

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

FILED

MAR 27 2002

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS OFFICE

ASHOOR RASHO, et al.,

Plaintiffs,

vs.

DONALD SNYDER, et al.,

Defendants.

No. 00-CV-0528-DRH

MEMORANDUM AND ORDER

Herndon, District Judge:

I. Introduction

Before the Court today is the Plaintiffs' motion for class certification. (Doc. 29). On November 6, 2001, Magistrate Judge Clifford J. Proud submitted to the Court a Report and Recommendation to deny that motion (Doc. 64), to which the Plaintiffs filed timely written objections. (Doc. 72). On February 15, 2002, the Court entered an order neither adopting nor rejecting the Report, but directing the Defendants to submit further information, verified and *in camera*, on the issue of numerosity. (Doc. 75). The Defendants have complied with that order. (Doc. 82). After careful review of the submitted materials, and *de novo* review of the record, the Court **ADOPTS** the Report (Doc. 64) and **DENIES** the Plaintiffs' motion for class certification (Doc. 29), as explained in detail below.

II. Analysis

The Court reviewed those parts of the Report to which the Plaintiffs filed

timely, written objections *de novo*. **FEDERAL RULE OF CIVIL PROCEDURE 72(b); SOUTHERN DISTRICT OF ILLINOIS LOCAL RULE 73.1(b); Willis v. Caterpillar Inc., 199 F.3d 902, 904 (7th Cir. 1999)**. The Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate. The [Court] may also receive further evidence or recommit the matter to the magistrate with instructions.” **28 U.S.C. § 636(b)(1)**.

One of the issues addressed in the Report is whether the proposed class is sufficiently numerous to justify treating this case as a class action. The Report evaluated the numerosity issue after adopting a class definition proposed by the Plaintiffs, the “records definition.” (Doc. 64, p. 7; Doc. 45; Doc. 41, Exhibit B attachment: I.D.O.C. Admin. 05.12.110). As stated in the Report, the Plaintiffs acknowledged that using the “records definition” they propose carries the obvious benefit that “class members could be identified based on undisputed factors.” (Doc. 45, p. 11). The Report carefully analyzed the parties’ arguments on numerosity in light of this definition, and concluded that the Plaintiffs failed to carry their burden of showing that “the [proposed] class is so numerous that joinder of all parties is impracticable.” **FED. R. CIV. P. 23(a)(1)**; (Doc. 64, p. 9).

On February 15, 2002, the Court directed the Defendants to submit further information. (Doc. 75). The Court ordered the Defendants to review their records and to submit *in camera* a verified statement of “how many [Tamms] inmates meet the ‘records definition’ criteria of ‘serious mental health concerns

The Defendants submitted the information in an appropriate manner. (Doc. 82). The Court has reviewed it. Defendants' submission reveals that only 15 inmates at Tamms meet the "records definition" proposed by the Plaintiffs.

FEDERAL RULE OF CIVIL PROCEDURE 23 provides, in pertinent part, that "one or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable." **FED. R. CIV. P. 23(a)(1)**. In the Court's judgment, a group of 15 potential plaintiffs is not "so numerous that joinder of all members is impracticable." That is particularly true in this case, where the potential plaintiffs are incarcerated together, such that geographical dispersion of the parties is not a factor weighing in favor of class certification. *Cf., Gaspar v. Linvatec, 167 F.R.D. 51, 57 (N.D. Ill. 1996)(class of 18 members meets numerosity requirement where proposed class members were widely dispersed among several states; case cited by Plaintiffs).*

The Court also notes that Plaintiffs argued in their Objections that "numerosity is presumed at the level of 40 class members," a position "acknowledged by the commentators and the courts alike." (Doc. 72, p. 16). The Court does not suggest that the converse is also true; the Court recognizes that when numerosity is the issue, there are no "absolute limitations." *General Tel. Co. of the Northwest, Inc. v. Equal Employment Opportunity Comm'n, 446 U.S. 318, 330 (1980)*. However, taking into account the particular facts of this case in light of the record as a whole, the Court does not believe that the Plaintiffs have met their burden of

which would suggest placement at the Tamms Corrections Center would be inappropriate' as set forth on page 11 of Plaintiff's Reply in support of their motion for class certification." (Doc. 75). The Court sought this information so it could decide the issue of numerosity based on facts in the Defendants' possession, while taking into consideration the serious confidentiality issues inherent in any disclosure of medical information. (Docs. 75, 80).

In deciding to proceed in this manner, the Court chose not to credit the statistical analysis offered by the Plaintiffs as to the potential size of the class. That analysis was based at least in part on statistical information pertinent to published research applicable to "nationwide estimates of seriously mentally ill prisoners," and thus not the population of Tamms. (Doc. 72, p. 13; Doc. 45, Ex. 1, ¶18)¹. This distinction is important. Prisoners housed at Tamms are selected from the general population of Illinois inmates due to particular behavioral criteria. *Complaint*, ¶¶28-30 (Doc. 1). Thus, what is typical of the general prisoner population may not apply to those housed at Tamms. For this reason, the Court determined that Plaintiffs' statistical method is not likely to produce the most accurate description of the size of the potential class. In an attempt to discover the actual number, the Court demanded a verified submission that would reveal how many members of the Tamms population meet the "records definition" criteria proposed by the Plaintiffs.

¹Plaintiffs' expert, Kathryn A. Burns, M.D., based her statistical estimate on her evaluation of the four named Plaintiffs, staffing levels at Tamms, and the "nationwide estimates." (Doc. 45, Ex. 1, ¶18).

demonstrating that the size of the proposed class is “so numerous that joinder of all members is impracticable.” **FED. R. CIV. P. 23(a)(1)**. The Court agrees with the findings and conclusions of Mag. Judge Proud with respect to the issue of numerosity, and **ADOPTS** the Report. (Doc. 64).

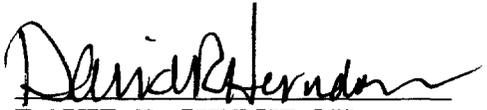
Plaintiffs also objected to the Report’s findings and conclusions with respect to the issue of typicality. After careful *de novo* review, the Court has serious reservations as to whether the Plaintiffs met their burden on typicality. However, since the Court’s resolution of the numerosity issue is sufficient to deny their motion, there is no need to decide typicality at this time.²

III. Conclusion

After careful *de novo* review of the record as a whole, including the Defendants’ *in camera* verified submission, the Court **ADOPTS** Magistrate Judge Proud’s Report. (Doc. 64). The Court therefore **DENIES** the Plaintiffs’ motion for class certification. (Doc. 29).

IT IS SO ORDERED.

Signed this 27th day of March, 2002.


DAVID R. HERNDON
United States District Judge

²The Court also sees no need to resolve the issue Plaintiffs raised as to the adequacy of Faygie Fields as a class representative, since it has no bearing on the outcome of this dispute.