

64 Fed.Appx. 531

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United States Court of Appeals,
Sixth Circuit.

Everett HADIX, et al., Plaintiffs-Appellees,

v.

Perry M. JOHNSON, et al.,
Defendants-Appellants.

No. 02-2419. | May 29, 2003.

Before: KENNEDY and DAUGHTREY, Circuit Judges.

Opinion

ORDER

The state defendants appeal the October 29, 2002, Order and Injunction in this prisoner civil rights action involving the Michigan prisons. On April 2, 2003, the court denied the plaintiffs' motion to vacate and remand and granted a stay of the October 29 Order and Injunction to the extent that, effective May 1, 2002, the defendants were enjoined from placing or maintaining at-risk prisoners in an environment where the heat index is greater than 90 degrees. The district judge has now certified, pursuant to *First Nat'l Bank of Salem, Ohio v. Hirsch*, 535 F.2d 343

(6th Cir.1976), that if the case were remanded, he would modify the injunctive relief set forth in the October 29 Order and Injunction. The plaintiffs now move to remand to the district court.

The defendants oppose the motion to remand, arguing that their appeal challenges not only failure of the district court to comply with the Prison Litigation Reform Act (the "PLRA") prior to granting injunctive relief, but the court's finding of a constitutional violation with respect to heat-related illness and its assertion of jurisdiction over facilities not subject to the consent decree. However, no final judgment has been entered in this action, and the October 29 Order and Injunction is appealable only to the extent that it grants injunctive relief. *See* 28 U.S.C. § 1292(a)(1). Because the district court has certified that it will modify the injunctive relief, the defendants' objections to the remand are not well-taken.

Therefore, the motion to remand is **GRANTED**, and this appeal is remanded to the district court to vacate the injunctive relief set forth in the October 29 Order and Injunction and conduct further proceedings in accordance with the PLRA. The April 2 stay granted by this court will remain in effect until the district court modifies its October 29 Order and Injunction to vacate the provision enjoining the defendants from placing or maintaining the at-risk prisoners in an environment where the heat index is greater than 90 degrees.

Parallel Citations

2003 WL 21259171 (C.A.6 (Mich.))