IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FREDERICK HARPER, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	**CIVIL ACTION FILE NO.**
v.	)	
	)	**1:04-CV-01416-TWT**
Fulton County, *et al.*,	)	
	)	
Defendants.	)	

ORDER

This matter is before the Court on Defendant Fulton County's Motion to Terminate Prospective Relief (Doc. 357). Upon consideration of the same, the evidence and argument presented by the parties at a hearing on April 24, 2015, and consideration of the law and facts presented, for the reasons set forth herein, the motion is hereby GRANTED.

I. Background

This is a class action lawsuit filed in 2004, stemming from the then-unconstitutional conditions of confinement at the Fulton County Jail (the "Jail"). The Plaintiffs are or were all inmates confined at the Jail. In 2006, the Parties entered into a Consent Order, sanctioned by this Court, setting forth relief pursuant to 18 U.S.C. § 3626. At that time, the parties agreed, and the Court found, that the conditions of the Jail were

accurately described in a report on the Jail by Dr. Robert Greifinger. That report was made "Exhibit A" to the Consent Order. The parties further agreed that the requirements set forth in the Consent Order were narrowly drawn, extended no further than necessary to correct the violations of the plaintiffs' federal rights, and were the least intrusive means to correct those violations.

Fulton County has brought a motion to terminate the Consent Order pursuant to 18 U.S.C. § 3626(b)(1)(A) or to modify the Consent Order pursuant to Federal Rule of Civil Procedure 60(b). The Plaintiffs and Defendant Sheriff oppose this motion.

II. The Legal Standard

18 U.S.C. § 3626(b)(1)(A) provides in relevant part that:

> "In any civil action with respect to prison conditions in which prospective relief is ordered, such relief shall be terminable upon the motion of any party or intervener—
>
> (i)2 years after the date the court granted or approved the prospective relief".

Furthermore, subsection (b)(3) provides that:

> "(p)rospective relief shall not terminate if the court makes written findings based on the record that 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".

Thus, in order to maintain the Consent Order in this case, this Court must find current and ongoing violations of the Federal rights of the Plaintiffs. It is not sufficient that specific terms of the Consent Order are not being met. *See* Cason v. Seckinger, 231 F.3d 777 (11th Cir. 2000). Finally, "current and ongoing" does not mean a potential or even likely future violation, rather "current and ongoing" means a violation that is ongoing at the time the Court conducts the § 3626(b)(3) inquiry. Cason at 784.

Fulton County has also moved to end or otherwise modify the Consent Order pursuant to Federal Rule of Civil Procedure 60(b)(5) and (6). That section authorizes a Court to relieve a party from a final judgment, order, or proceeding when "applying it prospectively is no longer equitable; or [for] any other reason that justifies relief." F.R.C.P. 60(b)(5), (6). Such a finding will be satisfied when there has been a significant change in fact or law rendering the continued enforcement "detrimental to the public interest". Horne v. Flores, 557 U.S. 433 (2009), citing Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367 (1992).

III. Discussion

The Plaintiffs have asserted that the Jail is "dangerously understaffed" and that the understaffing is leading to constitutional violations in the form of delayed medical care as well as a significant risk of inmate on inmate assaults. In support of this assertion, the Plaintiffs have presented evidence, in the form of reports and affidavits, of individual accounts of either delayed medical care, violent assaults, or delayed response to assaults, all due to alleged staffing shortages. The Plaintiffs also point to the fact that the Jail's accreditation from National Commission on Correctional Health Care was recently withdrawn. While the Sheriff is reluctant to state that there are ongoing constitutional violations at the Fulton County Jail, he generally agrees that staffing is below that required by the Consent Order and that he needs more staff to adequately run the Jail.

In addition, the Court has heard from Calvin Lightfoot, the Court-appointed monitor in this case. Mr. Lightfoot reported that meeting the mandated staffing requirements is the one area that the County and Sheriff are still not in compliance with. Mr. Lightfoot further reported, however, that the Jail is far safer than it has been at any time during his tenure as monitor, and that he could not say, as a matter of fact, that the

staffing levels at the Jail are directly linked to any of the alleged violence there. Furthermore, Mr. Lightfoot has stated that the Jail is well run, and has far fewer incidents of violence than other Jails the monitor has had experience with.

Based upon the evidentiary record, this Court cannot find that there are current and ongoing violations of the Plaintiffs' federal rights. Although a delay in medical care is reason for concern, to amount to a constitutional violation, the Plaintiffs must establish that serious medical needs were unattended for non-medical reasons or show such deficiencies in the policies of staffing or procedures such that they are effectively denied access to adequate medical care. Anderson v. City of Atlanta, 778 F.2d 678 (11th Cir. 1985). Given the significant actions the County and Sheriff have taken with respect to staffing, policy and procedure, and funding the Jail, the Court cannot make such a finding.

With respect to inmate assaults, the Court recognizes that jails are dangerous places and that occasional, random violence demonstrates, "the tragic realities of jail and prison life that detainees are often subject to, absent fault on the part of individual jail [staff]." Grieveson v. Anderson, 538 F.3d 763 (7th Cir. 2008). Although the assault claim is disturbing, it cannot be said that the Sheriff and County have turned a blind

eye to the problem. Rather, the record before me indicates that the County and Sheriff have worked collaboratively to address many of the problems that have led to assaults in the past – crowding, broken locks, lack of security rounds and a lack of security cameras. All of these problems have been addressed, leading this Court to countenance the words of the Mr. Lightfoot, that the Jail is safer than it has been at any time within the past ten years and that inmate assaults are surprisingly uncommon.

Finally, the Court finds that there has been a significant change in facts, such that termination of the Consent Order is further warranted under Federal Rule of Civil Procedure 60(b). At the time this lawsuit was filed, the Jail was dangerously over-crowded, housing over 3000 inmates. Inmates stayed in portable beds in day rooms and slept 3 to a cell. The delivery of medical and mental health care was haphazard at best. The physical systems at the Jail were broken. Cell locks did not lock. Showers flooded. The heating, electrical and air-conditioning systems often failed. Since that time, all of the major systems at the Jail have been repaired or upgraded. The locks now function remotely and appear to be incapable of being compromised. Crowding has been alleviated. Cameras observe and record incidents as they take place. An operations and

maintenance system has been put in place to maintain the physical plant. While the staffing is less than ideal, the Constitution does not require ideal.

IV. Conclusion

The Court is satisfied that the fundamental purpose behind the Consent Order, to provide a constitutional jail, has been met. The Court commends all of the parties for working in a largely collaborative effort during the course of this Consent Order to bring the Jail to a far, far better state than it was at the time the Consent Order was first entered. The Court encourages the parties to continue their efforts in that regard, but it will no longer require them to do so as the result of this Court's Order. The Consent Order in this case is terminated.

So ORDERED, this 7th day of May, 2015.

/s/Thomas W. Thrash
Thomas W. Thrash, Jr.
United States District Judge