

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

MICHAEL LINDSEY GAMBUZZA,  
CHRISTOPHER SCOTT DRESCHER,  
BARBARA SCHNURR and  
DEBORAH SORENSEN, on behalf of themselves  
and all others similarly situated,

Plaintiffs,

v.

Case No. 8:09-cv-1891-T-17TBM

LIEUTENANT DIANE PARMENTER,  
CAPTAIN ANTHONY ACKLES,  
MAJOR JAMES HIGGINBOTHAM and  
SHERIFF BRAD STEUBE,  
in their official capacities,

Defendants.

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**ORDER**

This cause is before the Court sua sponte. The question before the Court is whether this case is now moot.

Discussion

Plaintiffs proceeded on their amended complaint (hereinafter "complaint"). (Doc. 10). Although Plaintiffs sought class certification, the class was never certified. At the time the

complaint was filed, Plaintiffs Gambuzza, Drescher, and Johnson were incarcerated in the Manatee County Jail. The additional Plaintiffs are relatives of Drescher and Johnson.

Now, Plaintiff Gambuzza's address is 701 17th Avenue W., Bradenton, Florida 34205 (See case number 8:09-cv-449-23TGW). Plaintiff Christopher Drescher is incarcerated in the Department of Corrections. Plaintiff Michael Johnson's address is unknown.

#### Mootness

"If a suit is moot, it cannot present an Article III case or controversy and the federal courts lack subject matter jurisdiction to entertain it." *Seay Outdoor Advertising, Inc. v. City of Mary Esther, Fla.*, 397 F.3d 943, 946 (11th Cir.2005) (citations omitted). A case is moot when the issue presented is no longer live, the parties lack a legally cognizable interest in its outcome, or a court decision could no longer provide meaningful relief to a party. *Troiano v. Supervisor of Elections in Palm Beach County*, 382 F.3d 1276, 1281 (11th Cir.2004). Whether a case is moot is a question of law, *Troiano*, 382 F.3d at 1282.

The Court of Appeals may not entertain an appeal unless there is a present "case or controversy," i.e., an actual dispute that continues to exist between parties. *Smith v. Allen*, 502 F.3d 1255, 1267 (11th Cir. 2007). The general rule in the Eleventh Circuit is that a transfer or a release of a prisoner from prison will moot that prisoner's claims for injunctive and declaratory relief. *Id.* "The reason for this rule is that injunctive relief is 'a prospective remedy, intended to prevent future injuries,' *Adler*,<sup>1</sup> 112 F.3d at 1477, and, as a result, once the prisoner has been released, the court lacks the ability to grant injunctive

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<sup>1</sup> *Adler v. Duval County Sch. Bd.*, 112 F.3d 1475, 1477 (11th Cir. 1997).

relief and correct the conditions of which the prisoner complained." *Smith*, 502 F.3d at 1267. See, e.g., *Wahl v. McIver*, 773 F.2d 1169, 1173 (11th Cir.1985) ( per curiam) (stating that a prisoner's past exposure to sub-par conditions in a prison "does not constitute a present case or controversy involving injunctive relief").

Plaintiffs sought declaratory and injunctive relief in their complaint. Plaintiffs did not seek punitive or compensatory damages. They did not seek nominal damages.<sup>2</sup> See *Mobley v. Johnson*, at 2007 WL 2608664 at \*2 (N.D. Fla. Sept, 5, 2007)(citing *Hughes v. Lott*, 350 F.3d 1157, 1162 (11th Cir. 2003)).

Any argument that Plaintiffs' claims for injunctive relief are not moot because they may be future inmates in the Manatee County Jail is without merit. The Supreme Court, the Eleventh Circuit, and this District have rejected such claims. *Spencer v. Kemma*, 523 U.S. 1, 15 (1998); *McKinnon v. Talladega County, Ala.*, 745 F.2d 1360, 1363 (citing *Dudley v. Stewart*, 724 F.2d 1493, 1494 (11th Cir.1984)); *Romano v. Rambosk*, Case No. 2:06-cv-375-FtM-29DNF, 2010 WL 2732005 (M.D. Fla. July 9, 2010).

Pursuant to the above, the Court orders:

1. That on or before March 25, 2011, the parties shall file memoranda of law as to whether this case is moot.

2. That ruling on Plaintiffs' motion for reconsideration (Doc. 31) is deferred, pending a decision on whether the case is moot. The Clerk is directed to temporarily remove the

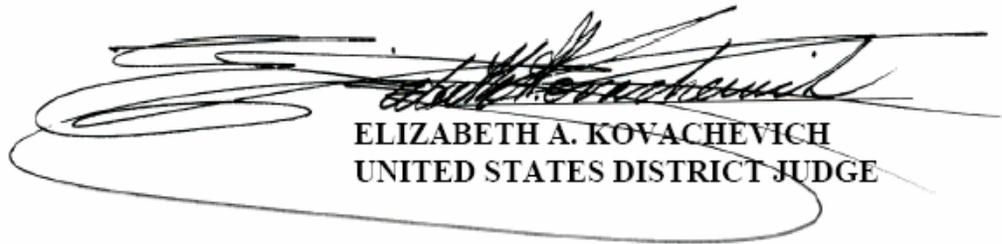
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<sup>2</sup> Plaintiffs sought costs and attorneys' fees arising out of this litigation pursuant to 42 U.S.C. Section 1988, and any other applicable law, and such other and further relief as the Court may deem just and equitable. Plaintiffs were represented by counsel and could have specifically sought nominal damages.

motion from the docket and to return it to the docket after the Court makes its determination on mootness.

3. That Counsel's motion to withdraw (Doc. 35) is granted.

ORDERED at Tampa, Florida, on March 11, 2011.



ELIZABETH A. KOVACHEVICH  
UNITED STATES DISTRICT JUDGE

Counsel of Record