2020 WL 4668756
Only the Westlaw citation is currently available.
United States District Court, W.D. Tennessee, Western Division.

Favian BUSBY and Michael Edgington, on their own behalf and on behalf of those similarly situated, Plaintiffs,
v.
Floyd BONNER, Jr., in his official capacity, and Shelby County Sheriff's Office, Defendants.

No. 20-cv-2359-SHL
|
Signed 07/24/2020

Attorneys and Law Firms

Jeffery P. Robinson, Pro Hac Vice, Amreeta Mathai, Pro Hac Vice, American Civil Liberties Union of Tennessee, Andrea Woods, Pro Hac Vice, ACLU Criminal Law Reform Porject ACLU Criminal Law Reform Project, Edward Robinson, Jr., Pro Hac Vice, Jonathan Silberstein-Loeb, Pro Hac Vice, Meredith Borner, Paul, Weiss, Rifkind, Wharton & Garrison LLP, New York, NY, Joshua B. Spickler, Joshua Spickler, Just City, Brice Moffatt Timmons, Black McLaren Jones Ryland & Griffee, P.C., Memphis, TN, Maria Morris, Pro Hac Vice, American Civil Liberties Union of Tennessee, Washington, DC, Stella Marie Yarbrough, Thomas Hauser Castelli, American Civil Liberties Union of Tennessee, Nashville, TN, Zoe Brennan-Krohn, Pro Hac Vice, American Civil Liberties Union of Tennessee, San Francisco, CA, for Plaintiffs.

2241, AUSA, U.S. Attorney's Office, Bridgett L. Stigger, Marlinee Iverson, Shelby County Attorney's Office, Memphis, TN, J. Austin Stokes, James I. Pentecost, Nathan Daniel Tilly, Pentecost, Glenn, Mauldin & York, PLLC, Jackson, TN, for Defendants.

ORDER DENYING DEFENDANTS' SECOND MOTION TO DISMISS

SHERYL H. LIPMAN, UNITED STATES DISTRICT JUDGE

***1** Before the Court are Defendants' Motion to Dismiss First Amended Petition ("Second Motion to Dismiss"), (ECF No. 78), filed June 30, 2020, Plaintiffs' Response, (ECF No. 113), filed July 15, 2020, Defendants' Reply, (ECF No. 119), filed July 20, 2020, and the Amicus Brief of the State of Tennessee, (ECF No. 118), filed July 20, 2020. For the following reasons, the Motion is **DENIED**.

BACKGROUND

On May 20, 2020, Plaintiffs filed a Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 and Class Action Complaint for Declaratory and Injunctive Relief, (ECF No. 1), as well as a Motion for Temporary Restraining Order ("TRO Motion"), (ECF No. 2). Plaintiffs allege that their constitutional rights, under the Fourteenth Amendment, and their statutory rights, under Title II of the Americans with Disabilities Act ("ADA") and Section 504 of the Rehabilitation Act ("Rehab Act"), are being violated. (ECF No. 2 at PageID 53-59.)

On May 26, 2020, along with their Response to the TRO Motion, Defendants filed a Motion to Dismiss. (ECF No. 25.) Defendants raised three grounds for dismissal of Plaintiffs' Petition, arguing that: (1) the Petition is not cognizable under 28 U.S.C. § 2241 because it challenges the conditions of confinement rather than the fact or duration of confinement, (2) Plaintiffs have yet to exhaust state law remedies and (3) Plaintiffs' have failed to comply with the requirements of the Prison Litigation Report Act's ("PLRA"). After the Motion to Dismiss was fully briefed, (ECF Nos. 35, 37), this Court considered each of the arguments, but denied the Motion on June 10, 2020, (ECF No. 38).

On June 16, 2020, Plaintiffs filed an Amended Petition, (ECF No. 50), adding two Named Plaintiffs and the related factual allegations. Otherwise, the Amended Petition appears to be the same as the original one. Now, Defendants target the Amended Petition with their Second Motion to Dismiss. In the latest Motion, Defendants again argue that Plaintiffs have failed to exhaust their claims in state court, that the Amended Petition is an improper

challenge to the conditions of confinement rather than the fact of confinement and that Plaintiffs failed to abide by the PLRA. In addition, Defendants argue for the first time that the unconstitutional punishment claim (claim one of the Amended Petition) and the ADA and Rehab Act claims (claims three and four) should be dismissed for failure "as a matter of law," (ECF No. 78-1 at PageID 1143-46), presumably under Fed. R. Civ. P 12(b)(6) or 12(c), (ECF No. 119 at PageID 2720).

Because the Court will not revisit rulings it has already made and is not persuaded by Defendants' new arguments, the Motion is **DENIED**.

ANALYSIS

Defendants' Second Motion presents two significant problems. First, as noted above, three of Defendants' arguments have already been considered and decided. Second, Defendants raise arguments here that should have been made in their First Motion to Dismiss. Moreover, the new arguments are unpersuasive.

The first problem arises because this Motion runs afoul of the caution against redundancy and the doctrine of the "law of the case." See Christianson v. Colt Indus. Operating Corp., 486 U.S. 800, 815–16 ("[T]he doctrine [of the law of the case] posits that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case"); Edmonds v. Smith, 922 F.3d 737, 739 (6th Cir. 2019) (noting that "findings made at one stage in the litigation should not be reconsidered at subsequent stages of that same litigation"). Even though the Court previously decided these issues, Defendants contend that repeating their arguments is appropriate for two reasons: (1) the Amended Petition added two Named Plaintiffs and "additional facts," although it is unclear what additional facts were added, and (2) the Court's ruling, according to Defendants, was based on a misunderstanding as to what procedures are available for detainees to challenge the constitutionality of their confinement. (ECF No. 119.) Neither argument carries the day.

***2** First, that the Petition was amended does not excuse Defendants' needless filing. The Amended Petition added no claims or legal theories, and thus changed nothing as to the previous ruling. Indeed, the argument that Defendants should be able to raise the same legal arguments as to new Plaintiffs directly contradicts the doctrine of "the law of the case."

Moreover, to the extent Defendants rely on an alleged misunderstanding by the Court in the first Order, the Motion should be one for reconsideration, not a new Motion. However, Defendants should NOT construe that statement as an invitation for yet another Motion, as the Court has considered this issue and ruled. In its previous ruling, the Court was well aware of detainees' ability to file motions related to bail, and to appeal those rulings. However, that statutorily-defined standard process does not include the inmate health risks during confinement among the factors to be considered. Thus, exhaustion is not required here. See O'Sullivan v. Boerckel, 526 U.S. 838, 847-848 ("[S]tate prisoners do not have to invoke extraordinary remedies when those remedies are alternatives to the standard review process and where the state courts have not provided relief through those remedies in the past"); Goar v. Civiletti, 688 F.2d 27, 28-29 (6th Cir. 1982) (exhaustion is not required where the state court remedy is "inadequate or cannot provide the relief requested").

Defendants also emphasize in their Reply that Rule 12(g)'s ban on successive motions to dismiss does not apply to the defenses of failure to state a claim upon which relief can be granted or lack of subject matter jurisdiction. (ECF No. 119 at PageID 2720.) That may be, but Defendants miss the point. Defendants are not merely raising those defenses again, but they are repeating the same case law, facts and legal theories. These arguments have been addressed and have grown stale. Given that the Court previously ruled and detailed its reasons for rejecting that earlier round of Defendants' arguments, (see ECF No. 38), the Court will not revisit its prior Order.

As for the State of Tennessee's Amicus Brief, it contends that Tennessee has available state court remedies and Plaintiffs must exhaust those remedies first. Put simply, the Amicus Brief repeats Defendants' arguments, which is not helpful. See, e.g., Supreme Court Rule 37 ("An amicus curiae brief that brings to the attention of the Court relevant matter not already brought to its attention by the parties may be of considerable help to the Court. An amicus curiae brief that does not serve this purpose burdens the Court, and its filing is not favored"). The Brief does not change this outcome.

The second problem with this Second Motion to Dismiss

arises out of the fact that Defendants include arguments that they inexcusably neglected to assert in their original Motion to Dismiss. Those include arguments that (1) the unconstitutional punishment claim fails as a matter of law because it is identical to Plaintiffs' unconstitutional confinement claim and (2) the disability claims fail because Plaintiffs allege insufficient facts and violations of federal disability laws do not merit habeas relief. Both arguments fail because they should have been raised before but also because they are without merit.

As an initial matter, there is no reason Defendants could not have raised these two arguments in their original Motion to Dismiss.[1] See 5C CHARLES A. WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1388 (3d ed. 2004) ("The filing of an amended complaint will not revive the right to present by motion defenses that were available but were not asserted in timely fashion prior to the amendment of the pleading"). Pointedly, Federal Rule of Civil Procedure 12(g)(2) states, "Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under [Rule 12] must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion." Fed. R. Civ. P. 12(g)(2). The ban on successive Rule 12 motions is "salutary in that it works against piecemeal consideration of a case." Fed. R. Civ. P. 12(g) advisory committee's note to 1966 amendment.

***3** Still, out of an abundance of caution, the Court considers these two arguments, but finds neither of them convincing. First, a claim of unconstitutional punishment is distinct from a claim of unconstitutional confinement. Only pretrial inmates can bring the former claim while both pretrial and convicted inmates may bring the latter claim. See Bell v. Wolfish, 441 U.S. 520, 523 (1979). Besides, unconstitutional punishment claims are brought under the Due Process Clause of the Fifth Amendment (or the Fourteenth Amendment, for state detainees); unconstitutional confinement claims are brought under the Cruel and Unusual Punishment Clause of the Eighth Amendment. See id.; J.H. v. Williamson Cty., Tennessee, 951 F.3d 709 (6th Cir. 2020). Indeed, a pretrial inmate can file a grievance under both causes of action. See, e.g., Williamson Cty, 951 F.3d 709. Therefore, Defendants fail to show how Plaintiffs' unconstitutional punishment claim fails as a matter of law.

Second, not all disability claims require proof of intentional discrimination, nor is habeas relief precluded for those asserting disability claims. As to the question of intent, a public entity can violate Title II of the ADA or Section 504 of the Rehabilitation Act—the two statutes under which Plaintiffs assert their disability claims—without acting with discriminatory intent. See Ability Center, Toledo v. City of Sandusky, 385 F.3d 901, 910 (6th Cir. 2004) ("Title II imposes affirmative obligations on public entities and does not merely require them to refrain from intentionally discriminating against the disabled"); Alexander v. Choate, 469 U.S. 287, 296 (1985) (noting that "much of the conduct that Congress sought to alter in passing the Rehabilitation Act would be difficult if not impossible to reach were the Act construed to proscribe only conduct fueled by a discriminatory intent").

As for habeas relief, inmates can seek such relief when asserting a federal disability discrimination claim. See 28 U.S.C. § 2241(c)(3) (establishing the writ of habeas corpus for inmates "in custody in violation of the Constitution or laws or treaties of the United States") (emphasis added); see also Mitchell v. Metrish, 2005 WL 2397031, at *6 (E.D. Mich. Sept. 28, 2005) (considering disability claims under a writ of habeas corpus). As Defendants point out, certain district courts have declined to consider habeas relief when examining disability claims, (see ECF No. 78-1 at PageID 1125), but, in the absence of a Sixth Circuit decision to the contrary, this Court defaults to a textualist reading of § 2241's scope. Such a reading appears particularly apropos here, where Plaintiffs do not allege that there is an accommodation that they are not being afforded, but rather that they cannot be accommodated, and thus habeas relief is the only option. Given that allegation, Plaintiffs have stated a claim upon which relief could be granted.

CONCLUSION

For these reasons, Defendants' Second Motion to Dismiss is **DENIED**.

IT IS SO ORDERED, this 24th day of July, 2020.

All Citations

Slip Copy, 2020 WL 4668756

Footnotes

[1] Defendants did raise the ADA and Rehab Act arguments before but in a reply brief, (ECF No. 37), so they were ignored.