

Winston v. Nagy

United States District Court for the Northern District of Indiana, South Bend Division

June 5, 1996, Decided ; June 5, 1996, ENTERED

CAUSE NO. 3:94-cv-150AS

Reporter: 1996 U.S. Dist. LEXIS 12107

CHARLES EVERETT WINSTON, et al., Plaintiffs, v. JOSEPH NAGY, Sheriff of St. Joseph County, et al., Defendants.

Subsequent History: Adopting Order of August 14, 1996, Reported at: [1996 U.S. Dist. LEXIS 12108](#).

Counsel: [*1] For CHARLES EVERETT WINSTON, 3:94cv150, plaintiff: Charles P Rice, Shawn P Ryan, South Bend, IN.

For JOSEPH SPEYBROECK, /JOSEPH NAGY, Sheriff of St. Joseph County (3:94cv150), defendant: Larry L Ambler, Allen Fedder Herendeen and Kowals, South Bend, IN. A. Howard Williams, South Bend, IN.

For RICHARD JASINSKI, (3:94cv150), JOSEPH ZAPPIA, (3:94cv150), RICHARD LARRISON, (3:94cv150), JAMES RIENEKOLD, (3:94cv150), HANK KEULTJES, (3:94cv150), RAFAEL MORTON, (3:94cv150), JOE BALDONI, (3:94cv150), LARRY JASINSKI, (3:94cv150), DENNIS SCHAFFER, (3:94cv150), GATHA VAUGHN, (3:94cv150), GEORGE NOME, (3:94cv150), JIM REINHOLTZ, (3:94cv150), defendants: David T Ready, Doran Blackmond Ready Hamilton and Williams, South Bend, IN.

MICHAEL LYNN, movant, [PRO SE], Columbia City, IN.

Judges: Robin D. Pierce, U.S. Magistrate Judge. Chief Judge Allen Sharp

Opinion by: Robin D. Pierce

Opinion

REPORT AND RECOMMENDATION

This class action, brought on behalf of all past, present and future prisoners incarcerated in the St. Joseph County Jail (the "Jail") in South Bend, Indiana, challenges conditions of confinement, including alleged overcrowding, at the Jail. Following negotiations the parties reached [*2] a settlement agreement, which has been reduced to the form of a partial interim consent decree, placing limitations upon the Jail's population. The court conducted a fairness hearing concerning

the proposed settlement on May 31, 1996. For the reasons which follow, it is recommended that the proposed settlement agreement be approved and that the partial interim consent decree (Dkt. # 191) be approved and entered.

Adequacy of Notice

On May 7, 1996, the parties filed a "Stipulation and Order Approving Form and Plan and Notice of Proposed Consent Decree," which was approved by the court on the same date. The stipulation and order required that notice of the proposed consent decree be "served personally, by the Sheriff of St. Joseph County, upon every person currently being held at the St. Joseph County Jail;" that the Sheriff make provisions that all persons arriving through the Jail be served with a copy of the notice; and that on or before May 20, 1996, the clerk of this court cause to be published on two separate occasions, at least five days apart, the notice in the South Bend Tribune. According to the notice, the partial interim consent decree provided that the court would "continue [*3] to have subject matter jurisdiction over the St. Joseph County Jail;" that the maximum inmate population of the Jail be 300; that the Sheriff provide daily reports of the inmates to counsel for the plaintiff class; that the Sheriff file with this court, within 120 days of approval of the partial interim consent decree, "a report detailing any progress on a work-release center or other detention alternatives which would be designed to accommodate population increases of non-violent inmates" at the Jail; and that the Sheriff also file a "report on progress and plans and site availability for a new St. Joseph County Jail facility" within 90 days of approval of the partial interim consent decree. The notice further stated that the court would conduct a fairness hearing on May 31, 1996 at 10:00 a.m., and advised class members that they had a right at the fairness hearing to comment on or object to the partial interim consent decree. Class members were also advised as follows:

If you wish to object or comment on the consent decree in writing prior to the hearing, you must present such comments to the plaintiffs' counsel prior to May 24, 1996. If you desire to appear in person, you must [*4] file an appearance by counsel or obtain the permission of plaintiffs' counsel to appear and address the court. If you have no objections to this consent decree, you need not file anything with the court or plaintiffs' counsel.

Based upon its review of the procedures the parties have adopted for notifying class members of the proposed settlement, the court finds that the class members have been fully and accurately advised of the terms of the proposed consent decree, as well as the procedure for bringing comments supporting or opposing the consent decree to the attention of the court. In addition, the comment period provided in the notice fully satisfied the requirements of Rule 23(e) of the Federal Rules of Civil Procedure. See e.g. Van Horn v. Trickey, 840 F.2d 604, 606 (8th Cir. 1988); Diaz v. Romer, 801 F. Supp. 405, 408 (D. Colo. 1992).

Approval of Settlement

Before a court can approve a class action settlement, it must determine that the settlement is lawful, fair, reasonable and adequate. E.E.O.C. v. Hiram Walker & Sons, Inc., 768 F.2d 884, 889 (7th Cir. 1985); Gautreaux v. Pierce, 690 F.2d 616, 631 (7th Cir. 1982); Armstrong v. Board of Sch. Directors, [*5] etc., 616 F.2d 305, 313 (7th Cir. 1980). Among the factors that a court should consider in making this "fairness" determination are: the strength of the plaintiffs' case compared to the defendants' offer; the likely length, complexity and expense of further litigation; the amount of opposition to the settlement among affected parties; the opinion of competent counsel; and the stage of the proceedings and the amount of discovery already completed. E.E.O.C., 768 F.2d at 889; Armstrong, 616 F.2d at 314. In considering a proposed class action settlement, a court may either approve or disapprove of the settlement; it may not rewrite the parties' agreement. Armstrong, 616 F.2d at 315; Harris v. Pernsley, 654 F. Supp. 1042, 1049 (E.D. Pa. 1987). A court "may not deny approval of a consent decree unless it is unfair, unreasonable, or inadequate." E.E.O.C., 768 F.2d at 889.

The first factor -- the strength of the plaintiffs' case compared with the defendants' offer -- is considered the most important. E.E.O.C., 768 F.2d at 889; Armstrong, 616 F.2d at 314. In this regard, the court believes that plaintiffs' chances of success in obtaining the type of preliminary [*6] injunctive relief reflected in the interim consent decree -- a specific cap on the number of Jail inmates -- would have been relatively low. A party seeking a preliminary injunction must, as a threshold matter, demonstrate some likelihood of success on the merits, and that it has no adequate remedy at law and will suffer irreparable harm if the injunction is not issued. Roth v. Lutheran General Hospital, 57 F.3d 1446 at 1453 (7th Cir. June 27, 1995); Vencor, Inc. v. Webb, 33 F.3d 840, 845 (7th Cir. 1994); Storck USA, L.P. v. Farley Candy Co., 14 F.3d 311, 313-14 (7th Cir. 1994); Abbott Lab. v. Mead Johnson & Co., 971 F.2d 6, 11 (7th Cir. 1992). If the party seeking a preliminary injunction cannot establish either of these

prerequisites, the court's inquiry is over and the injunction would be denied. *Id.* Here, in order to demonstrate some likelihood of success on the merits, plaintiffs would have to produce evidence suggesting that defendants maintained overcrowded conditions at the Jail to inflict wanton pain, or that the defendants were deliberately indifferent to whether the conditions at the Jail had such an effect. Farmer v. Brennan, 511 U.S. 825, [*7] 114 S. Ct. 1970, 1979, 128 L. Ed. 2d 811 (1994); Wilson v. Seiter, 501 U.S. 294, 111 S. Ct. 2321, 115 L. Ed. 2d 271 (1991); Steele v. Choi, 82 F.3d 175, 178 (7th Cir. 1996); Steading v. Thompson, 941 F.2d 498 (7th Cir. 1991). The task of demonstrating some likelihood of success on the merits based upon an Eighth Amendment or Fourteenth Amendment claim for jail overcrowding would thus be formidable. It is further apparent that plaintiffs would have difficulty establishing irreparable harm at this stage in the proceedings.

The second factor -- the likely length, complexity and expense of further litigation -- is essentially inapplicable to the type of interim agreement involved in the present case. At the same time, however, there is a strong possibility that the parties' agreement upon the partial interim consent decree would provide a basis for an overall settlement of the plaintiffs' claims, thereby obviating the considerable time and expense involved in a trial.

The third factor -- the amount of opposition to the settlement among affected parties -- strongly favors approval. Indeed, opposition to the proposed interim consent decree is essentially non-existent. No objection [*8] has been received from any current inmate at the Jail.

The fourth factor is concerned with the opinion of competent counsel. In the present case, all of the parties are represented by very capable and competent counsel. It is clear that counsel have represented their clients ably throughout the negotiation process which led to the present agreement. There is no indication that the proposed partial interim consent decree, or any aspect of it, is the product of collusion among or between counsel for the plaintiff class and the attorneys for defendants. The court has no reason to doubt the judgment of counsel in recommending the approval and adoption of the partial interim consent decree.

The last factor calls for consideration of the stage of the proceedings and the amount of discovery completed. This factor, however, is more pertinent to an evaluation of a final or global settlement agreement, as opposed to the type of interim agreement involved here. Still, the record suggests that the parties have completed sufficient investigation to give them a clear insight into the facts

underlying plaintiffs' claims, as well as the strengths and weaknesses of those claims.

Having reviewed [*9] the terms of the proposed partial interim consent decree, and having considered the matters presented at the fairness hearing, the court finds that the settlement embodied in the partial interim consent decree is lawful, fair, reasonable, and adequate. Accordingly, it is **RECOMMENDED** that the partial interim consent decree be approved and entered.

ANY OBJECTIONS to this report and recommendation must be filed with the Clerk of courts within ten (10) days

of receipt of this notice. Failure to file objections within the specified time waives the right to appeal the district court's order. See Thomas v. Arn, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985); Lockert v. Faulkner, 843 F.2d 1015 (7th Cir. 1988); Video Views, Inc. v. Studio 21 Ltd., 797 F.2d 538 (7th Cir. 1986).

Dated this 5th day of June, 1996.

Robin D. Pierce, U.S. Magistrate Judge