

FILED
DES MOINES, IOWA

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

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CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

GEORGE GOFF, et al.,)	
)	
Plaintiffs,)	No. 4:90-CV-50365
)	
vs.)	
)	ORDER
CHARLES HARPER, et al.,)	
)	
Defendants.)	

This matter comes before the Court on defendants' motion to dismiss for lack of subject matter jurisdiction (docket #210). Plaintiffs have resisted this motion, and a hearing was held. After careful consideration of the parties' written and oral arguments, the Court is persuaded that defendants' motion will be denied.

I. Introduction and Procedural Background

In July 1990, Iowa State Penitentiary (ISP) inmate George Goff brought this lawsuit under 42 U.S.C. § 1983, alleging that various conditions of confinement at ISP violated his constitutional rights. On September 13, 1995, the Court granted plaintiff's unresisted motion to certify the action as a class action. On June 5, 1997, following trial of this case, the Court entered an extensive order setting forth its findings of fact and

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conclusions of law. In that order, the Court found four constitutional violations: 1) the violation of substantive due process resulting from the extraordinarily long lockup sentences; 2) the violation of the Eighth Amendment resulting from the inadequate mental health treatment received by mentally ill and mentally disordered inmates; 3) the violation of the Eighth Amendment resulting from the deprivation of exercise for inmates in lockup during the winter months; and 4) the violation of the Eighth Amendment resulting from the pandemonium and bedlam the mentally-stable inmates must suffer because they are intermingled with the mentally-ill inmates who either cannot or do not control their behavior. In its order of June 5, 1997, the Court directed the ISP officials to develop a plan to remedy these constitutional violations, thus entering the remedial portion of this case.

On September 4, 1997, in defendants' first attempt at submitting a plan, they indicated that while a special needs unit might help to remedy some of the problems found by the Court, the development of such a unit would be subject to approval of the district court in Watson v. Ray, a consent decree case capping the population at ISP at 550 inmates. They also indicated that while the Iowa Department of Corrections (IDOC) had plans to implement system-wide a new disciplinary process, its use at ISP was contingent upon relief from the consent decree in Gavin v.

Ray, and the district court's order in Kane v. Brewer, both of which affected the disciplinary process at ISP.

On November 7, 1997, the Court ordered the parties to submit a pleading setting forth their positions as to how they believed the various consent decrees identified by defendants affected this case. On November 26, 1997, defendants filed their pleading, indicating that the consent decrees they believed to be at issue were: McBride v. Grossheim, 4:73-CV-70242 (on the issue of delivery of mental health care); Gavin v. Branstad, 4:78-CV-70062 (on the issues of time spent in segregation, exercise, and separation of mentally stable from mentally ill inmates); Watson v. Ray, 4:78-CV-80106 (to the extent that it limits the population at ISP to 550 inmates and would need to be modified in order to permit the addition of 200 new special needs beds); and Kane v. Brewer, No. 73-80153 (to the extent it required certain disciplinary procedures at ISP and would need to be modified in order to permit the implementation of a new disciplinary process). In short, defendants' position was that, between Gavin and McBride, the four constitutional violations found by this Court had already been addressed and, that while Kane and Watson did not necessarily address the four constitutional violations found by the Court, the approval of the Kane and Watson courts was necessary before certain relief could be implemented because Kane and Watson specifically governed certain

aspects of inmate life at ISP. Plaintiffs responded by recognizing that defendants might need to obtain approval from the Kane and Watson courts in order to implement suggested changes. Plaintiffs disagreed with defendants as to the extent to which Gavin or McBride might address the violations found by this Court, conceding only that it was possible that when considering Gavin, there might be an overlap as to the violation pertaining to exercise. Plaintiffs finally argued that since defendants had never previously raised Gavin, McBride, Kane, or Watson as a bar to this litigation, they had waived any right to use those cases in a defensive manner at this stage in the proceedings.

On December 22, 1997, defendants filed the motion to dismiss for lack of subject matter jurisdiction which is now before the Court. At the time defendants filed the present motion, they had already filed motions to terminate the consent decrees in Watson, Gavin, and McBride.¹ A hearing on the present motion was held on July 10, 1998, at which time defendants had already succeeded in knocking out McBride, one of the consent decrees which they cited in support of the present motion. Because defendants' motions to terminate the other consent decrees remained pending, this Court

¹ Defendants filed a motion to terminate prospective relief in Kane on February 3, 1998.

deemed it prudent to await the rulings on those motions before deciding the present motion.

II. Legal Analysis

In relation to a lack of subject matter jurisdiction, Rule 12(h)(3) of the Federal Rules of Civil Procedure mandates:

Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

As is evident, the present case has been in the remedial stage for two years now. While motions to dismiss for lack of subject matter jurisdiction generally are brought early in the proceedings, jurisdiction cannot be waived and may even be challenged for the first time on appeal. Berger Levee District, Franklin County, Mo. v. United States, 128 F.3d 679, 680 (8th Cir. 1997). In analyzing the jurisdiction of the district court in Berger Levee District, the Eighth Circuit Court of Appeals looked to the "well-pleaded complaint" to determine whether jurisdiction was proper. Id. at 680-81. "Jurisdiction is based on the complaint's allegations. If the [plaintiffs'] complaint stated a claim on its face, it alleged a valid § 1983 action and successfully invoked the district court's jurisdiction." McKenzie v. City of White Hall, 112 F.3d 313, 316 (8th Cir. 1997) (internal citation omitted). See also Caterpillar, Inc. v. Williams, 482 U.S. 386, 392, 107 S. Ct. 2425, 2429, 96 L. Ed. 2d

318 (1987) ("The presence or absence of federal-question jurisdiction is governed by the 'well-pleaded complaint rule,' which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint.").

In this case, defendants' motion to dismiss for lack of subject matter jurisdiction is based on their contention that the violations found by this Court have been addressed by consent decrees or orders already in effect at ISP. Specifically, they argue that the McBride decree governs the delivery of mental health services at ISP and that the Gavin decree addresses the length of time spent in segregation, outdoor exercise, and the separation of the mentally stable from the mentally ill inmate. Defendants contend that plaintiffs are trying to enforce the Gavin and McBride decrees through the present action. Defendants argue that a § 1983 action is not an appropriate action to enforce these decrees, but that instead, a contempt action would be the appropriate vehicle for enforcement. DeGidio v. Pung, 920 F.2d 525, 534 (8th Cir. 1990). Defendants also argue that even if "rights" are established for inmates by remedial orders, such as these consent decrees, these remedial orders "apart from independent constitutional grounds affirmed there, cannot serve as a substantive basis for section 1983 . . . because such orders do not create 'rights, privileges, or immunities secured by the

Constitution and laws'" as is required by that statute. Green v. McKaskle, 788 F.2d 1116, 1123 (5th Cir. 1986). Defendants, thus, apparently contend that the existence of the Gavin and McBride decrees deprive this Court of subject matter jurisdiction.

Plaintiffs respond that defendants' motion to dismiss for lack of subject matter jurisdiction should be denied because, contrary to defendants' assertion, plaintiffs are not trying to enforce any existing consent decree. Plaintiffs contend that subject matter jurisdiction is proper in this Court because they brought this action pursuant to 42 U.S.C. § 1983 in order to remedy violations of their constitutional rights. Plaintiffs argue that the issues in this case are different from the issues covered by the consent decrees in Gavin and McBride.² Without admitting that there is any overlap between the subject matter of this case and the consent decrees cited by defendants, plaintiffs argue that, to the extent there is any such overlap, the proper argument to be made by defendants would have been one of res judicata or claim preclusion and that it is now too late in the proceedings for defendants to raise such a claim. Munz v. Nix, 908 F.2d 267, 271 (8th Cir. 1990) ("Res judicata is an affirmative

² Plaintiffs' arguments focus on Gavin and McBride since plaintiffs had recognized, in their pleading setting out their contentions as to the effects of existing consent decrees on this case, that if Watson and Kane remained intact, the approval of the Watson and Kane courts might be necessary before certain relief could be implemented.

defense which can be waived by state authorities."). Finally, plaintiffs argue that since defendants are trying to use the Prison Litigation Reform Act to terminate the relief provided by Gavin, McBride, and other cases, they should be estopped from relying on them in support of their motion to dismiss.

It must be noted that during the pendency of this litigation, the Prison Litigation Reform Act of 1995 (PLRA) was enacted. Of special importance to these proceedings is the portion of that act codified at 18 U.S.C. § 3626, which provides for the "immediate termination of prospective relief [such as that provided by consent decrees] 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 Federal right." See 18 U.S.C. § 3626(b).³ Following the PLRA's enactment, defendants invoked that provision in an attempt to terminate the four consent decrees identified in their pleading of November 26, 1997, as possibly bearing on this case. They were successful.

³ Section 3626(b) contains a limitation on termination of prospective relief "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)(3) (emphasis added).

By the time this Court heard the parties' arguments in relation to defendants' present motion to dismiss on July 10, 1998, the McBride decree had been terminated, the order terminating relief in that case having been entered on June 5, 1998.⁴ Thereafter, Kane was terminated on August 5, 1998, Watson was terminated on August 10, 1998, and Gavin was terminated on January 21, 1999. Only Gavin and Watson were appealed by plaintiffs. The Gavin appeal is still pending. The Watson ruling has in the last few days been decided by the Eighth Circuit Court of Appeals. It upheld the district court's ruling terminating the case.

As stated, in moving this Court to dismiss plaintiffs' case, defendants argued that the four constitutional violations found by this Court were covered in consent decrees already in place at ISP. For this proposition, defendants relied on Gavin and

⁴ At the hearing on defendants' motion to dismiss, held July 10, 1998, defendants recognized that McBride had been terminated. (Tr. 13-14.) They contended that Judge Vietor's order terminating McBride had distinguished the issues contained in McBride from those in the present case and argued that, accordingly, the Court no longer lacked subject matter jurisdiction only as to the violation relating to the delivery of mental health services. (Tr. at 13-14, 25-26.) Judge Vietor's order terminating McBride stated that plaintiffs had failed to demonstrate a current and ongoing violation of their federal rights and further that "[a]ssuming that there is an Eighth Amendment violation in respect to the confinement of mental health inmates, it is being addressed by Senior Judge Donald E. O'Brien in Goff v. Harper, No. 4-90-cv-50365, and prospective relief in this case does not remain necessary to correct it." Defendants continued to maintain, however, that the Court lacked subject matter jurisdiction as to the remaining three constitutional violations, arguing that they were covered by Gavin.

McBride and indicated that Watson and Kane could also impact the relief available to plaintiffs. All four of these consent decrees have now been terminated. Therefore, even assuming that the Court found defendants' argument in support of its motion to dismiss meritorious, which it does not, the factual basis for that argument, the presence of the consent decrees, has now crumbled.

While the Court is not persuaded by defendants' argument that it lacks subject matter jurisdiction, it will briefly examine the basis for subject matter jurisdiction asserted by plaintiffs in their amended and substituted complaint. As mentioned, plaintiffs' claims have been brought pursuant to 42 U.S.C. § 1983 which provides, in pertinent part, that:

[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured

In plaintiffs' complaint, they have alleged that the Court has subject matter over their claims pursuant to 28 U.S.C. § 1343.⁵ Section 1343 provides, in pertinent part:

⁵ Interestingly, defendants' answer to plaintiffs' amended and substituted complaint admits that the complaint is brought pursuant to 42 U.S.C. § 1983 and that jurisdiction is based on 28 U.S.C. § 1343. Answer at ¶ 2.

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

. . . .

- (3) To redress the deprivation, under color of any State law statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States

28 U.S.C. § 1343(a)(3). Section 1343 of Title 28 provides proper jurisdiction for § 1983 claims. Porter v. Dawson Educational Service Co-Op., 150 F.3d 887, 889 (8th Cir. 1998) ("The district court has subject matter jurisdiction of this 42 U.S.C. § 1983 civil rights action under 28 U.S.C. § 1343."); Webb v. Lawrence County, 144 F.3d 1131, 1133 (8th Cir. 1998) ("The district court had subject matter jurisdiction of this 42 U.S.C. § 1983 civil rights action under 28 U.S.C. § 1343."); Lundberg v. West Monona Community School Dist., 731 F. Supp. 331, 334 (N.D. Iowa 1989) ("Title 28 of the United States Code, section 1343(3), vests jurisdiction in this court to consider plaintiffs' claims [brought pursuant to 42 U.S.C. § 1983].").

The Court is persuaded that it has subject matter jurisdiction in this case. This case was brought pursuant to § 1983 alleging violations of the inmates' constitutional rights, under color of law, by state actors. Plaintiffs' complaint stated a cognizable claim under § 1983. Following trial of this

matter, the Court determined that four constitutional violations exist. This case is exactly the kind of case which is properly before a federal district court. Defendants have not persuaded the Court otherwise. Defendants' argument that this Court is deprived valid subject matter jurisdiction by the existence of consent decrees entered in other cases is entirely unpersuasive, especially where these same defendants were concurrently doing all they could possibly do to terminate, and ultimately were successful in terminating, the same consent decrees on which they rely in support of the present motion. The Court recognizes that Gavin, one of the consent decrees on which defendants rely, remains on appeal. The Court is persuaded, however, that even if that consent decree was now to be reinstated, that ruling could not deprive this Court of its valid subject matter jurisdiction in this case. This is true even if at some earlier stage in these proceedings, it might have been appropriate for defendants to have raised them in connection with a preclusion argument. Accordingly, defendants' motion to dismiss for lack of subject matter jurisdiction will be denied.

For the reasons set out above,

IT IS HEREBY ORDERED that defendants' motion to dismiss (docket #210) is denied.

This 30 day of September, 1999.

Donald E O'Brien
Donald E. O'Brien, Senior Judge
UNITED STATES DISTRICT COURT