it is able to do so. Winward also maintains that he is being denied certain rights to which he is entitled under State law and the State also denies any such violation of the law.

A hearing was held on Winward's motions on May 7, 1996. Afterwards, additional filings were received in the form of a "Motion Supplementing Oral Argument" from Winward and a letter from the State in response to a request from me as to the precise status of Winward's incarceration. In the draft report, I recommended that all Winward's motions be denied. Winward filed exceptions to the draft report in November, 1 996. After review of the exceptions, it continues to be my view that the motions should be denied. The exceptions will be addressed in the discussion that follows.

I

Background

Brian Winward is an inmate in the State of Delaware prison system. He has been convicted of a number of serious crimes and is serving a lengthy prison sentence. He and the other petitioners who filed this action did so in order to obtain various rights that they claimed were wrongfully denied to them. Eventually, they obtained pro bono representation from several lawyers who successfully negotiated a settlement of the case. The settlement agreement was signed on February 18, 1992. Winward claims that the State has failed to honor the terms of the settlement agreement, and hence these proceedings to compel compliance.

Winward appears pro se in these proceedings. While he is an intelligent advocate for his positions, his lack of formal training leads him at times to approach issues in ways that an experienced lawyer would not; for example, by devoting argument to matters that are not truly in issue, such as the proposition that courts should give meaning to all the terms of a contract. I have read all of Winward's filings and have tried to assess them as fairly as possible while at the same time focussing my attention on the specific points that in my opinion are germane to the issues he raises. Hence, I have not addressed every case cited by Winward, but have dealt with each of his issues as fully as possible.

II

Issues

A. Whether the State has failed to perform its duties under the settlement agreement. The agreement at the heart of this proceeding was executed on February 18, 1992. It states in pertinent part that

> Upon the execution of this Agreement and the plaintiff's [i.e., Winward's] return from Delaware County, Pennsylvania, he shall be classified to the Multi–Purpose Criminal Justice Facility for a psychological evaluation for the purpose of the initiation of a substance abuse treatment plan and for the implementation of the terms of a proposed substance abuse treatment plan to be implemented by the Mental Health Services Division of the Department.

> Portions of the Treatment Plan shall be administered within the Key Program which is administered by Correctional/Medical Systems. *Assuming plaintiff's compliance with the rules and regulations of the Mental Health Services Division of the Department, the Key Program and the Multi–Purpose Criminal Justice Facility,* he shall participate in the proposed substance abuse treatment plan for a period of approximately one year, and any normal extensions thereof. At the end of said treatment, plaintiff shall be given the option to continue in a treatment plan that is consistent with his needs and the guidelines, rules and regulations of the Mental Health Services Division of the Department pertaining to inmates similarly situated. During the period of the aforementioned proposed substance abuse treatment plan, the plaintiff shall, *assuming his compliance with the rules and regulations of the Mental Health Services Division of the Department, Key Program and the Multi–Purpose Criminal Justice Facility,* engage in the following therapeutic activities:
>
> ***2** a. Alcoholic's Anonymous Group Once Per Week for sixty (60) minutes.
>
> b. Educational Groups three times a week at two (2) hours per group.
>
> c. Anger management group once per week for ninety (90) minutes.
>
> d. Mental Health Group once per week for sixty (60) to ninety (90) minutes.
>
> e. Individual counseling once a week for one (1) hour per session.

Settlement Agreement of February 18, 1992, at V.c.2. (Emphasis supplied.) The agreement was signed by, among others, each petitioner and the lawyer for all of them.

Winward holds that he is entitled to be "classified for a psychological evaluation for the purpose of the initiation of a substance abuse treatment plan and for the implementation of the terms of a proposed treatment plan...." Docket no. 211, p. 1. In order to be clear as to Winward's position on the issue as to the nature of the treatment program to be given him, it is worth quoting at length from his submission.

> Defendants impress the Court that the Treatment Program that they are obligated to is that which is on page 10 of the Decree [settlement agreement]. (This is the matter gray which the Court must make black or white.) Plaintiff contends that said Treatment Program on page 10 is a "less therapeutically desired back-up program", which defendant's agents counsel against and state is *incomplete* and *based upon obsolete date;* and, *subject to revisions.* Plaintiff avers that the back-up Treatment Program is a last effort part of an entire Proposed Treatment Plan; and, to be agreed to in the event that: 1) an out-of-state program similar to the KEY Drug Program proves untenable; and, 2) the results of the psychological evaluation determined that no revisions to the back-up Treatment Program were necessary. Were this not the case (that the agreed up[on] back-up Treatment Program was subject to modification, or enforcement of the other two facets of the Proposed Treatment Plan) there would be no need for the agreed upon psychological evaluation. The Decree [i.e., settlement agreement] was agreed to as written, contingent upon efforts to place Winward in an out-of-state Rehab or some other based upon a psychological evaluation, because Winward was in Pennsylvania.

Id., p. 2–3. (Emphasis in original.) The argument goes on to refer to statements that were apparently made to Winward by one of his lawyers, but which statements do not appear otherwise in the record. These statements attributed to the lawyer are hearsay. Winward has also placed in the record a copy of a memorandum discussing a proposed plan of treatment that he contends ought to be implemented. Docket no. 201, ex. 2.

Before proceeding further, let me observe that the agreement, signed by Winward and his lawyers, does not obligate the State to provide him with a particular mode of treatment. It obligates the State to implement "*a* proposed substance abuse treatment plan...." (Emphasis supplied.) It also requires Winward's compliance with the rules of a variety of programs or agencies, among them the Multi–Purpose Criminal Justice Facility. This compliance with rules is emphasized a number of times in the agreement. The need for compliance with all the rules mentioned is unmistakable.

***3** Turning now to the State's response, the file for this case contains, among other things, the affidavit of Deputy Warden George Martino. Docket no. 167. It states that

> A rehabilitation program has been designed for inmate Brian J. Winward ("Winward") that fulfills the specific requirements of the Settlement Agreement. By memorandum dated February 16, 1993, I ordered that the treatment program be implemented. The order specifically provided that if Winward refused to participate, that the refusal should be logged. The attached log book pages reflect that Winward has been offered the program of treatment but has declined to participate in the program. When Winward has refused to participate in the program, he has not been required to participate.

Id., p. A–2, ¶ 3. It is my understanding of Winward's position, as stated at the May 7, 1996 hearing, that he does not deny his refusal to participate and that such refusal continues to this time. He maintains that he is justified in refusing because, in his view, the proffered treatment plan is not as acceptable to him as the one he proposes in his exhibits. Under the circumstances presented, it is hard to see that Winward has a claim against the State with respect to the implementation of the treatment program: the settlement agreement did not entitle him to a plan of his choosing, but does entitle him to a plan devised by the State that meets the criteria of the agreement. The agreement did oblige Winward to abide by the rules of the agencies and departments that would implement the plan. He has refused to participate and so may not complain that he has been deprived of the fruits of his contract with the State.

Other remarks are in order before leaving this subject. First, whatever may have passed between Winward and his attorney as to the meaning of the agreement is not relevant to its implementation. If the language of the contract is clear on its face, there is no room for interpretation. A recent case that states the relevant principles clearly and succinctly is *Bell Atlantic Meridian Systems v. Octel Communications Corporation,* Del.Ch., C.A. No. 14,348, Allen, C. (Nov. 28, 1995).

> The primary consideration in the construction of contract language is to fulfill, to the extent possible, the reasonable expectations of the parties at the time they contracted. [Citations omitted.] In this process, Delaware courts adhere to an "objective" theory of contracts. [Citations and footnote omitted.]
>
> Under the objective approach, the court must first determine whether the contractual language in dispute is ambiguous. When the contract language, read in the context of the entire contract, is not reasonably susceptible to more than one meaning, this "objective" meaning will govern. [Citations omitted.] Moreover, parol evidence (that is evidence pertaining to antecedent agreements, communications of the parties, commercial usage in the industry, etc.) that contradicts or varies this meaning will not be considered. [Citations and footnote omitted.]

***4** *Id.,* pp. 12–14. There is no ambiguity in the settlement agreement because it is not fairly susceptible of different interpretations or meanings. *Rhone–Poulenc v. American Motorists Ins.,* Del.Supr., 616 A.2d 1192, 1196 (1992). The discussion is carried further in *Haft v. Haft v. Dart Group Corporation,* Del.Ch., C.A. No. 14,426, Allen, C. (Nov. 14, 1995) at 11:

> It is elementary that the intention necessary to form a contract is not found in the private subjective mental state of either of the parties to a negotiation, but is the meaning that a reasonable person would attribute to their expressions of assent, given the context of the words and acts that preceded their claimed agreement and culminate in it. Thus, courts do not look for and give legal force to private subjective state of mind (intent) but to objective acts (words, acts and context) that constitute the enforceable contract and the "objective" meant (intended) to do. *See Leeds and Parkview Convalescent Ctr., Inc. v. First Allied Connecticut Corp.,* Del.Ch., 521 A.2d 1095 (1986)....

Another point should be made before leaving this particular issue. Winward places great reliance on a proposed plan of treatment that appears to be dated January 1 6, 1 992. He maintains that this proposal sets forth the treatment plan he should be receiving. Such reliance, however, is misplaced because the memorandum containing the plan specifically denotes the plan as "tentative" and conditions its relevance to his treatment on "a complete psychological evaluation" of him. This evaluation has never been performed because Winward, as he stated in open court, has refused to have it done. While one may sympathize with Winward in his belief that he is entitled to better than has been offered him, there is no basis in the record or the settlement agreement to hold that the State has breached its contractual duty to him in any way.

B. The incarceration issue. While it is not squarely within

the parameters of the settlement agreement, reference must be made to Winward's incarceration and its effect on his treatment. The importance of this subject lies in its relevance to the nature of the treatment plan the State is able to offer Winward.

Winward has been sentenced to prison for a number of serious offenses, among them first degree robbery and attempted escape. He is serving a combined sentence of 107 years, of which 39 are minimum mandatory. Under 11 *Del. C.* § 4205(f) and (g), all his time must be served at Level V in a full custodial Level V institutional setting. He is not eligible for any kind of release until 2060 unless Superior Court reduces his sentence. This restriction on his ability to leave a Level V setting limits the options available to the State in providing Winward with treatment.

The point of this description of Winward's circumstances is that the forms of treatment he envisions as being in his best interests would involve his being placed in custodial situations less rigorous than Level V. He views the settlement agreement as entitling him to forms of release that cannot be granted under laws pursuant to which he was sentenced.

***5** To make this point as clearly as possible, Winward must accept the fact that the law that exists at the time and place a contract is made is incorporated into the contract itself, whether the parties so specify or no, *Koval v. Peoples,* Del.Super., 431 A.2d 1284 (1981); *Trader v. Jester,* Del.Super., 1 A.2d 609 (1938), and so it cannot be contended that Winward has any right acquired under the settlement agreement that, directly or indirectly, could be construed as allowing him or the State to avoid the consequences of Title 1 1 of the Delaware Code and thereby shortening or otherwise affecting the terms of his incarceration.

C. The liberty interest. Winward maintains that he has a liberty interest in rehabilitation under State and federal law. To the extent he has such an interest, which the State denies, it is a qualified interest.

The State law to which Winward refers is 11 *Del. C.* § 6531. Section 6531(b) states that "The Department [of Corrections] shall establish alcohol and drug counseling and treatment programs for inmates." Winward makes much of the fact that the language used appears to be mandatory. This subsection goes on, however, to say that "the Department shall also establish rules and regulations regarding the order in which inmates shall be eligible to participate in such course." As already stated, the Department has offered a course of treatment to Winward which he has declined to accept because it is not to his liking. Although I am not persuaded that there is a constitutional right to treatment, and the State contends there is none, that issue need not be addressed because the statute does not prescribe a specific program and Winward has refused to take advantage of the program that has already been offered to him. To the extent there is a liberty interest, as Winward characterizes it, to rehabilitation under Title 11, such interest is a qualified liberty interest, and the qualifications are imposed by the terms of the very statutes relied upon and by the terms of 11 *Del. C. §* 4205 (f) and (g), which have already been discussed. There is no indication in this record that Winward has been denied anything to which he is lawfully entitled under State law with reference to 11 *Del. C.* § 6531.

The issue of statutory right to rehabilitation has been before the courts of this State before. In *Carr v. Redman,* Del.Supr., 541 A.2d 598, 1988 WL 44803 (1988), an order issued by the Supreme Court of Delaware, the Court wrote that

> There is no specific statutory directive requiring that a certain type of rehabilitation be offered to certain types of prisoners, which is Carr's claim.
>
> Other decisions reviewing these statutes have found that they do not set forth prisoner's rights to specific rehabilitation programs. [Citation omitted.] Carr argues that this interpretation is inaccurate and goes against the statutory directive that "[t]his chapter be liberally construed so as to effectuate its purposes." 11 *Del. C.* § 6502(a) [F N2] Section 6502(a) creates the Corrections Department and provides general guidelines by which the Department should operate. It does not direct that each prisoner shall receive treatment or rehabilitation specifically tailored to the individual prisoner's needs.

***6** Similarly, the United States District Court for Delaware has held that "the inability to participate in educational or rehabilitative programs as a result of an inmate's classification level or conditions of custody does not raise a constitutional issue." *Bagwell v. Oberly,* D.Del., 1993 WL 14663 (1993) at 3, quoting from *Wilson v. Homan,* C.A. No. 89–35–JJF (D.Del. Apr. 24, 1989).

To continue, Winward also appears to contend that he is entitled to specific treatment as a result of an order entered by Judge Barron on December 23, 1 994. If so, his remedy for enforcing Superior Court orders lies in Superior Court, not the Court of Chancery.

For what it is worth, I note that in the packet of papers containing the order just referred to is a letter to Winward from Judge Barron, dated February 23, 1993. Judge Barron writes that "It is my understanding that in light of that fact [the lengthy sentence of incarceration], you may not be eligible for the SENTAC inpatient drug program at this early date, at least without a commutation of sentence." What this letter establishes is that Winward has been pursuing these matters at a number of levels, as he

ought to do, and that he has been made aware from sources other than the Department of Corrections or the Department of Justice that the length of his imprisonment presents a serious impediment to participation in certain programs he would like made available to him.

D. The racial issue. Winward claims that he has been denied treatment afforded to similarly situated African Americans and, therefore, he is the victim of racial discrimination. This is an issue not encompassed anywhere in the settlement agreement and so must be considered apart from it. As such, it is far from clear that he is without an adequate remedy at law and if that is the case, he ought not to be raising the issue for the first time in this Court in connection with matters that are entirely unrelated to that issue. 10 *Del. C.* § 342. For what it is worth, I note that part of the disparate treatment involves work assignments. There is no clearly established legal right to have work assignments that are free of racial bias. *Baker v. Young,* Del.Super., 90M–JL–12, Herlihy, J. (Oct. 12, 1990). As the record now stands, there is no reason to believe that Winward has been the victim of invidious discrimination, other than his own allegations, and if he has, his remedy is not in this Court in the context of attempting to enforce compliance with a settlement agreement that arose out of entirely unrelated issues and which is itself entirely unrelated to this new claim.

E. Nature of relief available. There has been confusion as to the nature of the relief this Court is able to provide to litigants. Winward has asked that the State be held in contempt for its alleged violations of the settlement agreement. For the record, a settlement agreement approved by a court can be enforced in the same fashion as any other contract, but unless its provisions are formally incorporated into an order of the court, which is not the case here, contempt sanctions for failure to comply may not be imposed. *Dickerson v. Carper,* Del.Ch., C.A. No. 12056, Chandler, V.C. (Sept. 7, 1995).

***7** *F. Ancillary matters.* After filing his motion to reopen this case Winward filed motions for the issuance of subpoenae to a number of present and former State employees and after the May 7 hearing he requested that a transcript of that hearing be prepared. As to the subpoenae, I directed the Register in Chancery not to issue them pending the outcome of the decision on whether an evidentiary hearing ought to be held. In light of the recommendation made herein that the motion to reopen be denied, there is no need to issue subpoenae. As to the request that a transcript be prepared, the stated purpose is for an appeal from this decision (although at the time the request was made this matter was not yet ripe for decision) and for use in collateral litigation in the United States District Court. I have no authority to order the preparation of such a transcript, nor have I done so.

III

The Exceptions to the Draft Report

The exceptions to the draft report are lengthy. The best way to address them is to set them forth, one by one, followed by commentary.

1. The September 4, 1996 submission. Winward writes that

> The day of the Master's report September 4, 1 996 plaintiff Brian J. Winward submitted (as filed on said date) a Memorandum And Points of Authority In Support of Contempt, which was not given consideration with respect to case-authority and rationale of argument.

Docket no. 216, p. 1.

As already explained, our case law holds that a settlement agreement may be specifically enforced, but if it has not been incorporated into an order of a court, violation of said agreement may not be the subject of contempt sanctions.

> Plaintiffs have styled their enforcement action as a motion to show cause why defendants should not be found in contempt of a court order. Defendants deny that they are in violation of the Agreement or the Stipulation, but they have not questioned plaintiffs' characterization of a violation of the Agreement as contempt of an order of this Court. Because defendants have never disputed that the Agreement was entered as an order, the Court accepted plaintiffs' characterization of the Agreement as an order in its 1991 ruling on plaintiffs' first motion to show cause. [Citation omitted.] Yet, the record in this case shows that the Court entered an order approving the Agreement as a fair and reasonable settlement, but that order did not incorporate the Agreement as an order of this Court. [Citation omitted.] The Court also approved the Stipulation as fair and reasonable, but did not

> incorporate the terms of the Stipulation as an order of this Court. [Citation omitted.] A settlement agreement approved by a court but not incorporated into an order is merely an agreement. It may be enforced as a contract, but it cannot be enforced by contempt. *Read v. Wilmington Senior Center,* Del.Super., C.A. No. 91A–06–03, Bifferato, J. (Sept. 6, 1991), Let. Op. at 2, *aff'd,* Del.Supr., No. 369, 1991 (Dec. 26, 1991)(ORDER). Plaintiffs cannot enforce the Agreement or the Stipulation with a motion to show cause.

***8** *Dickerson v. Carper, supra,* pp. 2–3. To the extent there is an argument that contempt is an issue in this proceeding and that the memorandum filed on September 4, 1 996 has a bearing on that issue, the prior decision of this Court in *Dickerson* is a sufficient answer.

Another reason that it is not critical that I should have read the September 4 submission before issuing the draft report is that it states principles that are not in dispute, but that are not determinative in this proceeding as I see it. For example, Winward insists that he has an agreement with the State that is enforceable, but that the defendants are trying to avoid duties agreed to by their previous attorneys or by previous defendants who have since left State employment. He also refers to the concept of "law of the case" for the proposition that what has already transpired in this case is binding on the parties. These statements are correct enough as stated in the memorandum, but their relevance to the present case is what I question. Regardless of everything said in the September 4 submission, the agreement among the parties is still subject to the restrictions imposed on it by the circumstances that existed at the time of its making, as explained at length above, and is still not subject to interpretation to the extent that interpretation would vary the clearly expressed terms of the agreement itself. Nothing said in the September 4 submission changes these facts. Therefore, in my view, the fact that the arguments contained in the September 4 submission were not available to me when I issued the draft report does not, now that I have read it, require a different result.

2. Appointment of counsel Winward objects that counsel has not been appointed for him. I thought this issue had been disposed of earlier, but may be mistaken; it may be that it was disposed of in another proceeding, but not in this one.

Our Constitution guarantees a right to counsel to people accused of crime, but not to plaintiffs in civil actions. "The Sixth Amendment's guarantee of a right to counsel has not been extended to civil proceedings. [Citations omitted.]" *Boulware v. Battaglia,* D.Del., 344 F.Supp. 889, 903 (1972), *affm'd.,* CA3, 478 F.2d 1398 (1973). Winward says in various documents that counsel was previously appointed for him in this case, but that is an incorrect characterization of what happened. Counsel appeared for him and others pro bono. While this is laudable on the part of the lawyers who provided services to Winward and his co-petitioners, it is entirely different from the Court appointing lawyers to represent their interests. So far as I can tell, a plaintiff does not have a right to court-appointed counsel in a civil proceeding, and so none has been appointed here.

3. The State's failure to perform its duties under the agreement and the incarceration issue. The exceptions treat these two matters separately, but as I have already treated them as different aspects of one issue, I shall so treat them here. These challenges to the draft report are lengthy, running from page 2 to page 9 of the exceptions. The general approach is that there is an Eighth Amendment duty to provide adequate medical care to prisoners and hence defendants have a duty in addition to any contractual duty to provide this care.

> ***9** In this case we are dealing with entering a contract to address the Eighth Amendment right to be "free from cruel and unusual punishment" via "adequate medical care"—substantial compliance being hinged upon that. [Citations omitted.] Under Delaware law (Public Health and Safety, et cetera) medical contracts are essential to delivering adequate medical treatment, and they are devised by doctors or agents of the State for prisoners. They must comply with policy, rule, regulation, law and codes of professionalism of the doctors, i.e, they cannot be used to devise any ole program; but rather, effective ones based upon particular client needs. A psychological evaluation is essential for this purpose; the most relied upon valid psychological evaluation is the Court approved and utilized S.E.T. by the Division of Drugs Alcohol And Mental Health, which comports with Public Health And Safety requirements. The intent of the parties to be inferred from the language of the parties is that a psychological evaluation is to be performed and revisions made so adequate medical care could be provided. The language stating the program of KEY and Mental Health at M.P.C.J.F. infers only that if the psychological evaluation did not determine otherwise then Winward would settle for the less therapeutic back-up program. The intent is clear: if KEY was the only offer contracted and settled there would be no need for the psychological evaluation. The Master must give meaning to all of the words and phrases of the contract [citation omitted] and not make some terms meres surplusages; and, a clear provisions cannot be overcome by a doubtful one. [Citation omitted.]

p. 5.

This lengthy quotation demonstrates some of the problems in dealing with the issues in this case. It moves from point to point without an internal logic. The Eighth Amendment is invoked to demonstrate the need for the settlement agreement (although arguably, if there has been a violation of the Constitution, there is a right to be redressed in another court without need to make the settlement agreement). Medical contracts are said to be "essential" for the treatment of patients according to law; why this is so if there are statutory and Constitutional duties to provide such treatment is not explained. As stated in the main body of this report, there may be a right to treatment, but there appears to be no right to treatment that must meet the subjective dictates of the individual patient, and in any event, a program that appears to meet the requirements of the settlement agreement has been offered to Winward, but he has declined to cooperate with the defendants in its implementation. Without having done that much, it is hard to discern his basis for maintaining that the program offered is inadequate. The terms of the agreement are plain and do not require explication. If Winward believes otherwise based on conversations with his attorney before the settlement agreement was executed, that is between him and the attorney, but it in no way controls the interpretation of the agreement.

***10** The failure of Winward to comply with the requirements of the defendants in implementing a program of treatment for him frustrates their ability to carry out their obligations under the settlement agreement. This aspect of the case ties directly to Winward's demand that he be given treatment that the State claims would violate the terms of his incarceration. The State can only do what the law allows it to do. It cannot make a contract with a private individual to avoid the consequences of a sentence given by Superior Court. Whatever may have been Winward's hopes when the settlement agreement was entered, the defendants at no time had power to vary the terms of the sentence imposed by Superior Court or to disregard state law with respect to that sentence.

4. The liberty interest. There is no liberty interest at stake in this proceeding such as was under discussion in the cases cited by Winward. No one disputes that there is a right to contract or that Winward has an interest in rehabilitation. What the settlement agreement gives him is a mode of treatment, but not the exclusive power to control the treatment and thereby obtain benefits not otherwise available to him because of his status as a Level V prisoner. He has it within his power to obtain treatment such as the settlement agreement promised, and that being the case, he cannot maintain that he has been deprived of a liberty interest.

5. The racial issue. Winward contends that African–American prisoners with life sentences have been placed in the KEY Program, but that he has not, and believes that this is evidence of racial discrimination against him. If invidious racial discrimination is being practiced at the prison, it is a matter of serious concern and one that should be raised in a court of competent jurisdiction. It is not determinative, however, of whether the State has breached its settlement agreement with Winward. Either the State has performed its part of the agreement or it has not. The fact that someone not a party to the agreement has been treated in a way that Winward believes discriminates against him wrongfully is not relevant to whether the State has failed to carry out its contractual duties to him. Jurisdiction of such a claim is available elsewhere, and so this Court is without authority to entertain it, 10 *Del. C.* § 342.

6. The nature of the relief. The point Winward makes under this heading is that I found the settlement agreement not to have been part of a formal order of the Court, and the failure of the State to perform the psychological examination within ninety days demonstrate that "the Settlement Agreement is not consummated and the case should be reopened for trial on the issues." The settlement agreement may not have been part of a formal court order, thus rendering contempt proceedings inappropriate, but that hardly means that it is unenforceable in a proceeding for specific enforcement. *Dickerson, supra.* The failure to comply with the psychological examination is Winward's failure, not the State's. There is no basis in this part of the exceptions to reopen the case or to set it down for trial.

***11** *7. Ancillary relief.* Winward objects in this part of the exceptions that he was unable to present important evidence because I quashed subpoenae and denied discovery. There was no need at that stage of these proceedings to engage in discovery or to hold an evidentiary hearing because the issue was whether Winward had an enforceable right to treatment that he was not receiving. Based on a review of the settlement agreement, case law, the fact of Winward's sentence and his own statements that he had refused to cooperate with the defendants in a variety of ways, I reached the conclusion that he could not make a showing that he had been deprived of anything to which he is entitled.

While this matter does not come before the Court in the summary judgement format, it may be useful to examine it in that context. Summary judgement is granted to a party who can show that, viewing the facts of the case as favorably as possible to the non-moving party, the moving party should still receive judgement in his favor. If that standard is applied to the present case, there are factors in this case that are not in dispute and that undermine Winward's request: a settlement agreement that did not entitle Winward to a specific treatment plan of his devising, the fact that he has not cooperated with

the defendants, and the nature of his sentence and the consequences of that sentence in terms of the way it must be served under State law. Once these aspects of this case are considered, there is no way that Winward can prevail on the claim that the defendants have not carried out their duty to give him a treatment plan that he prefers, and which could entail his being released from Level V incarceration, rather than the one they have offered him. This is what the present proceeding amounts to, and Winward has not established his entitlement to prevail on the showing he has made.

IV

Conclusion

The nature of Winward's incarceration is such that the options available to him and the State in terms of treatment and rehabilitation are limited. The record shows that the State has tried to carry out its duties under the settlement agreement with respect to Winward, but that he has not cooperated with it and so has frustrated its performance. Based on this state of the record, it cannot be maintained that the State has failed to perform under the agreement. Furthermore, the record does not disclose any violation of State law with respect to Winward's right to rehabilitation because the extent of rehabilitation afforded under State law is limited by other factors, among which is the nature of Winward's incarceration and the restrictions it places on his ability to take part in affairs any place other than a fully custodial Level V institution. Finally, the racial discrimination issues are not within the scope of this civil action and to the extent Winward may have a cause of action regarding these issues—which is far from clear from the available record and with respect to which I express no opinion—he has an adequate remedy in other courts and so may not litigate these issues in this Court.

***12** Based on the foregoing discussion, Winward's requests to reopen this case and to compel the State to perform its duties under the settlement agreement and to hold the State in contempt should be denied and the motions dismissed.

cc: Register in Chancery

NO FINAL ORDER WAS ENTERED BECAUSE THE PARTIES SETTLED THEIR DIFFERENCES AFTER THE ISSUANCE OF THE FINAL REPORT.