

JUL 2 2007

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

JAMES N. HATTEN, Clerk
By: *[Signature]*
Deputy Clerk

JOHN RHODES, individually and
on behalf of himself and all
others similarly situated,

Plaintiffs

v.

CIVIL ACTION NO.
1:91-CV-2908-ODE

ROGER GARRISON, in his
official capacity as Sheriff
of Cherokee County, Georgia
and Cherokee County, Georgia

Defendants

ORDER

This case is before the Court on Defendants' Motion to Terminate Consent Order [Doc. 17]. At issue is a Consent Order [Doc. 11] entered on December 7, 1992, which provides prospective relief with respect to numerous conditions at the Cherokee County Jail. In an Order of May 3, 2007 [Doc. 24], the Court deferred ruling on Defendant's Motion pending filings related to whether an evidentiary hearing must be held before terminating the Consent Order. Having read and considered Plaintiffs' Response to Order of the Court [Doc. 27], Defendants' Brief Filed in Response to the Court's Order [Doc. 28], and Plaintiffs' Reply [Doc. 29], Defendants' Motion to Terminate Consent Order [Doc. 17] is GRANTED for the following reasons.

I. Background

This case was originally brought in 1991, to address conditions at the Cherokee County Jail. On December 7, 1992 a Consent Order was entered, directing that certain actions be taken

with respect to inmate housing and inmate life. Since that date, no claims that the requirements of the Consent Order have been violated have been presented to this Court. The filing of Defendants' Motion to Terminate the Consent Order on February 22, 2007 triggered opposition from Plaintiffs' counsel, plus a request for discovery to see if there are any current constitutional violations, and an evidentiary hearing to present any discovered evidence of claimed violations. It is obvious that the original Plaintiffs no longer reside at the Cherokee County Jail and that Plaintiffs' counsel have no information from any current inmate regarding alleged violations. This lack of evidence is shown by the filings the parties have made with the Court. Thus, having a hearing under these circumstances would not be productive.

In October 2002, Cherokee County opened a new jail facility ("New Jail"), replacing the prior jail. Defendants argue that the Consent Order should be terminated because it predates the enactment of the Prison Litigation Reform Act ("PLRA"), and fails to satisfy the requirements for prospective relief established by the PLRA.

The PLRA was enacted in 1996, and limits the scope of prospective relief that a federal court may grant in prison litigation reform cases. 18 U.S.C. § 3626 (2000). Specifically, § 3626(b) provides for termination of previously granted prospective relief:

(1) Termination of prospective relief. - - (A) 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 - -

(iii) in the case of an order issued on or before the date of enactment of the Prison Litigation Reform Act, 2 years after such date of enactment.

(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 right.

(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 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) (2000).

II. Evidentiary Hearing

By the Court's Order of May 3, 2007, Plaintiffs' were directed to file:

a brief outlining with specificity whether they contend that there are "current and ongoing" violations of federal rights in the Cherokee County Jail and, if so, what those violations are. Also, Plaintiff must specify the evidence that would be presented at the hearing to support such contentions. Plaintiffs must also specifically list any alleged violations of the Consent Order and the evidence supporting such allegations.

[Doc. 24, at 7-8]. After being granted an extension of time, Plaintiffs filed their response to the Court's Order on May 31, 2007 [Doc. 27].

Plaintiffs' response does not specify any violations. Plaintiffs primarily argue that they are entitled to discovery before providing such information. Plaintiffs cite no cases finding that discovery is required under the provisions of the

PLRA, and the Act is silent as to the question of discovery. Courts that have specifically addressed the discovery issue have stated that district courts "are not required to grant discovery requests in every case." Harvey v. Schoen, 245 F.3d 718, 721 (8th Cir. 2001). Discovery has been denied where it has been found "that [plaintiffs] failed to show present violations of constitutional rights, that most of the problems giving rise to the decree had been solved, and that recent reports suggested that the only areas of current noncompliance with the decree were not of a constitutional magnitude." Watson v. Ray, 192 F.3d 1153, 1158 (8th Cir. 1999).

Plaintiffs claim that based on the affidavit of Roger Garrison, the current Sheriff of Cherokee County [Doc. 17-2], it is inferable that there are a number of requirements of the Consent Order that are not being followed in the New Jail. Garrison's Affidavit was filed by Defendants along with the Motion to Terminate the Consent Order, as evidence that the New Jail has solved the problems targeted by the Consent Order. Plaintiffs point out that Garrison's Affidavit is silent regarding the provisions of the Consent Order regarding male guards not being stationed in female cell blocks, the availability of female hygiene products, the use of restraints for nondisciplinary purposes, privileged mail, sick calls, and medical screenings. [Pl. Resp., 5].

Defendants respond that the fact that Garrison's Affidavit fails to mention current compliance with each provision of the Consent Decree does not permit an inference that there are any violations. Defendants further state that they can produce

evidence that male guards are not assigned to monitor female cell blocks; that all necessary hygiene products are provided to inmates, including feminine hygiene products; that the restraint chair in the New Jail is not used as an impermissible disciplinary measure; that the provision protecting privileged legal mail encompasses correspondence from the courts, attorneys, government officials, Sheriff's Department officials, probation and parole authorities, and administrators of the grievance system; that the inmates are provided daily sick calls conducted by nurses and a weekly sick call conducted by a physician; and that the New Jail schedules a medical examination for every inmate who is placed in general population, exceeding the Consent Order's requirement that inmates incarcerated for more than seven days must receive a medical examination.


The Court agrees that no negative inference can be drawn from Garrison's affidavit as to any ongoing violation of the Consent Decree. Even if it could be, Plaintiffs have not alleged any concrete violations of federal rights, or even violations of the provisions of the Consent Order for over fifteen years. Although the Court of Appeals for the Eleventh Circuit has "seemed to suggest that a hearing would be required in all" PLRA cases, in the instant case there have been no allegations of "several specific violations of the federal rights of the class members." Cason v. Seckinger, 231 F.3d 777, 782 (11th Cir. 2000). In Cason, the plaintiffs' allegations included claims of sexual harassment of female inmates by guards and visitors, sexual assault of a female prisoner by a guard, sexual assault by a fellow inmate and reluctance to investigate the claims of assault. Id. at n.6.

Furthermore, the district court refused to consider class-member affidavits that allegedly would have demonstrated the existence of the current and ongoing violations. Id. at 782. No such affidavits have been offered in this case.

Where, as in the present case, Plaintiffs have made no allegations of current and ongoing violations of federal rights despite being given an opportunity to do so, it is not necessary for the Court to allow discovery or hold an evidentiary hearing.

The Court finds that an evidentiary hearing is not required in the present case, and the Consent Order must be terminated pursuant to the PLRA. For the foregoing reasons, Defendants' Motion to Terminate Consent Order [Doc. 17] is GRANTED.

SO ORDERED, this 2 day of July, 2007.


ORINDA D. EVANS
UNITED STATES DISTRICT JUDGE