UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FREDERICK HARPER, et al., individually and on behalf of all present and future inmates in the Fulton County Jail in Atlanta, Georgia,	:	
Plaintiffs,	:	CIVIL ACTION
v.	:	1:04-CV-1416-MHS
FULTON COUNTY, GEORGIA, et al.,	:	
Defendants.	:	
THEODORE JACKSON, Fulton County Sheriff, in his official capacity,	:	
Defendant and Third-party Plaintiff,	:	
v.	:	
JIM DONALD, Commissioner, Georgia Department of Corrections, in his official capacity, et al.,	:	
Third-party Defendants.	:	

ORDER

Before the Court is a motion to terminate prospective relief filed by defendants Fulton County and the Fulton County Board of Commissioners (the County or County defendants).[1] For the following reasons, the Court denies the motion.

Background

On May 19, 2004, plaintiff Frederick Harper, an inmate at the Fulton County Jail, filed this action *pro se* alleging the use of excessive force by a jail officer. On June 22, 2004, attorneys from the Southern Center for Human Rights appeared on behalf of plaintiff and filed an amended class action complaint on behalf of all inmates at the Fulton County Jail seeking declaratory and injunctive relief to correct allegedly deplorable conditions at the jail. The amended complaint alleged, among other things, that the jail was dangerously overcrowded and understaffed, and that the locks on many of the cells did not work. Am. Compl. ¶¶ 24-26.

[1] Defendant Fulton County Sheriff Ted Jackson has not joined the County's motion.

In December 2005, the parties reached a settlement and presented the Court with a comprehensive Consent Order enumerating the actions defendants had agreed to undertake to remedy the conditions at the jail. Following a fairness hearing, the Court approved the settlement and entered the Consent Order on February 7, 2006. Among other things, the Consent Order places a cap of 2,500 on the number of inmates that may be housed at the jail's Rice Street facility.[2] Consent Order ¶ 18. The Consent Order also establishes mandatory minimum staffing levels for each cellblock and requires that "[a]ll cell doors at the Jail shall be equipped with functioning locks which can be opened remotely from the tower," and that "[t]hese locks shall be maintained in good working order." Id. ¶¶ 16, 25-26.

Since entry of the Consent Order, defendants have taken significant steps toward achieving compliance with its provisions. As a result, conditions at the jail are much improved today compared to when this lawsuit was filed. Nevertheless, compliance still has not been achieved with the two critical Consent Order provisions requiring adequate staffing and functioning locks.

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[2] The Consent Order originally set a cap of 2,250, but the Court later agreed to increase the cap to 2,500. Order of April 29, 2010.

The latest quarterly report by the court-appointed monitor states that coverage of officer and supervisor mandated posts improved slightly over the previous quarter but still fell short of full compliance. Twenty-Fifth Quarterly Report of the Court Monitor at 4 (Jan. 10, 2013). The report also estimates that the replacement of non-functioning locks at the jail, for which the Board of Commissioners did not approve funding until last month, will not be completed until November. Id. at 7.

At a meeting with the parties in chambers on December 11, 2012, the Chairman of the Fulton County Board of Commissioners acknowledged that defendants were not in compliance with the Consent Order's requirements regarding staffing and locks but at the same time expressed the County's desire to end the Court's supervision of the jail. The Court instructed the Chairman to notify the Court when the locks had been replaced and another meeting with the parties would be scheduled to discuss termination. Less than a month later, on January 4, 2013, the County defendants moved to terminate prospective relief.

Discussion

The County defendants contend that they are entitled to termination of prospective relief under both the Prison Litigation Reform Act of 1995 (PLRA), 18 U.S.C. § 3626, and Rule 60(b) of the Federal Rules of Civil Procedure. The Court addresses each ground in turn below.

I. PLRA[3]

The PLRA provides in pertinent part that prospective relief ordered in a prison conditions case "shall be terminable upon the motion of any party . . . 2 years after the date the court granted or approved the prospective relief." 18 U.S.C. § 3626(b)(1)(A)(i). However, "[p]rospective relief shall not terminate if the court makes written findings based on the record that

[3] The PLRA requires the court to "promptly rule" on any motion to terminate prospective relief and imposes an "automatic stay" of such relief beginning 30 days after the motion is filed unless the Court finds good cause to postpone the effective date "for not more than 60 days." 18 U.S.C. § 3626(e). The County states that it "does not wish to take advantage of the automatic stay provisions at this time" and does not seek relief until "on or about July 1, 2013." Mot. to Terminate Prospective Relief at 2 n.1. In essence, the County defendants acknowledge that their motion is premature and ask the Court to hold it in abeyance. They do not explain why they chose to file their motion now rather than waiting until it was ripe for decision, and they cite no authority that would allow the Court to ignore the statute's automatic stay provisions. Regardless of whether the County intends to take advantage of the stay, if the Court does not rule, it will take effect automatically. Therefore, in order to avoid any question about the Consent Order's continuing effectiveness, the Court must rule on the motion now.

prospective relief remains necessary to correct a current and 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). More than two years have passed since entry of the Consent Order. Nevertheless, based on the record, the Court finds that all the prerequisites for continuing enforcement of prospective relief are present.

First, in the Consent Order itself, the County defendants agreed and stipulated that the prospective relief set forth "is narrowly drawn, extends no further than necessary to correct the violations of the plaintiffs' federal rights, and is the least intrusive means necessary to correct these violations." Consent Order ¶ 107. This relief includes the requirements to staff each cell block with a minimum number of uniformed officers and supervisors and to equip all cell doors with functioning locks. Consent Order ¶¶ 16, 25-26. The County defendants acknowledge that these requirements have not been satisfied, Defs.' Br. at 4, and they do not suggest that the relief they agreed was necessary seven years ago is no longer needed. Indeed, as set out in plaintiffs' response to the County's motion, the record is replete with evidence

that inmates are able to open cell locks or prevent them from locking, enabling them to regularly leave their cells without permission. Pls.' Resp. at 5-8. Likewise, the record shows that shifts at the jail are not fully staffed with the required number of supervisory officers. Id. at 10-11. Clearly, the combination of non-functioning locks and lack of adequate supervisory staff poses a significant risk of harm to officers, staff, and inmates.

The County argues that full compliance with the Consent Order is not a prerequisite to termination of prospective relief. Defs.' Br. at 4. In essence, the County defendants ask the Court to accept their promise that the locks will be fixed and additional staff will be hired. Such promises carry no weight. The County promised seven years ago to fix the locks and provide adequate staffing. Today these promises remain unfulfilled. To achieve termination of prospective relief, the law requires results, not more promises.[4]

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[4] The County's promises ring especially hollow in light of the Commissioners' recent decision to cut all funding for outsourcing inmates to other jails. As a result, the Chief Jailer has reportedly said that inmates will again be required to sleep on the floor, a clear violation of the Consent Order. See Rhonda Cook & Johnny Edwards, Jail Can't Rent Beds, ATL. J.-CONST., Jan. 24, 2013, at B1; Consent Order ¶ 19.

The County also argues that "there are no current and ongoing constitutional violations at the Fulton County Jail." Defs.' Br. at 4. This argument is without merit. The record establishes that plaintiff class members face a current and ongoing threat of serious harm due to non-functioning locks and lack of adequate staffing, that the County defendants have known of this risk at least since the Consent Order was entered nearly seven years ago, and that they have failed to respond reasonably by taking the steps necessary to correct the situation. Thus, there is a current and ongoing violation of plaintiff class members' constitutional right to be protected from violence at the hands of other inmates. See Rodriguez v. Sec'y for Dep't of Corr., 508 F.3d 611, 616-17 (11th Cir. 2007); Cason v. Seckinger, 231 F.3d 777, 783-84 (11th Cir. 2000).

Based on the record, the Court finds that prospective relief remains necessary to correct a current and ongoing violation of plaintiffs' federal rights, extends no further than necessary to correct the violation, and is narrowly drawn and the least intrusive means to correct the violation. Therefore, the County is not entitled to termination of prospective relief under 18 U.S.C. § 3626(b)(1)(A)(i).

II. Rule 60(b)

Rule 60(b) of the Federal Rules of Civil Procedure provides in pertinent part that a court may relieve a party from a final judgment or order if "the judgment has been satisfied . . . or applying it prospectively is no longer equitable" or for "any other reason that justifies relief." FED. R. CIV. P. 60(b)(5) & (6). The County defendants argue that they are entitled to termination of prospective relief under these provisions because over the last seven years they have spent hundreds of millions of dollars to fund the Sheriff's budget, repair the jail, and implement programs that have reduced the jail's population, and because they have recently appropriated funds to repair and replace the locks at the jail and are currently working with the Sheriff to assist him in filling vacant staff positions more quickly. Defs.' Br. at 5-6. As a result, they argue, "the work that has already been completed or will be completed in the immediate future, indicates that the mandates of the Consent Order have been satisfied" and "applying it prospectively is no longer equitable or fair." Id. at 6. This argument is also without merit.

First, notwithstanding the County's substantial expenditures and achievements to date, even it acknowledges that it has not fully satisfied the

terms of the Consent Order. The locks still do not work and staffing is still inadequate. The County's expectation that it will achieve full compliance with these requirements at some point in the near future is not satisfaction of the judgment and does not eliminate the need for an enforcement mechanism to ensure that the County fulfills its obligations under the Consent Order with reasonable promptness and diligence. See Sullivan v. Houston Indep. Sch. Dist., 475 F.2d 1071, 1078 (5th Cir. 1973) (affirming district court's conclusion that judgment had not been satisfied under Rule 60(b)(5) where defendant had complied with literal terms of injunction but failed to show that prospective relief was unnecessary to prevent future violations of plaintiffs' rights).

Second, the County defendants have failed to show that continuing to enforce the Consent Order against them would be inequitable. It is not enough that "it is no longer convenient to live with the terms of a consent decree." Rufo v. Inmates of Suffolk Cnty. Jail, 502 U.S. 367, 383 (1992). Instead, the County "bears the burden of establishing that a significant change in circumstances warrants revision [or termination] of the decree." Id. The County defendants have not demonstrated such a change in

circumstances. The fact that they have spent a substantial amount of money and have achieved compliance with many of the Consent Order's requirements does not constitute a change in circumstances that makes it inequitable to require the County to comply with other, as yet unfulfilled, obligations.

Third, the fact that the County anticipates it "will be in substantial compliance with all of the Consent Decree items" by July 1, 2013, does not justify termination of prospective relief. Defs.' Br. at 4. In applying Rule 60(b)(5), "a critical question . . . is whether the objective of the [Consent Order] . . . has been achieved." Horne v. Flores, 557 U.S. 433, 450 (2009). Viewed as a whole, the objective of the Consent Order is not simply to eliminate overcrowding, as the County suggests, but to bring conditions at the Fulton County Jail into compliance with constitutional requirements. Obviously, that objective has not been achieved when the absence of functioning locks and the lack of adequate staffing continue to create

conditions that pose a significant threat of serious harm to plaintiff class members.[5]

Furthermore, in addition to showing that the objective of the Consent Order has been achieved, the County must demonstrate that "a durable remedy has been implemented." Horne, 557 U.S. at 450. "[A]t a minimum, a 'durable' remedy means a remedy that gives the Court confidence that defendants will not resume their violations of plaintiffs' constitutional rights once judicial oversight ends." Evans v. Fenty, 701 F. Supp. 2d 126, 171 (D. D.C. 2010). Given the history of backsliding after the termination of consent decrees in previous cases challenging conditions at the Fulton County Jail, the County's promise that it will achieve full compliance with the Consent Order in the near future can hardly be considered a "durable remedy."

Finally, absent proof of grounds for relief under Rule 60(b)(5), the County defendants may obtain relief under Rule 60(b)(6) only if they can show "compelling or aggravated circumstances involving extreme hardship

[5] As noted above, even the objective of eliminating overcrowding has been placed in jeopardy by the County's decision to cut funding for inmate outsourcing.

and injustice . . . ." McDonald v. Oliver, 642 F.2d 169, 172 (5th Cir. 1981). The County defendants' very justification for such relief – that they will be able to comply with the Consent Order's provisions in the near future – demonstrates that continued enforcement of the Consent Order will produce neither injustice nor extreme hardship.

Summary

For the foregoing reasons, the Court DENIES the County defendants' motion to terminate prospective relief [#281]

IT IS SO ORDERED, this 24 day of January, 2013.

Marvin H. Shoob, Senior Judge
United States District Court
Northern District of Georgia