

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
ALEXANDER COUNTY, ILLINOIS

People of the State of Illinois, ex rel.
DONALD SNYDER,

Plaintiff,

v.

TYSHAWN ROSS,

Defendant.

No. 03-MR-27

ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIM

Defendant, Tyshawn Ross, through his attorney, Alan Mills of the Uptown People's Law Center, as his answer to plaintiff's complaint, states as follows:

1. Defendant admits the allegations of paragraph 1.
2. Defendant admits that he began a hunger strike on March 23, 2003, and that the purpose of his hunger strike is to protest the fact that the Department of Corrections refuses to provide him with a proper Muslim diet. Defendant denies that his hunger strike has or ever had any relation to differences with paralegals. Defendant denies that he ever stated that he was striking because of differences with paralegals.
3. Defendant admits that he has ingested water by mouth, but has ingested nothing of nutritional value. Defendant denies that he has ever stated that he would not ingest adequate water, and has in fact done so.

4. Defendant denies that he has refused any medical or nursing evaluation or intervention. Rather, after being permitted to communicate with counsel, defendant agreed to all such monitoring. Defendant denies that it is impossible to tell how much damage he has sustained. Rather, the testing to which he agreed demonstrates that there is no such damage.

5. Defendant admits that if he continues on a hunger strike he will die, and further notes that whatever he does, he will die. Defendant also admits that if he were to stop ingesting water, he would die much sooner, but denies that he has done so.

6. Defendants deny the allegations of paragraph 6.

WHEREFORE, defendant requests that judgment be entered in his favor on the complaint.

AFFIRMATIVE DEFENSES

Facts Common To All Affirmative Defenses

1. Defendant is a practicing Muslim.
2. One of the tenets of defendant's Muslim religion is that certain food shall not be eaten.
3. Prisoners at Tamms Correctional Center are routinely provided with a diet which complies with the tenets of the Muslim religion.
4. Until approximately December, 2002, defendant requested and received a diet which complied with the tenets of the Muslim religion.
5. Defendant violated the tenets of the Muslim religion, and thus consumed a regular diet at Tamms, which included various foods prohibited by his Muslim religion.

6. After consultation and counseling with the Imam who serves prisoners at Tamms who practice the Muslim religion, defendant determined that he should resume a diet which complied with the requirements of his religion.

7. Defendant completed all of the proper requests required for a religious diet.

8. The Tamms Chaplain, Mr. Miller, refused to approve defendant's request for a diet which complied with his Muslim religion.

9. Mr. Miller stated that defendant would have to wait six months before he could obtain a diet which would comply with the requirements of defendant's Muslim religion.

10. The refusal of plaintiff to provide defendant with a diet which complies with the tenets of defendant's religious beliefs substantially burdens defendant's exercise of his religion.

11. Providing defendant with a proper religious diet would not impose any significant costs on plaintiff, as identical diets are already prepared for many prisoners at Tamms Correctional Center.

12. Refusal to provide defendant with a proper religious diet does not further any legitimate interest of plaintiff.

13. Refusal to provide defendant with a proper religious diet does not further any compelling interest of plaintiff.

14. There are less restrictive alternatives than refusing to provide defendant with a proper religious diet to achieve any compelling interest plaintiff may have.

15. At all times since he initiated his hunger strike, defendant has been, and remains, willing to terminate his hunger strike as soon as he is provided a diet which complies with the requirements of his Muslim religion.

FIRST AFFIRMATIVE DEFENSE

16. Defendant incorporates by reference the allegations contained in paragraphs 1 through 15 of the Facts Common to All Affirmative Defenses.

17. Forced feeding of defendant is a medical procedure.

18. Forced feeding of defendant would violate 755 ILCS 40/5 and 755 ILCS 40/20(a).

SECOND AFFIRMATIVE DEFENSE

19. Defendant incorporates by reference the allegations contained in paragraphs 1 through 15 of the Facts Common to All Affirmative Defenses.

20. Forced feeding of defendant would substantially burden defendant's exercise of his religion, in violation of 42 U.S.C. §2001cc-1.

THIRD AFFIRMATIVE DEFENSE

21. Defendant incorporates by reference the allegations contained in paragraphs 1 through 15 of the Facts Common to All Affirmative Defenses.

22. Forced feeding of defendant would violate defendant's rights to free speech, right to free exercise of his religion, right to privacy, and right to liberty, protected by the First, Fifth, and Fourteenth Amendments to the Constitution of the United States.

COUNTERCLAIMS

As his counterclaims against plaintiff, defendant states as follows:

COUNT ONE

23. Defendant incorporates by reference the allegations contained in paragraphs 1 through 15 of the Facts Common to All Affirmative Defenses.

24. The failure to provide defendant with a diet which complies with the tenets of his Muslim religion violates 42 U.S.C. §2001cc-1.

WHEREFORE, defendant requests that the Court:

- A. Enter a preliminary injunction, without bond, requiring plaintiff to provide him with a diet which complies with the tenets of his Muslim religion;
- B. Enter a permanent injunction requiring plaintiff to provide him with a diet which complies with the tenets of his Muslim religion;
- C. Enter judgment in favor of defendant and against plaintiff the amount of \$50,000.00, or such greater or lesser amount as a jury may award upon the trial of this case; and
- D. Award defendant his reasonable attorneys fees and costs.

COUNT TWO

25. Defendant incorporates by reference the allegations contained in paragraphs 1 through 15 of the Facts Common to All Affirmative Defenses.

26. The failure to provide defendant with a diet which complies with the tenets of his Muslim religion violates the First and Fourteenth Amendments to the Constitution of the United States.

WHEREFORE, defendant requests that the Court:

- A. Enter a preliminary injunction, without bond, requiring plaintiff to provide him with a diet which complies with the tenets of his Muslim religion;
- B. Enter a permanent injunction requiring plaintiff to provide him with a diet which complies with the tenets of his Muslim religion;

- C. Enter judgment in favor of defendant and against plaintiff the amount of \$50,000.00, or such greater or lesser amount as a jury may award upon the trial of this case; and
- D. Award defendant his reasonable attorneys fees and costs.

Respectfully submitted,



Attorney for defendant

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that he served a copy of the foregoing **Answer, Affirmative Defenses and Counterclaim** upon:

Reona Daly
Assistant Attorney General
1001 East Main Street
Carbondale, Illinois 62901

by faxing same to 618-529-6416, at or before 5:00pm on April 13, 2003. A copy of the fax receipt is attached hereto.

