

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

DAMEKIA MORGAN

CIVIL ACTION

VERSUS

NO. 07-9755

C. RAY NAGIN, ET AL

SECTION B(4)

ORDER AND REASONS

Before the Court is Defendants Richard W. Winder and Mubarek A. Kareem's Motion to Dismiss (Rec. Doc. No. 67). After review of the pleadings and applicable law, and for the reasons that follow,

IT IS ORDERED that Defendants' Motion to Dismiss is **DENIED**.

BACKGROUND

The Youth Study Center ["the Center"] is located in New Orleans, Louisiana and acts as a pretrial detention facility for minors accused of offenses. Plaintiffs filed suit on December 21, 2007, on behalf of all minors who are now or in the future will be confined at the Center. Plaintiffs allege that the conditions at the Center violate the minors' rights under the Constitution and laws of the United States.

Plaintiffs named as Defendants: (1) C. Ray Nagin, the mayor of New Orleans, (2) Richard Winder, Director of the Department of Human Services for the City of New Orleans, (3) Mubarek Kareem, Social Services Coordinator for the Department of Human Services, (4) Ozzie Williams, the acting supervisor of the Center, (5) Phyllis Landrieu, the acting president of the New Orleans School

Board, and (6) Daryl Kilbert, Superintendent of the New Orleans Public Schools.

Plaintiffs make a number of allegations regarding conditions at the Center. First, they allege that the staff of the Center are inadequately trained and that the staff fail to protect the youths from the threat of abuse by staff members and other youths. Plaintiffs contend that the youths are punished arbitrarily, that they are placed in isolation for grossly excessive periods of time, and that there is no procedure in place for determining when isolation is appropriate. Plaintiffs further allege that Defendants are indifferent to the mental health needs of the youths, that Defendants fail to assure adequate psychological assessment of the youths, and that Defendants do not employ a sufficient number of psychologists and social workers. Additionally, Plaintiffs allege that Defendants are indifferent to the medical care of the youths, that medication is not distributed as prescribed, that the youths are not fed nutritious meals, and that they are sometimes fed spoiled food. Plaintiffs contend that the toilets, showers, and sinks are not adequately cleaned, that cells are oppressively small and dark, and that the youths are not provided adequate hygiene items. Additionally, Plaintiffs argue that the youths are forced to wear dirty clothes and that the Center is infested with vermin and rodents. Plaintiffs allege that Defendants do not provide appropriate education, that the Defendants fail to assess the youths to determine if they have

special educational needs, and that Defendants fail to provide adequate rehabilitative treatment. Plaintiffs allege that Defendants deny the youths access to the courts by maintaining a grievance procedure that is vague and by sometimes actually physically destroying grievances that are submitted. Finally, Plaintiffs allege that Defendants deny them access to counsel by unreasonably limiting contact with attorneys.

Based on these claims, Plaintiffs allege the following causes of action:

1. That the conditions at the Center violate the youths' Due Process rights under the Fourteenth Amendment;
2. That the conditions at the Center constitute Cruel and Unusual Punishment under the Eighth Amendment;
3. That the process of arbitrary punishment at the Center violates the youths' Due Process rights under the Fourteenth Amendment;
4. That the refusal to protect the youths violates their rights under the Eighth and Fourteenth Amendments;
5. That Defendants' refusal to allow meaningful access to courts violates the youths' rights under the First, Sixth, Eighth, and Fourteenth Amendments;
6. That Defendants' indifference to Plaintiffs' mental health needs violate their rights under the Eighth and Fourteenth Amendments;
7. That Defendants' failure to provide adequate special

education services violates the youths' rights under the Fourth and Eighth Amendments as well as the Rehabilitation Act, the Individuals with Disabilities Education Act, and the Americans with Disabilities Act;

8. That Defendants' failure to provide adequate mental care for youths with mental disabilities violates their rights under the Fourteenth and Eighth Amendments as well as the Rehabilitation Act and the Americans with Disabilities Act;

9. That Defendants' failure to provide adequate rehabilitation violates the youths' rights under the Eighth and Fourteenth Amendments.

Defendants C. Ray Nagin and Ozzie Williams previously moved to dismiss Plaintiffs' claims against them. See Rec. Doc. No. 44. The Court denied Defendants' Motion. See Rec. Doc. No. 84. Defendants Richard W. Winder and Mubarek A. Kareem have now filed a Motion to Dismiss essentially adopting the arguments made in the previous Motion to Dismiss.

Defendants claim that Plaintiffs have failed to allege facts sufficient to support claims for Constitutional violations regarding the general conditions at the Center, the staff's failure to provide adequate medical care, and Defendants' denial of access to courts.

Plaintiffs contend that they have alleged facts related to the general conditions of confinement at the Center as well as failure

of the staff to provide medical and mental healthcare which are sufficient to state a claim for unconstitutional "conditions of confinement" at the Center under *Bell v. Wolfish*, 441 U.S. 520 (1979). Additionally, Plaintiffs contend that their allegation that the staff of the Center are actively interfering with the youths' attempts to file grievances is sufficient to support a claim for denial of access to courts.

DISCUSSION

I. Motion to Dismiss Standard

In considering a Rule 12(b)(6) motion to dismiss, courts have found that dismissal pursuant to this provision "is viewed with disfavor and is rarely granted." *Lowery v. Texas A&M Univ. Sys.*, 117 F.3d 242, 247 (5th Cir. 1997); *Kaiser Aluminum & Chem. Sales, Inc. v. Avondale Shipyards, Inc.*, 677 F.2d 1045, 1050 (5th Cir. 1982). The complaint must be liberally construed in favor of the plaintiff, and all facts pleaded in the original complaint must be taken as true. *Oliver v. Scott*, 276 F.3d 736, 740 (5th Cir. 2002); *Campbell v. Wells Fargo Bank*, 781 F.2d 440, 442 (5th Cir. 1986). Until recently, the standard for a motion to dismiss was often phrased in such a way that a district court could not dismiss a complaint under Fed. R. Civ. Pro. 12(b)(6) "unless it appear[ed] beyond doubt that the plaintiff [could] prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *Blackburn v. Marshall*, 42 F.3d 925, 931 (5th Cir. 1995). The Supreme Court, however, recently

noted that the phrase "no set of facts" "is best forgotten as an incomplete, negative gloss on an accepted pleading standard..." *Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1955, 1969 (2007). The Court went on to note that the standard, in reality, remains the same, that "once a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint." *Id.* The Fifth Circuit defines this strict standard as "whether in the light most favorable to the plaintiff and with every doubt resolved in his behalf, the complaint states any valid claim for relief." *Lowrey*, 117 F.3d at 247, citing 5 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure*, §1357, at 601 (1969). "In other words, a motion to dismiss an action for failure to state a claim admits the facts alleged in the complaint, but challenges plaintiff's rights to relief based upon those facts." *Ramming v. United States*, 281 F.3d 158, 161-62 (5th Cir. 2001).

II. Claims Against Defendants Winder and Kareem under 42 U.S.C. § 1983

As in the case of Defendants Nagin and Williams, Plaintiffs have brought an action against Defendants Winder and Kareem in their individual and official capacities pursuant to 42 U.S.C. § 1983. The claims against Defendants in their official capacities are essentially claims against the City of New Orleans, the entity of which they are agents. *Burge v. City of St. Tammany*, 187 F.3d 452, 466 (5th Cir. 1999). In order for a local governmental body

to be held accountable for a constitutional violation, there must be (1) a policy maker, (2) an official policy, and (3) a violation of the constitutional rights whose moving force was the policy or custom. *Piotrowski v. City of Houston*, 237 F.3d 567, 578 (5th Cir. 2001). The unconstitutional conduct must be directly attributable to the municipality through some sort of official action. *Id.* Additionally, there must be a link between the policy and the constitutional violation, and the policy must be maintained with an objective deliberate indifference to a constitutionally protected right. *Lawson v. Dallas County*, 286 F.3d 257, 263 (5th Cir. 2002).

In order to find the Defendants liable in their individual capacities, Plaintiffs must show (1) their personal involvement in the constitutional deprivation or (2) a sufficient causal connection between their wrongful conduct and the constitutional violation. *Thompkins v. Belt*, 828 F.2d 298, 303 (5th Cir. 1987). Additionally, "[s]upervisory liability exists even without overt personal participation in the offensive act if supervisory officials implement a policy so deficient that the policy 'itself is a repudiation of constitutional rights' and is 'the moving force of the constitutional violation (citations omitted).'" *Id.*

As shown above, in the case of both municipal and individual liability, the plaintiff must first sufficiently allege a constitutional violation. The Court has already found in its previous ruling denying Defendants Nagin and Williams' Motion to Dismiss that Plaintiffs have sufficiently alleged a claim for

unconstitutional conditions of confinement and denial of access to courts under Section 1983. See Rec. Doc. No. 84. Thus, the only remaining issue is whether Plaintiffs have alleged a sufficient connection between Defendants' conduct and these constitutional violations to support claims against Defendants Winder and Kareem in their individual and official capacities.

Plaintiffs' Complaint states that Richard Winder is the Director of the Department of Human Services for the City of New Orleans and that he is "responsible for the secure detention and constitutional treatment of youths remanded to detention pending trial and youths adjudicated delinquent and held pending placement with the Louisiana Office of Youth Development." Comp. ¶ 15. Further, the Complaint states that Winder "has full control of [the Center], including but not limited to, its budget, personnel, programs, and the administration and affairs of [the Center], and is responsible for the adoption and establishment of all rules and regulations for the placement, care, and treatment of juveniles in the City's custody." *Id.* The Complaint states that Mubarek Kareem is the Social Services Coordinator for the Department of Human Services for the City of New Orleans. Comp. ¶ 16. It states that he is responsible for addressing the social services needs of the children detained at the Center and that he reports to Defendant Winder. *Id.*

Plaintiffs allege further that "Defendants are aware of the unconstitutional conditions and the risks of irreparable harm to

Plaintiffs," which are enumerated in the Complaint and that "[d]espite Defendants' knowledge, they are deliberately indifferent to those unconstitutional conditions and the risk of irreparable harm." Comp. ¶ 87. Plaintiffs allege that "[t]he conditions of confinement at [the Center], and the policies, procedures, and practices established by the Defendants are not rationally related to a legitimate, non-punitive government purpose...." Comp. ¶ 88. Finally, Plaintiffs allege that "[a]s a proximate result of the policies, practices, acts, and omissions of Defendants, Plaintiffs have suffered and continue to suffer serious and irreparable...injuries." Comp. ¶ 86.

The Court finds that Plaintiffs have alleged sufficient facts to state a claim against Defendants Winder and Kareem in their official capacities. Plaintiffs have clearly alleged an official policy on the part of Winder and Kareem related to the procedures at the Center. Additionally, Plaintiffs have alleged a direct causal link between this policy and the unconstitutional violations enumerated in the Complaint.

The Court finds that the allegations in Plaintiffs' Complaint are also sufficient to state a cause of action against Defendants Winder and Kareem in their individual capacities. Plaintiffs allege that as the Director of the Department of Human Services, Winder has full control over the Center including its budget, personnel, programs, as well as the establishment of rules and procedures. Additionally, Defendant Kareem coordinates the social services at

the Center and reports to Defendant Winder. The Court finds that Plaintiffs have made sufficient allegations concerning the formulation on Defendants' part of a policy at the Center that deprives the Plaintiffs of their Constitutional rights as well as allegations that this policy is the moving force behind the deprivation.

In sum, the Court finds that Plaintiffs have alleged a sufficient connection between the Constitutional violations detailed in their Complaint and conduct on the part of Defendants Winder and Kareem to support claims against the Defendants in their individual and official capacities.

Accordingly,

IT IS ORDERED that Defendants' Motion to Dismiss is **DENIED**.¹

New Orleans, Louisiana this 26th day of August, 2008.


UNITED STATES DISTRICT JUDGE

¹Plaintiffs filed along with their Complaint a Motion to Certify Class. All Defendants have now filed an answer. Additionally, there are no other motions currently pending in the case. Thus, it would now be proper to set a hearing date for the Motion to Certify Class unless defendant timely seeks class discovery.