

FILED
OCT 25 2007
[Signature]
CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

JODIE SMOOK, Individually and on behalf
of all other persons similarly situated,

CIV 00-4202

Plaintiffs,

-vs-

ORDER

MINNEHAHA COUNTY, SOUTH
DAKOTA; JIM BANBURY, in his
individual capacity; TODD CHEEVER,
as Director of Minnehaha County
Juvenile Detention Center; and
John and Jane Doe DETENTION CENTER
OFFICERS,

Defendants.

The Eighth Circuit Court of Appeals reversed and remanded this action for further proceedings consistent with its August 9, 2006 opinion. After Plaintiffs' petition for a writ of certiorari was denied by the United States Supreme Court on March 26, 2007, Plaintiffs filed with this Court a Motion for Leave to Substitute Class Representatives. (Doc. 165.) Defendants requested an opportunity to conduct discovery to determine if the substitute class representatives proposed by Plaintiffs are proper. Subsequently, Plaintiffs served Defendant Minnehaha County with discovery requests and asked Defendant to supplement responses to earlier served discovery. Counsel for Defendants informed Plaintiffs that it will not respond to Plaintiffs' discovery requests until this Court rules on Plaintiffs' Motion to Substitute Class Representatives. Plaintiffs then filed a Motion to Compel discovery. (Doc. 178.) Shortly thereafter, Defendants filed a Motion for Protective Order, asking the Court to stay discovery until the Court rules on Plaintiffs' Motion to Substitute Class Representatives. (Doc. 182.)

Plaintiffs acknowledge that, pursuant to the Eighth Circuit's decision, the claims for injunctive relief must be dismissed for lack of an Article III case or controversy and Smook's individual claim for damages against Minnehaha County, Jim Banbury and Todd Cheever must be dismissed. Furthermore, the Eighth Circuit directed this Court to consider whether the class should be redefined or decertified and whether there is an adequate class representative to replace Smook, if appropriate.

Plaintiffs correctly note that, in ruling that Smook has no claim for damages against Defendants, the Eighth Circuit found significant the fact that she was permitted to wear undergarments during the search. Although Plaintiffs' proposed Amended Complaint names as substitute class representatives three individuals who, unlike Smook, were not allowed to wear undergarments during the search, Plaintiffs discuss redefining the class on page 3 of Plaintiffs' Reply in Support of Plaintiffs' Motion for Leave to Substitute Class Representative. In light of the Eighth Circuit's opinion, the class certified to seek monetary damages will have to be redefined.¹ The Court's prior numerosity finding might change if the class is smaller than it was when the Court issued its initial certification order.

In addition, before granting Plaintiffs' motion, the Court must ensure that the substitute class representatives proposed by Plaintiffs meet the commonality, adequacy and typicality requirements of Rule 23(a). Limited discovery will be allowed to ensure that these requirements are met. Other discovery will be stayed pending completion of class discovery. At the completion of the limited class discovery, Plaintiffs should re-file their motion to substitute class representatives. Plaintiffs' renewed motion should include a proposed class definition, and Plaintiffs should explain how they now meet the four prerequisites for the maintenance of a class action under Rule 23(a). In their

¹The class seeking monetary damages is currently defined as:

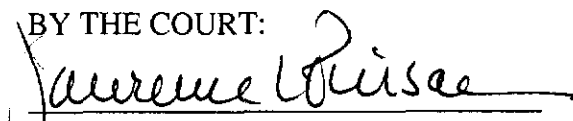
All persons seeking compensatory and punitive damages in this action who, when they [were] under the age of eighteen years, were charged with minor offenses from November 1, 1997 to a date to be set by the Court or were charged with non-felony offenses from April 16, 1999 to a date to be set by the Court, and were, pursuant to JDC policy, strip searched at the Minnehaha County Juvenile Detention Center.

response to Plaintiffs' renewed motion, Defendants should include any newly discovered facts relevant to the proposed class representatives' adequacy to represent the class. Accordingly,

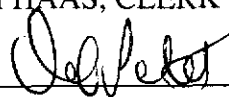
IT IS ORDERED:

1. That Plaintiffs' Motion for Leave to Substitute Class Representatives, doc. 165, is denied without prejudice.
2. That Plaintiffs' Motion to Compel, doc. 178, is denied.
3. That Defendants' Motion for Protective Order, doc. 182, is granted.

Dated this 25th day of October, 2007.

BY THE COURT:

Lawrence L. Piersol
United States District Judge

ATTEST:
JOSEPH HAAS, CLERK

BY: 
DEPUTY