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United States District Court, S.D. Iowa, Central Division.

Michael GAVIN, et al., Plaintiffs,
v.
Robert RAY, et al., Defendants.

Civil No. 4–78–CV–70062. | Sept. 18, 1996.

Attorneys and Law Firms

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Opinion

ORDER DENYING MOTION FOR IMMEDIATE TERMINATION

VIETOR, District Judge.

***1** Before the court is defendants' Motion for Termination of Relief. The United States of America intervened and filed briefs supporting its position. Plaintiffs resist the motion for termination of relief and concurrently move for summary judgment. A hearing was held September 3, 1996, and the motions are fully submitted and ready for ruling.

Background of Motions

In 1978 this class action was commenced by disciplinary segregation inmates in the Iowa State Penitentiary (ISP) in Ft. Madison, Iowa, challenging the constitutionality of various practices and policies at ISP as applied to disciplinary segregation inmates. On May 3, 1984, after extensive pre-trial processes, a settlement agreement executed by class representative plaintiffs and defendants was presented to the court for approval. *Gavin v. Ray,* No. 78–62–2 (S.D.Iowa May 3, 1984). The terms of the settlement agreement applied only to disciplinary segregation inmates at ISP, and concerned issues of exercise, miscellaneous services and opportunities, segregation status, restraints, use of tear gas, stripped cells, and access to the courts. The provisions of the agreement were sent to the identifiable members of the class who were given an opportunity to make objections. *Id.* (Order of May 4, 1984). After noting the comments of nine inmates who responded, this court found the proposed settlement to be fair, reasonable and in the best interests of all persons affected, approved the settlement agreement, and ordered compliance with its terms, which were incorporated into the Order by reference. Jurisdiction was retained to enter such orders as may be necessary to enforce the terms of the settlement agreement. *Id.* (Order of June 13, 1984).[1]

[1] Except for Count XVI and all individual claims, the Amended Complaint was dismissed. The "General Provisions" section of the Settlement Agreement is attached hereto as Appendix A.

In 1988, the court approved a supplement to the settlement agreement proposed by the parties, providing for, *inter alia,* resources for the satellite law library in Cellhouse 20, legal research assistance by library staff, and replacement of library books in the core library. *Id.* (Order of Oct. 4, 1988). The court ordered compliance with its terms, which were incorporated into the Order by reference, and retained jurisdiction to enter such orders as may be necessary to enforce its terms.[2] (Hereinafter, the orders of June 13, 1984 and October 4, 1988 will be referred to as "the consent decree.")

[2] The "General" section of the supplement to the Settlement Agreement is attached hereto as Appendix B.

On April 26, 1996, the President signed into law the

Prison Litigation Reform Act of 1995 (PLRA), Pub.L. No. 104–134, §§ 801–810, 110 Stat. 1321 (1996). This law affects several aspects of prison litigation, and includes a provision for terminating prospective relief ordered in consent decrees. Defendants move under the PLRA to terminate immediately the prospective relief provided in the consent decree as supplemented. Plaintiffs resist the motion and challenge the constitutionality of the PLRA's termination provisions.

Under the PLRA, prospective relief ordered in civil actions concerning prison conditions is immediately terminable upon a motion "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." 18 U.S.C. § 3626(b)(2).[3] If the court finds an ongoing violation of a federal right and prospective relief is necessary and narrowly drawn, then the prospective relief will not terminate. 18 U.S.C. § 3626(b)(3).[4] Thirty days after a motion to terminate prospective relief is filed, the prospective relief provided in the consent decree is "stayed" or suspended until the court enters a final order ruling on the motion. 18 U.S.C. § 3626(e).[5]

3 The full text of § 3626(b)(2) is as follows:

> (2) Immediate termination of prospective relief.—In any civil action with respect to prison conditions, a defendant or intervener 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.

18 U.S.C. § 3626(b)(2).

4 The full text of this provision is as follows:

> (3) Limitation.—Prospective relief shall not terminate if the court makes written findings based on the record that prospective relief remains necessary to correct a current or 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.

18 U.S.C. § 3626(b)(3).

5 The provision states:

> (e) Procedure for Motions Affecting Prospective Relief.—
>
> (1) Generally.—The court shall promptly rule on any motion to modify or terminate prospective relief in a civil action with respect to prison conditions.
>
> (2) Automatic stay.—Any prospective relief subject to a pending motion shall be automatically stayed during the period—
>
> (A)(i) beginning on the 30th day after such motion is filed, in the case of a motion made under paragraph (1) or (2) of subsection (b); * * * and
>
> (B) ending on the date the court enters a final order ruling on the motion.

18 U.S.C. § 3626(e).

***2** In approving the settlement agreement and supplement thereto, the court did not make findings that the relief was narrowly drawn, extends no further than necessary to correct the violation of a federal right, or that it was the least intrusive means necessary to correct a violation of a federal right.

Nonconstitutional Challenge

Plaintiffs argue the PLRA violates the supersession provision of the Rules Enabling Act. "Prior to reaching any constitutional questions, federal courts must consider nonconstitutional grounds for decision." *Jean v. Nelson,* 472 U.S. 846, 854 (1985) (quotation omitted). The court therefore first addresses plaintiffs' nonconstitutional challenge to the PLRA.

Under the Rules Enabling Act, the Federal Rules of Civil Procedure govern practice and procedure in district courts. 28 U.S.C. § 2072(a). "All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect." 28 U.S.C. § 2072(b); *see also Henderson v. United States,* 116 S.Ct. 1638, 1644 (1996). Plaintiffs assert section 3626(b)(2) is inconsistent and cannot coexist with Fed.R.Civ.P. 60(b), which sets out the requirements to obtain relief from a judgment or order. The language of section 3626(b)(2) is phrased as an alternative to Rule 60(b). The statute can coexist with the federal rule. *Benjamin v. Jacobson,* No. 75 CIV. 3073(HB), 1996 WL 413722, at *10 (S.D.N.Y. July 23, 1996) (Baer, J.) ("there is no direct conflict here because the two provisions can coexist."); *Hadix v. Johnson,* No. 4:92:CV:110, 1996 WL 393737, at *2 (W.D.Mich. July 3, 1996) (Enslen, J.) ("Rules of Civil Procedure and the stay provision can coexist."). Because the PLRA does not supersede Rule 60(b), it does not violate the supersession provision of the Rules Enabling Act.

Constitutional Challenge

Plaintiffs contend the PLRA's termination provisions infringe on the separation of powers doctrine, the Due Process Clause, and the Equal Protection Clause. The separation of powers challenge includes whether the PLRA reopens final judgments, creates a rule of decision in a pending case, and limits judicial remedies in violation of the Constitution.

The Constitution of the United States provides for all judicial power to be vested in the Supreme Court and those other courts as Congress may establish. U.S. Const. art. III, § 1. When either the legislative or executive branch of the government attempts to take upon it a power delegated solely to the judiciary, the action is unconstitutional. *See Plaut v. Spendthrift Farm, Inc.,* 115 S.Ct. 1447, 1453–56 (1995) (discussing history of independent judiciary).

The PLRA termination provision already has been subject to separation of powers challenges. In *Benjamin,* Judge Baer held there was no separation of powers violation in applying section 3626(b)(2) to a consent decree entered before the PLRA became law. *Benjamin,* 1996 WL 413772, at *16. The district court in *Hadix,* however, ruled differently. Considering only the automatic stay provision in section 3626(e), Judge Enslen found the statute wrongly reopened the final judgment embodied in the consent decree before him, and therefore violated separation of powers principles. *Hadix,* 1996 WL 393737, at *6.

***3** These two decisions are rooted in differing views of the decision in *Pennsylvania v. Wheeling & Belmont Bridge Co.,* 59 U.S. (18 How.) 421 (1856) and subsequent case law, including *Plaut.* The Court in *Wheeling* recognized that an "act of congress cannot have the effect and operation to annul the judgment of the court already rendered, or the rights determined thereby.... especially as it respects adjudication upon the private rights of parties." *Wheeling,* 59 U.S. at 431. The Court distinguished the facts of the case from this general proposition, however, and held that when Congress extinguishes or modifies the law affecting a public right underlying an executory or continuing decree, the prospective effect of the decree should also be modified. *Id.* at 431–32; *see also Hodges v. Snyder,* 261 U.S. 600, 603–04 (1923) (discussing public/private rights distinction in context of vested rights doctrine). In *Plaut* the Court held that a law which allowed cases previously dismissed on statute of limitations grounds to be reopened violated separation of powers principles because the law had the effect of reversing a final judgment. *Plaut,* 115 S.Ct. at 1456.

Addressing the separation of powers issue in *Benjamin,* Judge Baer held the prospective relief ordered in the consent decree was not a "final judgment" for separation of powers purposes. He explained that "Congress may legislate retroactively so as to modify the prospective effects of a judgment that is final for appeal purposes because this does not reopen the merits of the judgment." *Benjamin,* 1996 WL 413722, at *13. He rejected the argument that the public/private rights distinction was essential to the separation of powers analysis, and instead held that "[o]nly the character of the relief awarded in a final judgment is relevant to the separation-of-powers inquiry." *Id.* at *14. He concluded that because the district court retained supervisory jurisdiction over the prospective relief in the consent decree, the decree was not final for separation of powers purposes as discussed in *Plaut. Id.* at *11, 16; *see also Plyer v. Moore,* No. 3:82–876–2, Trans. at 31 (D.S.Ca. June 4, 1996) (granting motion to terminate consent decree immediately pursuant to provisions of PLRA); *Plyer v. Moore,* No. 3:82–876–2, slip op. at 9 (D.S.Ca. June 20, 1996) (granting stay of court's ruling on immediate termination pending appeal before Fourth Circuit).

In contrast, Judge Enslen in the *Hadix* decision regarded a final judgment as "one which resolves all legal issues (except execution) and concerning which the rights of appeal have been either exhausted, waived or have elapsed." *Hadix,* 1996 WL 393737, at *5. Because all legal issues except execution were resolved in the consent decree before him and the decree involved private rights, he held the decree was a final judgment, and that the PLRA termination provisions "render[ed] inoperative existing judgments of [the c]ourt" in violation of separation of powers principles. *Id.* at *6.

***4** Although the *Hadix* decision involved the automatic stay provision, the analysis of that case is persuasive in assessing the constitutionality of section 3626(b)(2). As stated by the Supreme Court in another inmate case involving prospective, ongoing relief, "a consent decree is a final judgment that may be reopened only to the extent that equity requires." *Rufo v. Inmates of Suffolk Jail,* 502 U.S. 367, 391, (1992); *see also Stone v. City and County of San Francisco,* 968 F.2d 850, 854 (9th Cir.1992) ("A consent decree is considered a final judgment despite the fact that the district court retains jurisdiction over the case."). It is this court's conclusion that the consent decree in this case, including the prospective relief ordered, is a final judgment affecting private rights, and that the PLRA's termination provisions violate separation of powers principles.

Further, the PLRA undermines the court's power to decide *when* prospective relief should end. The federal judiciary is vested with "the power, not merely to rule on cases, but to *decide* them...." *Plaut,* 115 S.Ct. at 1453. Under the PLRA, however, in order to prevent immediate termination of the decree, plaintiffs must show a current or ongoing violation of a federal right. 18 U.S.C. § 3626(b)(3). As long as defendants comply with the

consent decree, plaintiffs cannot prove a current or ongoing violation of a federal right. In these types of cases, there is no opportunity for the court to "decide" whether prospective relief should remain in effect. *Cf. Hadix,* 1996 WL 393737, at *4 (§ 3626(e) grants movants relief "with no provision for a case-by-case determination"); *see also Hadix v. Johnson,* No. 80–CV–73581–DT, 1996 WL 393735, at *2 (E.D.Mich. July 5, 1996) (agreeing with J. Enslen's opinion).

For these reasons, the court concludes that the termination provisions of the PLRA violate the separation of powers principles inherent in the Constitution, and should not, therefore, be enforced.[6]

[6] Because the termination provision violates separation of powers principles, it is not necessary to address the parties' other arguments.

CONCLUSION

Defendants' motion for termination of relief is DENIED. At the hearing, plaintiffs conceded their motion for summary judgment was superfluous. The motion for summary judgment is DENIED AS MOOT.

Pursuant to 28 U.S.C. § 1292(b), I certify that I am of the opinion that the foregoing ruling on the constitutionality of 18 U.S.C. § 3626(b)(2) involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the adjudication may materially advance the ultimate termination of the litigation.

Appendix A

GENERAL PROVISIONS

1. This Settlement Agreement is entered into partial settlement of the claims raised in the above-entitled matter. Upon execution of this Agreement by the parties hereto, and approval by the Court, the Court shall enter an Order enforcing the terms of this Agreement and dismissing the following portions of the Amended Complaint filed herein on April 2, 1979, to-wit:

***5** a. Count XVII, relating to the disciplinary process and the Iowa Administrative Procedures Act;

b. Count X;

c. Count XVIII;

d. Count XIX; and

e. Count XX.

2. This Agreement is not intended as a concession by any of the parties of the validity or invalidity of the claims presented in this action or as a concession that any party has prevailed herein for purposes of 42 U.S.C. § 1988. This Agreement is also not intended as a determination on the merits of the class claims or defenses of the parties not specifically provided for herein, except that the Plaintiffs agree that in the event that Plaintiffs at some later date wish to present class claims asserted in the Amended and Substituted Complaint that are not settled in this Agreement and were not presented to the Court for hearing on July 28, 1983, they shall be barred from presenting in support of those claims evidence of incidents that occurred prior to July 28, 1983. However, nothing stated herein shall in any way limit the presentation of evidence in the individual claims of the Amended Complaint.

3. Upon dismissal of the portions of the Amended Complaint as set forth in paragraph 1 above, the Defendants agree to pay the sum of *$22,000.00* for costs and attorneys' fees attributable to time spent by faculty supervisors of the University of Iowa College of Law's Prisoner Assistance Clinic on primarily non-education-related activities in connection with this lawsuit. No other attorneys' fees shall be claimed in connection with this action except for time expended after the effective date of this Agreement in connection with issues not settled herein.

4. Nothing in this Agreement shall be construed so as to resolve any issue pending before the Court by motion of either party.

5. This Agreement shall apply to prisoners at the Iowa State Penitentiary who are or will be segregated from other prisoners because they have received a disciplinary report or have been found guilty by a disciplinary committee of violating institutional rules for prisoner conduct, with the following exceptions:

a. Prisoners placed in summary segregation or in short-term disciplinary segregation but not transferred to a cellhouse primarily containing disciplinary segregation prisoners (presently Cellhouse 220 and portions of Cellhouse 319) do not need to be exercised on Saturdays, Sundays, or holidays. Nothing in this paragraph shall be construed as contrary to the provisions of the Stipulation in *Parrott v. Ray,* S.D. of Iowa, 78–174–2, or any decision that may interpret or implement that Stipulation; and

b. Protective custody prisoners transferred at their own request to a cellhouse primarily containing disciplinary segregation prisoners are covered by this Agreement only to the extent that they are not already covered by the Settlement Agreement in *Parrott v. Ray.*

6. The Court will retain jurisdiction to consider compliance with this Agreement and decree, as well as to consider modifications deemed necessary by the parties but not otherwise provided for herein.

***6** It is the express intent of the parties that the Court will have authority to consider the purposes of the Agreement, recommendations of the parties, the security and order needs of the institution, and prisoner rights in reviewing disputes as to the Agreement and its development and implementation as well as subsequent modifications.

The Court shall require the parties to attempt to work out any differences of opinion in the interpretation of the Agreement and decree or in the development and implementation of such or in efforts to modify the Agreement prior to filing requests for modification or applications for an order to show cause on a class-wide basis.

7. In the event that Defendants hire an attorney to represent prisoners in civil matters, including civil rights litigations, all claims for non-compliance of this Agreement shall be presented first to that attorney. Defendants shall submit quarterly reports to the Court for 18 months after the signing of this Agreement, with copies to Plaintiffs' counsel, outlining action taken to implement this Agreement.

8. The provisions of this Settlement Agreement shall be effective as of the date of the decree approving this Agreement except where specifically stated otherwise herein.

Appendix B

III. GENERAL

A. This Supplement to Settlement Agreement does not operate to modify any other agreement, court order, injunction, or stipulation in this case or any other case applicable to the Iowa State Penitentiary.

B. This Supplement to Settlement Agreement may not be modified by any party in any manner without the prior written consent of the opposing party hereto, or without court order following appropriate notice to all the parties.

C. This Supplement to Settlement Agreement is binding on each party hereto in accordance with its terms and any party may seek enforcement of its terms in any court having subject matter and personal jurisdiction. This Court shall maintain continuing jurisdiction to monitor implementation of this Supplement to Settlement Agreement, and to entertain any subsequently proposed modifications. This Supplement to Settlement Agreement may be executed in as many photocopies as the parties may agree, each to be considered an original, and each party waives any and all evidentiary objections to the introduction into evidence of any such counterpart in any subsequent proceeding for the enforcement of this Supplement to Settlement Agreement for the purpose of proving the terms thereof.

D. This Supplement to Settlement Agreement is subject to approval by the Court.

E. This Settlement Agreement shall be immediately posted at Iowa State Penitentiary in such place or places as statements of institutional rules, policy or procedure are normally posted at Iowa State Penitentiary, and at least two (2) complete photocopies of this Supplement to Settlement Agreement shall be placed in the Main Law Library of Iowa State Penitentiary and the satellite law libraries and be available for inmate inspection.