2010 WL 6610737 (Mass.Super.) (Trial Order)
Superior Court of Massachusetts.
Essex County

Edmund LACHANCE,
v.
Harold W. CLARKE,[1] & others.[2]
No. 06-CV-1246-C.
August 25, 2010.

Memorandum of Decision and Order on Commonwealth's Motion for Reconsideration

Thomas R. Murtagh, Judge.

INTRODUCTION/BACKGROUND

Edmund LaChance ("LaChance") is an inmate confined at the Souza Baranowski Correction Center, in Shirley, Massachusetts. On June 20, 2006, LaChance filed a complaint against various officials and employees working for the Department of Correction (the "DOC") (the "State Defendants"), seeking declaratory relief and monetary damages for his confinement in the Special Management Unit (the "SMU") without the benefit of the procedural protections afforded by 103 Code Mass. Regs. §§ 421.00, et seq., the Departmental Segregation Unit regulations (the "DSU regulations").

On August 24, 2009, LaChance filed a Partial Motion for Summary Judgment and the Commonwealth filed an Opposition and Cross-Motion for Summary Judgment. On April 5, 2010, after hearing, the court issued its decision (the "Summary Judgment Decision"), stating, "(1) the conditions of LaChance's confinement in the SMU were substantially similar to conditions of confinement in a disciplinary segregation unit; (2) the State Defendants violated LaChance's federal and state constitutional due process rights by failing to provide him with the procedural protections afforded by 103 Code Mass. Regs. §§ 421.00, et seq., the DSU regulations; and (3) the State Defendants confiscated LaChance's legal papers in violation of 103 Code Mass. Regs. § 403.09(h)." The Summary Judgment Decision also determined that the State Defendants were not entitled to the defense of qualified immunity because they had violated clearly established law. The matter is currently before the court on the Commonwealth's Motion for Reconsideration. For the reasons stated below, the Motion for Reconsideration will be *DENIED.*

DISCUSSION

The power to reconsider a case, issue, or question of law remains with the court until the court renders a final judgment. *Peterson v. Hopson,* 396 Mass. 597, 603 (1940). Under Superior Court Rule 9D, a party seeking reconsideration of a prior ruling (especially a written reasoned prior ruling) must show: (a) newly discovered evidence; (b) a change of circumstances; (c) a change of law; or (d) a plain error of fact or law in the original ruling. *Hingham Mut. Fire Ins. Co. v. Travelers Ins. Co.,* 2006 WL 414610 * 1 (Mass. Super. 2006) (Sikora, J.), citing *Barbosa v. Hopper Feeds, Inc.,* 404 Mass. 610, 622 (1989); see

also Mass. R. Civ. P. 60(b). The court's " 'opinions are not intended to be mere drafts, subject to revision and reconsideration at a litigant's pleasure.' " *Hingham Mut. Fire Ins. Co.,* 2006 WL 414610 at *1, quoting *Quaker Alloy Casting Co. v. Gulfco Indus., Inc.,* 123 F.R.D. 282, 288 (N. D. Ill. 1998). Where there is no material change in circumstances, the court is not bound to reconsider an issue once decided. *King v. Globe Newspaper Co.,* 400 Mass. 705, 707 (1987), cert. denied, 485 U.S. 940 (1988).

Here, the Commonwealth asserts that: (1) the court erred in determining LaChance was entitled to the protections afforded by the DSU regulations; (2) the court erred in failing to adequately consider the purpose of LaChance's confinement when deciding he was entitled to the protections of the DSU regulations; and (3) the court erred in failing to grant the State Defendants qualified immunity. These arguments are essentially the same arguments the Commonwealth pressed in its Opposition and Cross-Motion for Summary Judgment and which the court rejected in the Summary Judgment Decision.

In *Haverty v. Commissioner of Corr.,* the Supreme Judicial Court concluded that "the procedural protections contained in [the DSU regulations] must be afforded to all prisoners before they are housed in DSU-like conditions ...." 437 Mass. 737, 763 (2002). The test for determining the applicability of the DSU regulations is whether the conditions of confinement are substantially similar to those found in a departmental segregation unit. *Id.* at 755. To determine whether restrictive confinement is substantially similar to confinement in a departmental segregation unit, the court asks two questions: (1) whether the segregation was in solitary confinement; and (2) whether it was for an "indefinite period of time." *Id.* at 756-757.

Here, there is no dispute that LaChance was housed in DSU-like conditions.[3] The real question is whether LaChance was confined for an "indefinite period of time." He was held in the SMU for approximately ten months and given no information about when he would be released. Nevertheless, the State Defendants assert this confinement cannot be considered "indefinite" because LaChance was actually held "awaiting action," pending specific determinate events such as reclassification, transfer, out-of-state placement, bed assignment, etc. In the Summary Judgment Decision, the court rejected this argument and it does so again now.

Although the court has found no cases specifically addressing this point, the State Denfendants' interpretation appears contrary to the holding in *Haverty.* If an inmate can be held "awaiting action" for an undefined duration in DSU-like conditions, as the State Defendants assert, *Haverty* has little real meaning. Under this interpretation, the DOC would be allowed to hold an inmate, in DSU-like conditions, for any length of time, merely by labeling the inmate "awaiting action" and continually attaching events that never come to pass to the inmate's status.[4] *Haverty* prohibits this type of conduct.[5]

The Motion for Reconsideration fails to present any new evidence, any change in circumstances, or any change in the law which would warrant reconsideration of the Commonwealth's arguments. In essence, the Commonwealth is attempting to rehash previously decided issues. For this reason, the Motion for Reconsideration will be *DENIED.*[6]

ORDER

For the reasons explained above, it is hereby *ORDERED* that the Motion for Reconsideration be *DENIED.*

Dated: August 25, 2010

SO ORDERED.

<<signature>>

Thomas R. Murtagh

Justice of the Superior Court

Footnotes

[1] As Commissioner of Corrections, in his official capacity

[2] Thomas Dickhaut, Superintendent of SBCC. in his official capacity; Kathleen Dennehy, former Commissioner of Corrections, Roland Rheault, former Assistant Director of Classification, Lois Russo, former Superintendent of SBCC, in their individual capacities; and Anthony Mendonsa, Deputy Superintendent for Classification, and Michael Rodrigues, Director of Classification,' in their official and individual capacities

[3] The conditions of his confinement were remarkably similar to the conditions that were challenged in *Haverty* and which were found to be substantially similar to the conditions in a departmental segregation unit. *Id.* at 747. He was placed in a cell by himself and allowed out for approximately one-hour per day for recreation. His recreation area consisted of a cage-like structure on the "recreation deck" attached to the SMU. LaChance was limited to two one-hour non-contact visits per week. He was allowed to keep only limited personal property in his SMU cell and his canteen privileges were limited to twenty dollars per week.

[4] This appears to be the situation presented by the current case. Despite the Commonwealth's assertion that LaChance was being held "awaiting action," pending some type of reclassification and/or transfer, such an event never took place. Following his ten-month confinement in the SMU, LaChance was released back into the J-1 Unit, which he had previously occupied.

[5] Although the label assigned to an inmate's status was not directly addressed in *Haverty,* the Supreme Judicial Court did state, " 'the department and the commissioner may not sidestep statutory and regulatory provisions stating the rights of an inmate as to his placement in a DSU by assigning as a pretext another name to such a unit.' " *Id.* at 755, quoting *Longval v. Commissioner of Corr.,* 404 Mass. 325, 328-329 (1989). The court sees no reason why this same rationale would not apply to the particular status the DOC chooses to assign an inmate. In fact, in reaching the above conclusion, the Supreme Judicial Court cites to *Royce v. Commissioner of Corr.,* which provides that prison administrators "may not abuse their discretion ... by using awaiting action status as a means to accomplish an unlimited punishment immune to the procedures set forth in the rules and regulations." 390 Mass. 425, 429-430 (1983).

[6] The court does take the opportunity presented by the Motion for Reconsideration to correct a clerical error. In the Summary Judgment Decision, the court refers to the "departmental segregation unit" as a "disciplinary segregation unit." Any such references were made in error. This misnomer, however, in no way changes the reasoning underlying the Summary Judgment Decision.