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U.S. DISTRICT COURT
N.D. OF ALABAMA

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
DEC 02 2009
THOMAS K. KAHN
CLERK

No. 09-10703

CV-01-851-UWC

D. C. Docket No. 01-00851-CV-UWC

JOHNNY MAYNOR, et al.,
on behalf of themselves and all others
similarly situated,

Plaintiffs-Appellees,

versus

MORGAN COUNTY, AL, et al.,

Defendants-Cross-Claimants-Appellees,

MYRA YATES, et al.,

Defendants-Cross-Claimants,

BOB RILEY, et al.,
Governor of Alabama,

Defendants-Cross-Defendants,

GREG BARTLETT,
Sheriff of Morgan County,

Defendant-Cross-Claimant-Appellant.

Appeal from the United States District Court
for the Northern District of Alabama

Before DUBINA, Chief Judge, BIRCH and SILER*, Circuit Judges.

PER CURIAM:

Sheriff Greg Bartlett seeks review of the district court's modification of a consent decree. He argues that the consent decree, as modified, may impose upon him personal liability for feeding prisoners at Morgan County Jail. We DISMISS.

I. BACKGROUND

In 2001, Johnny Maynor and others ("Plaintiffs") confined at the Morgan County Jail ("the Jail") filed a class action against Morgan County, the Morgan County Sheriff (then Steve Crabb), and the Morgan County Commission, among others ("County Defendants"). Plaintiffs alleged that they were subjected to inhumane treatment at the jail, in violation of their constitutional rights. Specifically, they alleged that the jail was grossly overcrowded and unsanitary and that they were denied exercise, adequate food, and medical care. In September

* Honorable Eugene E. Siler, Jr., United States Circuit Judge for the Sixth Circuit, sitting by designation.

2001, the district court entered a consent decree between Plaintiffs and County Defendants. Paragraph 22 provided that County Defendants "shall provide a nutritionally adequate diet to inmates," approved by a registered dietician, and that food "shall not be withheld, reduced, or altered as a form of punishment." R45 at 9.

On 7 January 2009, the district court entered a contempt order against Morgan County Sheriff Greg Bartlett, directing that he be taken into custody. The court found that Sheriff Bartlett had violated the consent decree by consistently failing to provide an adequate diet to class members and had diverted to himself state and federal funds allocated for feeding class members. Under Alabama law, the Sheriff receives funds for inmates' food, is entitled to any surplus, and is liable for any shortfall. See Ala. Code 1975 § 36-22-17.

On 8 January 2009, the court ordered that Sheriff Bartlett be released from custody on the grounds that his representations to the court had sufficed to purge him of contempt. The Plaintiffs moved to modify the consent decree to include a provision that would: (1) direct the Sheriff to ensure that all funds allocated for feeding inmates be used only for that purpose; and (2) make the Morgan County Commission ("the Commission") – not the Sheriff – responsible for a shortfall in

funds, should one occur. The Morgan County Commission objected to the second point in the moved-for provision.

On 9 January 2009, the court granted the Plaintiffs' motion to modify the consent decree. As to the Commission's objection, the court said that "the Sheriff is not empowered to obligate the County commission to assume any additional obligations" but that a shortfall was so unlikely that it did not need to reach the merits of the objection. R94 at 3-4. The court added that a declaration that "Sheriff Bartlett shall not be personally liable in the most unlikely event of a shortfall" was sufficient. Id. at 4. The court then corrected this order so that the "County Commission," rather than "Sheriff Bartlett," would not be required to assume liabilty for any shortfall in the funding of food for inmates. R96 at 5.

The court issued another order on 27 January 2009. It granted the Plaintiffs' motion to modify the consent decree so that it read, in part: "For any year in which there is a shortfall in funds to provide meals for inmates in the County Jail, the Sheriff will not be responsible for the shortfall in funds." R104 at 2. At the end of this sentence was a footnote: "The Court makes no determination of whether the Morgan County Commission will be liable for any such shortfall. The issue, should it arise, will be determined when it arises." Id. at 2, n.1.

The Sheriff appeals, arguing that this footnote from the 27 January order modifies the legal relationship between him and the other parties to the consent decree and creates the possibility that he will be held liable for a shortfall, even though he does not have corresponding access to surplusage. He argues that the court abused its discretion in modifying the consent decree in this manner and seeks remand for further modification.

The Plaintiffs move to dismiss the appeal on the grounds that the district court's order is not a final judgment ripe for review under 28 U.S.C. § 1291. The County Defendants move to dismiss the appeal under 28 U.S.C. § 1292(a)(1), on the grounds that the Sheriff cannot show that immediate appellate review is necessary to avoid serious and irreparable harm. Both parties' motions to dismiss are carried with the case.

II. DISCUSSION

A. Jurisdiction Under § 1291

Normally, appellate jurisdiction is limited to final judgments. 28 U.S.C. § 1291. We have defined a final judgment as one that "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." Pitney Bowes, Inc. v. Mestre, 701 F.2d 1365, 1368 (11th Cir. 1983) (quotation marks and citation omitted). The district court contemplates at least the possibility of future

proceedings to resolve whether the Commission is responsible for a future shortfall. Though the district court stated that a shortfall is unlikely, it cannot be said that the order finally resolved all issues. There is more left for the district court to do than merely to execute the judgment – it left the determination of liability for a shortfall open to itself. Accordingly, the 27 January 2009 order granting the motion to modify the consent decree is not a final order under § 1291.

B. Jurisdiction Under § 1292(a)(1)

Trial court rulings other than final judgments are interlocutory and may be appealable under § 1292. Sheriff Bartlett claims jurisdiction under § 1292(a)(1), which covers interlocutory orders "granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions." Appeals invoking jurisdiction under § 1292(a)(1) must meet two requirements. First, the relief sought must be an injunction or have the practical effect of an injunction. United States v. City of Hialeah, 140 F.3d 968, 973 (11th Cir. 1998). Second, the appellant must show that the order appealed "'might have a serious, perhaps irreparable, consequence, and that the order can be effectually challenged only by immediate appeal.'" Id. (quoting Carson v. American Brands, 450 U.S. 79, 84; 1-1S. Ct. 993, 997 (1981)).

We first inquire whether the order appealed from falls within the language of § 1292(a)(1). The footnote of the 27 January order can be read, if not as a modification of the consent decree, then as a refusal to modify the consent decree to make the Commission responsible for any shortfall. It fits the statutory language because the court was "refusing to dissolve or modify [an] injunction[]." § 1292(a)(1); see Jacksonville Branch, NAACP v. Duval County Sch. Bd., 978 F.2d 1574, 1578 (11th Cir. 1992) ("For the purposes of modification, consent decrees are . . . treated as judicial acts, akin to injunctions."). Insofar as the court was "refusing to modify [an] injunction," the 27 January order falls within § 1292(a)(1)'s definition of an immediately appealable order. Id.

To establish jurisdiction, Sheriff Bartlett must meet the Hialeah test. He can meet the first of the Hialeah requirements. What he seeks is an injunction or something with the practical effect of one. Specifically, he wants to remand so that the court can clarify in another order that he will not be held liable for a shortfall. That modification would have the legal effect of an injunction. Id.

Bartlett must also show that the order appealed "might have a serious, perhaps irreparable, consequence, and that the order can be effectually challenged only by immediate appeal." Hialeah, 140 F.3d at 973 (quotation marks and citation omitted). He stresses that, under the modified consent decree, the Sheriff

is responsible for providing food that meets more stringent standards of nutrition and that, he implies, costs more. Because the consent decree does not allow the Sheriff to retain surplus funds, he could not use same to satisfy his obligation if a shortfall occurred. He also argues that, because Morgan County prisons rely in part on donated foodstuffs to feed prisoners, a shortfall could arise if donations decreased.

The district court's factual findings effectively parry Bartlett's efforts to demonstrate a harm imminent enough for Hialeah. First, the court found that the Sheriff "could double the food portions served to inmates of the Morgan County Jail without significantly increasing his food expenditures." R95 at 4, ¶15. Second, it found that, if the Sheriff devoted all monies provided to him for feeding inmates, sufficient nutrition would in all likelihood result without the need for more funds. Thus, neither the Sheriff's need to meet the more stringent nutritional requirements nor the County's reliance on donated foodstuffs was found to make a shortfall sufficiently likely to arise. As such, the injury here is too speculative to meet the second prong of the Hialeah test. Accordingly, we do not have jurisdiction under § 1292(a)(1).

III. CONCLUSION

Sheriff Bartlett appeals the district court's order modifying the consent decree, arguing that it may subject him to personal liability for the feeding of prisoners. Because the Sheriff's injury does not satisfy the second prong of the Hialeah test, we lack jurisdiction over the appeal under 28 U.S.C. § 1292(a)(1) and grant the County Defendants' motion to dismiss.

DISMISSED.