

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CLERK OF COURT  
DISTRICT OF MASSACHUSETTS

SANDY J. BATTISTA,  
Plaintiff,

vs.

KATHLEEN M. DENNEHY, Commissioner;  
ROBERT MURPHY, Superintendent;  
STEVEN FAIRLY, Director of Security;  
SUSAN J. MARTIN, Director of Health Services,  
GREGORY J. HUGHES, LICSW; and  
UMASS. CORRECTIONAL HEALTH PROGRAM,  
sued in the individual and official  
capacities,

Defendant's.

C.A.NO.

05 - 11456 DPW

*Referred to NJTB Dein*

VERIFIED COMPLAINT

Plaintiff, Sandy J. Battista, an involuntarily civilly committed patient, acting pro-se, for her 1/ Complaint states as follows:

INTRODUCTION:

This is a Civil Rights Action requesting declaratory and injunctive relief and damages from the Commissioner of the Department of Corrections, defendant Kathleen M. Dennehy, her officers, agents and employees (jointly "Defendant's"), for depriving the plaintiff, as a civilly committed patient, of established constitutional and statutory rights because of sex, disability, gender identity and expression. The plaintiff also alleges the Tort of

[1] Though still biologically male, plaintiff has been diagnosed by three separate medical professionals as meeting the diagnostic criteria for "Gender Identity Disorder(NOS)" and recommended for cross-gender hormonal therapy. As such, [she] recognizes as being transgendered and prefers to be referred to by female pronouns. Phrased simply in non-medical terminology, plaintiff has the soul of a female in the body of a male.

-2-

Intentional and Reckless or Negligent Infliction of Emotional Distress.

JURISDICTION AND VENUE:

1) This Court has jurisdiction over this action pursuant to 28 U.S.C. §§1331-32 and 1343(3) and (4). The matters in controversy arise under 42 U.S.C. §1983.

2) Venue properly lies in this District pursuant to 28 U.S.C. §1391(b)(2), because the events giving rise to this cause of action occurred at the Mass. Treatment Center("MTC"), in Bridgewater, Massachusetts. Which is located within the Eastern District of Massachusetts.

3) The Court has supplemental jurisdiction over any of the plaintiff's state law claims pursuant to 28 U.S.C. §1367.

4) Plaintiff's claims for injunctive relief are properly authorized by 28 U.S.C. §§2283-84 and Rule 65 of the Federal Rules of Civil Procedure.

PARTIES:

5) Plaintiff, Sandy J. Battista("Battista"), is and was, at all times relevant hereto, a civilly committed patient in the care and custody of the Massachusetts Department of Corrections ("DOC"). At the time of the events relevant hereto, Battista was civilly committed to the MTC, located at 30 Administration Rd., Bridgewater, County of Plymouth, Massachusetts. 02324-3230.

6) Battista is and was, at all times mentioned herein, an adult citizen of the United States and a resident of the State of Massachusetts.

-4-

timing, and level of medical and mental health services.

13) At all times relevant hereto, all of the above-named defendant's have acted under "color of state law" and are sued in their individual and official capacities.

PREVIOUS LAWSUITS BY BATTISTA:

14) In and around July of 1997, while incarcerated, Battista brought a cause of action against the Commonwealth of Massachusetts, asserting that DOC medical providers were being deliberately indifferent to her (then) self-diagnosed gender disorder, with the County of Suffolk. See Sandy-Jo Battista vs. Commonwealth of Massachusetts, et al., C.A.No.97-3487-A(Suffolk Superior Court).

15) In and around July of 1998, the Suffolk Superior Court, in treating defendant's Motion as one for Summary Judgment, held that: "...it was Battista who has diagnosed herself as a transsexual. She has failed to proffer reliable evidence, such as a medical diagnosis rendered by a physician, confirming her assertion. Thus, the Court seriously doubts whether Battista will be able to put forth any evidence of a 'serious medical need' at trial." Id.

16) In and around January of 2002, while "temporarily" civilly committed, Battista brought a second cause of action against the DOC, and treatment providers employed by the DOC, asserting similar claims concerning her (then) "independently" diagnosed gender disorder, with the United States District Court. See Sandy J. Battista vs. Robert Murphy, Superintendent, et al., C.A.No.02-10137-MEL.(On file).

-5-

17) In and around October of 2002, in response to plaintiff's Application for a TRC, filed in the above mentioned action, defendant Hughes submitted a sworn affidavit before this Court, declaring that, upon contracting with defendant UMCHP, "a treatment plan will be developed to address Battista's medical and mental health issues" pertaining to her claimed gender issues. The very same "treatment plan" defendant's are now arbitrarily withholding, after taking an oath before this Court they would provide. (A copy of this Affidavit is attached herewith for the Court's convenience and marked as Exhibit-1) ("Ex.- 1").

18) In and around November of 2002, this Court (Lasker, J.), in ruling on the defendant's Motion to Dismiss in the above mentioned action, held that: "...the Complaint is dismissed pursuant to the res judicate doctrine. However, even if Battista's Complaint were not barred by res judicata, adjudicating Battista's injunctive and declaratory claims, prior to a definite order to civilly commit her would be premature." Ex.-2.

STATEMENT OF FACTS:

19) On 5/24/01, just five days prior to Battista's scheduled release date from prison, the Worcester County District Attorney's Office filed it's ex parte petition seeking a determination as to her (then) alleged "sexual dangerousness." See Commonwealth vs. Sandy J. Battista, WORCV01-1108-C.

20) On 5/25/01, as a result of the above petition, Battista was transferred from her previous place of incarceration to the MTC, to await disposition on the above civil petition to commit.

21) On 5/29/01, Battista was discharged from her previous

-6-

sentences of incarceration.

22) On 12/19/01, the Worcester Superior Court (Fecteau, J.), determined that there was probable cause to believe that Battista was a "sexually dangerous person," and ordered her held at the MTC pending examination by two Commonwealth examiner's.

23) On 3/1/02, Battista met with one of the above mentioned Commonwealth examiner's. Katrin (Rouse) Weir, Ed.D..

24) On 4/1/02, the above mentioned examiner submitted her Report to the Court on Battista's (then) alleged "sexual dangerousness." Ex.-3.

25) As part of the above examiner's Clinical Assessments and Conclusions, Dr. Weir opined that Battista's "gender issues" may have some "biological basis," which "clearly has a complex network of issues related to." As well concluding that Battista "needs to work through" those issues. Id.(at page-12, para.5["Summary Assessment"]); and (at page-14, para.3["Conclusions and Recommendations"]).

26) On 5/15/03, a Worcester Superior Court Jury of Battista's peers, declared her to be a "sexually dangerous person," and the Court (Sweeney, J.), ordered her committed to the MTC, for "an indeterminate period of a minimum of one day and a maximum of the [respondent's] natural life until otherwise discharged pursuant to the provisions of section 9." Ex.-4.

27) On 7/23/03, Battista, acting pro-se, filed her petition seeking a review of her "current" sexual dangerousness, under the provisions of section 9 of G.L. c.123A, of the Massachusetts General Laws. See Sandy J. Battista, petitioner vs. Commonwealth,

-7-

C.A.No.03-10744(Suffolk Superior Court).

28) On 11/13/03, while civilly committed, Battista was advised by one of her treatment providers, Dr. Nicholas Petrou, regarding her gender issues, "to seek services via the UMass mental health program." Ex.-5.

29) On 3/29/04, Battista submitted a written complaint with defendant Dennehy, pointing out that she was being treated differently compared to state prisoners similarly situated, who were being afforded "more considerate treatment." Ex.-6.

30) On 4/21/04, during an annual review of Battista's treatment progress, the MTC's Community Access Board, recommended that Battista "explore the relationship her gender issues have on her sexual offense risk in treatment." Ex.-7(at page-15["Issues Remaining for Treatment"]).

31) On 4/27/04, Battista submitted a second written complaint with defendant Dennehy, pointing out that the affidavit submitted to this Court by one of her employees (at ¶17, above), not only "obligated" her to honor those declarations, but withholding such is a form of "perjury." Ex.-8.

32) On 5/25/04, defendant Martin informed Battista that her previous complaints to defendant Dennehy (at ¶¶29 & 31, above), were referred to her for response. Ex.-9.

33) Defendant Martin further informed Battista that upon her request, the MTC's contractual mental health provider will schedule an independent evaluation to determine what course of treatment may be most important for her gender issues. Id.

34) On 8/10/04, upon Battista's request, arrangements were

-8-

made for her to be seen by two separate independent gender specialists for the development of a treatment plan to address medical and mental health issues regarding her claimed gender issues.

35) On 11/16/04, the above mentioned gender specialists submitted their report, clinically diagnosing Battista as meeting all of the diagnostic criteria for "Gender Identity Disorder-(NOS)," and recommended a treatment plan that included cross gender hormonal therapy, as well as individual psychotherapy to support the adjustment the hormones will bring. Ex.-10.

36) In and around November of 2004, arrangements were made, in accordance with the above treatment plan, so that Battista was provided individual psychotherapy, by a clinician being trained to counsel her to support the adjustments the hormones will bring.

37) In and around April of 2005, also in accordance with the above treatment plan, arrangements were made to have Battista seen by an outside specialist in Endocrinology for the purpose of an appropriate medical prescription to address hormonal therapy.

38) Shortly thereafter, Battista was seen by the MTC's in house physician, Dr. Friedman, who submitted an order to fill the above medical prescription.

39) On 4/25/05, after numerous letters of inquiry as to what the delay was in the above prescribed medical treatment, Battista was informed in person by the MTC's Health Services Administrator, Maryanne Percuoco, that defendant's Dennehy, Martin, Murphy and Fairly had an administrative "hold" on her

-9-

medical prescription, pending some so-called "security review."

40) On 4/26/05, as a direct and proximate result of the above mentioned administrative hold, Battista had an emotional breakdown and was placed under a psychiatrist's care, as well as on Antidepressants, due to the overwhelming anxiety she was experiencing and a sense of hopelessness over the recent news in withholding her prescribed medical treatment.

41) On 4/27/05, Battista wrote defendant's Murphy and Fairly and requested that any pending administrative "security review" of her prescribed treatment be "expedited," due to the continual deterioration in her mental health and well-being. Ex.-11. (A copy of this correspondence was also directed at defendant Dennehy's attention as well. Ex.-12).

42) On 5/5/05, Battista again wrote defendant Murphy, regarding not receiving any response to her request above, as well as bringing to his attention the extreme profound effects she was experiencing in the delay in her prescribed treatment. Ex.-13.

43) On 5/9/05, Battista was removed from the general population of the MTC and placed in its segregation (minimum privilege) unit on administrative watch, due to another emotional breakdown over the stress and anxiety she was experiencing in the delay in her prescribed treatment.

44) Also on 5/9/05, defendant Martin informed Battista that her medical prescription (at ¶¶37-38, above) was currently being reviewed by defendant UMCHP "to determine it's appropriateness and necessity." as well as by DOC administrators "to deter-



-10-

mine any potential security contraindications." Ex.-14.

45) On 5/13/05, Battista wrote defendant UMCHP of her concerns and questions, relevant to why they were conducting a medical review of the appropriateness and necessity of their own sub-contracted medical professional's treatment recommendations. Ex.-15.

46) In her correspondence, Battista also pointed out that, the right to the prescribed treatment at issue was not just a question of Battista's health and well-being. Rather, the question must also be focused on "whether the prescribed treatment is statutorily mandated and necessary." Id.

47) On 5/17/05, due to the continual deterioration in Battista's mental health and well-being, her treating psychiatrists felt it medical necessary to double the dosage in her Antidepressants.

48) On 5/27/05, defendant Martin informed Battista that her correspondence to defendant Dennehy (at ¶41, above) was referred to her for response. Ex.-16.

49) Defendant Martin reiterated to Battista that her prescribed treatment still was under review. However, defendant Martin now alleges that the "review" is being conducted in "the context of a prison environment." Id.

50) On 6/2/05, Battista wrote defendant Martin of her concerns that her status as being "civilly" committed, as well as the implication that being denied prescribed treatment would have on the remedial aspect of her commitment is not being considered. Battista further questioned why the alleged pending review was being conducted in the context of a "prison environ-

- 11 -

ment," rather than in the context of a "mental health facility." Ex.-17. (A copy of this correspondence was also directed at defendant Dennehy's attention. Ex.-18).

51) In her correspondence, Battista also notified defendant's Martin and Dennehy of her intent on pursuing a TR0, should she not receive her medically prescribed treatment in an appropriate time period. Id.

52) Battista was competently clinically diagnosed by two separate gender specialist as meeting all of the diagnostic criteria for "Gender Identity Disorder(NOS)."

53) Consistent with the above clinical diagnosis, the examiner's determined that it is clinically and medically necessary and appropriate for Battista to be provided cross-gender hormonal therapy, and individual psychotherapy by a person experience, and/or trained to counsel persons with gender disorders, to support the adjustment that the hormones will bring.

54) Also consistent with the above clinical diagnosis, the clinical treatment outlined by the Harry Benjamin International Standards of Care deem it clinically and medically necessary and appropriate for Battista to wear clothing that is consistent with her female gender expression, and prohibiting her from doing so could cause grievous harm to Battista's mental health and well being.

55) In addition to being clinically and medically necessary and appropriate, Battista's wearing clothing typically worn by females is a statement and expression of who she is.

56) Battista's medical records reveal that she was born

-12-

with a rare medical condition referred to by the medical profession as "Congenital Adrenal Hyperplasia." This condition is an "intersex" condition and "physical impairment" at birth, and corresponds with the existence of the above psychological condition, "Gender Identity Disorder(NOS)."

57) As a proximate result of the defendant's withholding medically prescribed treatment, Battista has been denied the opportunity to eliminate risk factors during the course of her civil commitment.

58) As an additional proximate result of the defendant's withholding medically prescribed treatment, Battista has suffered the following immediate and irreparable harm: extreme stress and anxiety, a sense of hopelessness in treatment, which has affected her eating and sleeping habits, as well as her weight and ability to function in her normal daily routines, as well as ability to participate productively in on-going treatment for those sexual offending behaviors which she was originally committed under. Such harm and the potential impact on Battista's continued liberty is neither compensable or speculative.

59) Defendant's have made an arbitrary and medically unsupported decision to forego providing Battista with necessary prescribed medical treatment.

60) Defendant's have acted in a manner which treats Battista, because of the nature of her medical and mental health condition, differently from other state prisoners and patients at the MTC suffering from equivalent medical and mental health conditions.

61) Defendant's have treated Battista's medical and mental

-13-

health needs differently from those other similarly situated inmates and patients solely on the basis of class, i.e., inmates and patients with gender issues.

62) Defendant's not only have a moral obligation to the public, but also have a statutory obligation under c.123A "to do all that can be done to treat and rehabilitate" Battista. Including, but not limited to, treating Battista's "gender issues."

63) Had Battista been provided such medically prescribed treatment, her risk of committing a new sexual offense would have been eliminated. As studies reveal that the risk of reoffending among castrated sex offenders is virtually nil.

64) The acts of the defendant's have been conscious, repeated and have intentionally or recklessly and negligently caused Battista extreme emotional distress.

65) Upon information and belief, defendant's are providing state prisoner's housed in the general population of an all male adult state prison with hormonal therapy, as well as the right to retain, at their own expense, female clothing and make-up. This has apparently caused no security problems.

66) As a practical matter, to the best of Battista's personal knowledge and belief, her attempt at appearing feminine by altering her male clothing in a feminine fashion, and fashioning make-up from colored pencils and wearing her hair in feminine style, has never caused undue disruption, disorder, or distraction within the DOC, since 1995 thru date.

-14-

CAUSES OF ACTION:

COUNT I

67) Battista incorporates by reference and realleges paragraphs 1 through 66 of the Complaint as if fully set forth herein.

68) By withholding necessary medically prescribed treatment, defendant's have violated Battista's constitutional substantive due process rights in treatment; 103 DOC 630.00("Medical Services"); 103 DOC 650.00("Mental Health Services"); and G.I. c.123A, §2.

COUNT II

69) Battista incorporates by reference and realleges paragraphs 1 through 66 of the Complaint as if fully set forth herein.

70) By withholding necessary medically prescribed treatment, where such treatment has been provided to state prisoners suffering from analogous medical conditions, without a rational basis and legitimate purpose, defendant's have violated Battista's constitutional rights to equal protection.

COUNT III

71) Battista incorporates by reference and realleges paragraphs 1 through 66 of the Complaint as if fully set forth herein.

72) By withholding necessary medically prescribed treatment, defendant's actions have violated Battista's constitutional rights to be free from discrimination based on sex, disability, gender identity, and expression.

COUNT IV

73) Battista incorporates by reference and realleges paragraphs 1 through 66 of the Complaint as if fully set forth herein.

-15-

74) By withholding necessary medically prescribed treatment, defendant's actions have denied Battista the opportunity to eliminate risk factors during the course of her civil commitment. Thus, impacting Battista's continued liberty.

COUNT V

75) Battista incorporates by reference and realleges paragraphs 1 through 66 of the Complaint as if fully set forth herein.

76) By withholding necessary medically prescribed treatment, defendant's have acted in an intentional or recklessly negligent manner causing Battista extreme emotional distress.

RELIEF REQUESTED:

WHEREFORE, Battista request the following relief:

(a) a declaratory judgment that the defendant's have a constitutional and statutory obligation to ensure that Battista receives adequate and necessary medical treatment for her "gender issues;"

(b) a declaratory judgment that the defendant's acts have constituted "deliberate indifference" to Battista's prescribed medical treatment;

(c) a declaratory judgment that the defendant's acts have denied Battista equal protection;

(d) a declaratory judgment that the defendant's acts have constituted discrimination based on sex, disability, gender identity, and expression;

(e) issue a temporary restraining order and/or preliminary injunction against defendant's prohibiting them from withholding

-16-

Battista's medical prescription, previously prescribed by a Dr. Maria Warth on April 12, 2005;

(f) issue a permanent injunction against the defendant's, their successors in office, agents and employees and all other persons acting in concert and participation with them, from withholding from Battista any and all treatment recommendations deemed clinically and medically necessary and appropriate by medical professionals addressing Battista's gender issues;

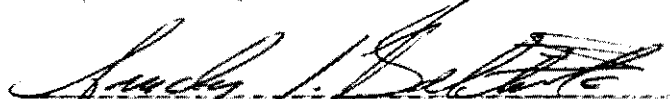
(g) issue a permanent injunction against the defendant's, their successors in office, agents and employees and all other persons acting in concert and participation with them, from prohibiting Battista from wearing female clothing and using female hygiene supplies and make-up;

(h) an award of damages for causing Battista's severe emotional distress, as well as her costs and attorneys' fees and other relief authorized by law; and

(i) such other and further relief as the Court may deem just and proper.

Dated: 7/6/05.

Respectfully submitted,



Sandy J. Battista, #M-15030  
Plaintiff/Pro-se  
Mass. Treatment Center  
30 Administration Rd.  
Bridgewater, Mass. 02324-3230

-17-

CERTIFICATE OF VERIFICATION

I, Sandy J. Battista, being duly sworn, deposes and says that I am the plaintiff in the above-captioned action, that she has read the foregoing Complaint and knows the contents thereof, that the same is true and accurate to the best of her own personal knowledge and belief, except as to matters therein stated upon information and belief, which matters she believes to be true and accurate.

Signed under the pains and penalties of perjury this

6th day of July, 2005.



Sandy J. Battista, #M-15930  
Mass. Treatment Center  
30 Administration Rd.  
Bridgewater, Mass. 02224-3230