

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MERCER COUNTY

DOCKET NO. C-123-07

CLERK OF SUPERIOR COURT
SUPERIOR COURT OF N.J.
MERCER COUNTY
RECEIVED AND FILED

KATHLEEN JONES, LAKESHA JONES,
SYLVIA FLYNN and HELEN L. EWELL,
on behalf of themselves and all individuals
similarly situated

JUL 21 2008

Sue Regan

SUE REGAN
DEPUTY CLERK OF SUPERIOR COURT

Plaintiffs

v.

DECISION

GEORGE W. HAYMAN et al.

Motion for Preliminary Injunction

Defendants

MARIA M. SYPEK, P.J. Ch.

July 21, 2008

The matter comes before the Court on a Motion for Issuance of an Order to Show Cause seeking a Preliminary Injunction filed by American Civil Liberties Union of New Jersey Foundation, Mia Lewis, Esq., admitted Pro Hac Vice and Edward L. Barocas, Esq., appearing on behalf of the Plaintiffs and opposition having been filed by the Office of the Attorney General, Dianne M. Moratti, Deputy Attorney General appearing on behalf of the Defendants and the Court having reviewed all documents submitted

and having heard oral argument and for good cause shown, the Court makes the following findings:

This matter arises from a class action complaint and order to show cause with temporary restraints filed on December 12, 2007 by Kathleen Jones ("Kathleen"), Lakesha Jones ("Lakesha"), Sylvia Flynn and Helen L. Ewell (collectively "Plaintiffs") against George W. Hayman, the Commissioner of the New Jersey Department of Corrections ("DOC"), James Barbo, the Acting Deputy Commissioner of the DOC, Lydell Sherrer, the Acting Assistant Commissioner of the DOC, William Hauck, the Acting Administrator of the Edna Mahan Correctional Facility ("EMCF"), Michelle Ricci, the Administrator of the New Jersey State Prison ("NJSP"), Alfred N. Kandell, an Assistant Administrator of the NJSP, James Drumm, an Assistant Administrator of the NJSP, Herbert A. Kaldany, the Director of Psychiatry of the DOC and Thomas F. Dechan, the Director of Education of the NJSP (collectively "Defendants") alleging that their confinement in the NJSP and the conditions in which they are held violate the New Jersey Constitution, New Jersey Civil Rights Act and New Jersey Law Against Discrimination. On January 22, 2008, the parties entered into a consent order whereby the parties agreed that the DOC would not transfer any female inmates from the EMCF to Section 1EE of the NJSP until further

order of the court. The consent order also permitted the DOC to transfer female inmates from the EMCF to the administrative segregation unit or the Stabilization Unit of the NJSP so long as they were later returned to the EMCF. Plaintiffs now ask the Court to preliminarily enjoin Defendants from transferring any general population women prisoners to the NJSP.

The facts of the matter are discussed in detail in the Court's opinion on Defendants' summary judgment motion but are briefly recited here. Plaintiffs are four of forty women prisoners who were transferred by the DOC from the EMCF to the NJSP in March 2007. The NJSP is a maximum-security men's prison which holds approximately 1,800 male prisoners. Plaintiffs claim that the women prisoners were given no notice or any opportunity to be heard before they were transferred to the NJSP. Plaintiffs allege that since arriving at the NJSP, they and the other women prisoners have been subject to inhumane and inequitable conditions of confinement. Plaintiffs state generally that the women prisoners' health has deteriorated, that they have been deprived of psychiatric and medical care, and have been denied rightful legal access, educational opportunities, work opportunities, their right to exercise, right to privacy and other rehabilitative programming.

Plaintiffs therefore contend that these transfers were unlawful because they violated the women prisoners' procedural and substantive due process rights. Plaintiffs also argue that women prisoners' constitutional and civil rights are being violated because of the deplorable and inhumane conditions of confinement to which they are subject at the NJSP and the fact that they are treated differently than the male prisoners there. Plaintiffs subsequently filed their class action complaint with claims under the New Jersey Constitution, New Jersey Civil Rights Act and the New Jersey Law Against Discrimination.

Defendants have responded by disputing all of the allegations made by Plaintiffs. Defendants state that the transfer of the women prisoners from the EMCF to NJSP was not unlawful as they are not required to provide notice or hearings before transfers are made. Defendants contend that the information they have presented demonstrates that female inmates in Unit 1EE of the NJSP are not being treated unfairly, are not being discriminated against and are not subjected to cruel and unusual punishment. Defendants therefore conclude that the conditions to which the women prisoners are subject at the NJSP are not inhumane or inequitable, and thus the women prisoners' constitutional and civil rights have not been violated.

Plaintiffs now ask the Court to continue restraining Defendants from transferring any general population female prisoners to the NJSP. Plaintiffs argue that such an injunction should be entered in order to restrain Defendants from subjecting other women prisoners to the allegedly inhumane and inequitable conditions of confinement at the NJSP. Defendants respond that an injunction offers no relief to the women prisoners currently at the NJSP because it only enjoins future transfers from occurring. Furthermore, Defendants contend that the conditions of confinement are hardly inhumane and inequitable but rather reasonable and similar to that of the male prisoners.

The issue before the Court is whether it shall grant Plaintiffs' request for the issuance of a preliminary injunction. "[T]he power to issue injunctions is the strongest weapon at the command of a court of equity, and its use, therefore, requires the exercise of great caution, deliberation, and sound discretion." Light v. National Dyeing & Printing Co., 140 N.J. Eq. 506, 510 (Ch. 1947). In order to grant such extraordinary relief, Plaintiff must demonstrate that (1) the injunctive relief is necessary to prevent irreparable harm; (2) the legal right underlying the plaintiff's claim is settled; (3) the material facts are uncontroverted and demonstrate a reasonable probability of ultimate success on the merits; and (4) the relative

hardship to the parties in granting or denying relief favors granting the relief. Crowe v. De Gioia, 90 N.J. 126, 132-34 (1982). The Court may take a less rigid view of these factors when the relief sought is designed only to preserve the status quo. Sherman v. Sherman, 330 N.J. Super. 638, 643 n.4 (Ch. Div. 1999).

a. Irreparable Harm

Harm is generally considered irreparable if it cannot be redressed adequately by monetary damages after the fact, Crowe, supra, at 133, or there exists no certain pecuniary standard for the measurement of damages. Scherman v. Stern, 93 N.J. Eq. 626, 631 (E. & A. 1922). The irreparable harm must be imminent, concrete, non-speculative, and the harm must occur in the near, not distant future. Subcarrier Communications v. Day, 299 N.J. Super. 634, 638 (App. Div. 1997). In certain circumstances, this requirement can be satisfied when the moving party will suffer "severe personal inconvenience." Crowe, supra, at 133 (citing Hodge v. Giese, 43 N.J. Eq. 342, 350 (Ch. 1887)).

In this matter, Plaintiffs have alleged that the women prisoners who have already been transferred to the NJSP have suffered irreparable harm because their constitutional and civil rights are being violated. Among other allegations, Plaintiffs state that women prisoners have been deprived of

psychiatric and medical care, items of basic hygiene, and privacy from male guards when undressing, showering or using the toilet. Certainly, when considered together, Plaintiffs' allegations add up to a situation where the women prisoners are suffering beyond a severe personal inconvenience. Additionally, this harm cannot be redressed by money damages or measured by any pecuniary standard. Thus, Plaintiffs contend that any women prisoners transferred in the future to the NJSP will suffer from the same irreparable harm as those women prisoners currently confined in the NJSP.

Defendants argue that the named plaintiffs are already confined at the NJSP, and therefore, an injunction should not be entered because it would not change the conditions or nature of their confinement. However, the Court has granted Plaintiffs' motion for class certification, which defines the class of plaintiffs here as "all general population women prisoners who are now or in the future will be confined in New Jersey State Prison." The class of plaintiffs thereby includes those women prisoners who may be transferred in the future to the NJSP and thereafter subjected to the allegedly inhumane and inequitable conditions of confinement there. Therefore, although an injunction would not change the conditions of confinement at the NJSP, it is necessary to prevent Defendants from subjecting other women prisoners to those conditions by transferring them to the NJSP.

Therefore, the Court finds that Plaintiffs have satisfied the first prong of the Crowe test.

b. Legally Settled Right

Preliminary injunctive relief should only be granted when the issues raised present a legally settled right. Crowe, supra, at 133 (citing Citizens Coach Co. v. Camden Horse R.R. Co., 29 N.J. Eq. 299, 304-05 (E. & A. 1878)).

Here, Plaintiffs have presented legally settled rights insofar as they have made claims under the New Jersey Constitution, Article I, paragraphs 1 and 12, the New Jersey Civil Rights Act, N.J.S.A. 10:6-2(c), and the New Jersey Law Against Discrimination, N.J.S.A. 10A:5-1 et seq.

c. Reasonable Success on the Merits

A preliminary injunction cannot be granted where all the material facts are controverted. Crowe, supra, at 133 (citing Citizens Coach Co. v. Camden Horse R.R. Co., 29 N.J. Eq. 299, 305-06 (E. & A. 1878)). Thus, to prevail on an application for a preliminary injunction, a plaintiff must demonstrate a reasonable probability of success on the merits. Ibid. (citing Ideal Laundry Co. v. Gugliemone, 107 N.J. Eq. 108, 115-16 (E. & A. 1930)). However, “mere doubt as to the validity of the claim is not an adequate basis for refusing to maintain the status quo.” Ibid. (citing Naylor

v. Harkins, 11 N.J. 435 (1953)). In fact, the point of temporary or preliminary relief is to maintain the parties in substantially the same condition when the final decree is issued as when the litigation began. Ibid. (citing Peters v. Public Service Corp. of N.J., 132 N.J. Eq. 500 (E. & A. 1942)).

The Court noted in its opinion on Defendants' motion for summary judgment that Plaintiffs have raised a number of genuine issues of material fact concerning all of their claims in their class action complaint. Thus, the material facts of this matter are controverted at this time, and discovery is needed before the Court can issue any dispositive rulings. However, in light of the fact that this preliminary injunction will maintain the status quo, i.e., will leave the parties in substantially the same condition as when the litigation began, the Court finds that it is not prevented from issuing an injunction. The preliminary injunction in this matter will not change the conditions of confinement at the NJSP, nor will it change the institution where Plaintiffs and other women prisoners are being confined. Therefore, the Court finds that Plaintiffs have satisfied the third prong of the Crowe test.

d. Balancing Equities

Preliminary injunctive relief requires a balancing of the relative hardship to the parties in granting or denying relief. Crowe, supra, at 134 (citing Isolantite Inc. v. United Electrical Radio & Machine Workers of America, 130 N.J. Eq. 506, 515 (Ch. 1941), modified on other grounds, 132 N.J. Eq. 613 (E. & A. 1942)).

In balancing the equities, the Court finds that the injunctive relief that Plaintiffs seek should be granted. If an injunction were not granted, women prisoners transferred over to the NJSP would be subject to the alleged inhumane and inequitable conditions present there. Furthermore, the hardship to the women prisoners there would likely become exacerbated by the increase in the number of women prisoners confined at the NJSP. However, if the injunctive relief is granted, Defendants would not be permitted to transfer other women prisoners to the NJSP. Moreover, Defendants have not provided specifically how an injunction which simply maintains the status quo harms them in this matter. Therefore, the Court finds that Plaintiffs have satisfied the final prong of the Crowe test.

The Court thereby finds that Plaintiffs have satisfied all four prongs of the Crowe test. Although the facts of the matter are controverted, because the preliminary injunction will simply maintain the status quo, the Court finds it appropriate to enter the injunction sought by Plaintiffs in this matter.

For the above stated reasons, Plaintiffs' request for a preliminary injunction is hereby GRANTED.

The Court entered an order this date in accordance with this decision.

PREPARED BY THE COURT

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MERCER COUNTY

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ORDER

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DEPUTY CLERK OF SUPERIOR COURT

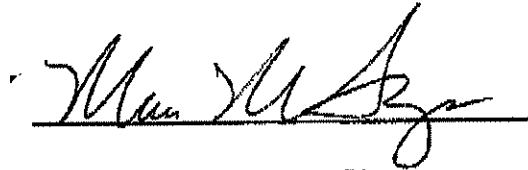
Defendants

The matter comes before the Court on a Motion for Issuance of an Order to Show Cause seeking a Preliminary Injunction filed by American Civil Liberties Union of New Jersey Foundation, Mia Lewis, Esq., admitted Pro Hac Vice and Edward L. Barocas, Esq., appearing on behalf of the Plaintiffs and opposition having been filed by the Office of the Attorney General, Dianne M. Moratti, Deputy Attorney General appearing on behalf of the Defendants and the Court having reviewed all documents submitted and having heard oral argument and for good cause shown:

IT IS ON THIS 21st day of July, 2008

ORDERED that the Plaintiffs' Motion for a Preliminary Injunction is hereby GRANTED for the reasons set forth in the decision issued by this Court.

IT IS FURTHER ORDERED that a copy of the decision and order shall be served upon all parties with seven (7) dates of the date herein.

A handwritten signature in cursive script, appearing to read "Maria M. Sypek", is written over a horizontal line.

Maria M. Sypek, P.J. Ch.