

1988 WL 47359

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United States District Court, D. New Jersey.

Jane ROE, on behalf of herself and all others
similarly situated, Plaintiff,

v.

William H. FAUVER, in his official capacity, Gary
Hilton, in his official capacity, Robert Walton, in
his official capacity, John Forker, in his official
capacity, and Richard Reed, M.D. in his official
capacity, Defendants.

CIV. No. 88–1225 (AET). | May 13, 1988.

Attorneys and Law Firms

Alfred A. Slocum, Public Advocate/Public Defender,
Department of the Public Advocate, Trenton, New Jersey
by Catherine A. Hanssens, Assistant Deputy Public
Defender, Office of Inmate Advocacy, for plaintiffs.

Stephen P. Tasy, Dep. Atty. Gen., Trenton, N.J., for
defendants.

Opinion

OPINION

THOMPSON, District Judge.

*1 This matter comes before the court on a motion by plaintiff Jane Roe for a preliminary injunction enjoining defendants William Fauver, *et al.* from continuing her confinement in isolation at the St. Francis Medical Center. Plaintiff wishes to be returned to the Corrections Institute for Women in Clinton [“Clinton”] where she was imprisoned prior to the diagnosis of AIDS. Plaintiff has been diagnosed as having Acquired Immune Deficiency Syndrome (AIDS) and was initially hospitalized for pneumonia. She has now recovered from pneumonia and the parties agree that her AIDS is in remission at this time. Current prison policy prohibits the return of an inmate diagnosed as having AIDS to the general prison population. Male prisoners with AIDS who are in remission are placed in the Special Medical Unit attached to Trenton State Prison. At the moment there is no similar facility for female prisoners suffering from AIDS, although prison officials indicate that such a facility is under construction on the grounds of the prison in Clinton. Plaintiff argues that confining an inmate with AIDS to a hospital room violates her Eighth Amendment right to be free from cruel and unusual punishment and

her Fourteenth Amendment right to equal protection. Furthermore, plaintiff argues that using St. Francis Medical Center as a place of confinement for female prisoners with AIDS in remission is contrary to sound public policy.

In reviewing an application for a preliminary injunction the court must examine four factors:

- (1) whether the moving party has shown a reasonable chance of success on the merits;
- (2) whether the moving party will suffer irreparable harm if the motion is denied;
- (3) whether the preliminary injunction would result in greater harm to the defendants; and
- (4) whether an injunction is in the public interest.

Monmouth County Correct. Inst. Inmates v. Lanzaro, 643 F.Supp. 1217, 1222 (D.N.J.1986), *aff’d* 834 F.2d 326 (3d Cir.1987). *See also Pilgrim Medical Group v. New Jersey State Board of Medical Examiners*, 613 F.Supp. 837, 845 (D.N.J.1985).

A hearing was held on March 31, 1988 and April 1, 1988 in which witnesses for the respective parties testified in support of their opposing positions.

Plaintiff presented the following witnesses:

Chaplain Carol Bamesberger—Chaplain at both St. Francis Medical Center and at the special unit at Trenton State Prison. Testified to the spartan, bare conditions of Jane Doe’s hospital room, the deterioration of the plaintiff’s mental state, depression, etc.

Father Dennis O’Brien—Chaplain at Youth Correctional Facility at Bordentown and volunteer chaplain at St. Francis.

Dr. Robert Swenson—Medical witness with broad experience in infectious diseases.

The defendants called the following witnesses:

Mr. Gary Hilton—Assistant Commissioner of Corrections

Dr. Isabel Guerrero—Author of the New Jersey Department of Corrections AIDS protocol.

Dr. Richard Reed—Medical Director of the New Jersey Department of Corrections.

*2 Federal courts have held that prison officials have

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significant discretion in determining a prisoner's particular placement, her custody status, and her access to rehabilitation projects or work. See *Dozier v. Hilton*, 502 F.Supp. 1299, 1306 (D.N.J.1981) and *Hluchan v. Fauver*, 480 F.Supp. 103, 108 (D.N.J.1979). Furthermore, once a prisoner's basic entitlements are met, prison officials are permitted to place certain restrictions on an inmate's recreation, work opportunities, interaction with other inmates and visitation. See *Rowe v. Fauver*, 533 F.Supp. 1239, 1244 (D.N.J.1982). Plaintiff argues that her confinement to a hospital room for the past nine months has precluded opportunities for meaningful exercise or recreation and deprived her of the privileges she had as a minimum security prisoner at Clinton. She argues that confinement under these conditions violates her Eighth Amendment right to be free from cruel and unusual punishment. Furthermore, she argues that there is no medical reason to keep her confined to a hospital room.

Plaintiff's doctors argue that a person with AIDS does not have to be isolated from other people for her own benefit, to protect her from bacteria and other sources of infection in the environment. They maintain that isolation serves no protective purpose because the "opportunistic infections which endanger persons with AIDS and ARC are not characteristically airborne and in fact usually arise from organisms already present within the individual's respiratory or digestive tract."

Plaintiff's doctors also contend that the depression plaintiff suffers in isolation undermines her health. Plaintiff is not entitled under the Constitution to a particular amount of recreation indoors or outdoors. The decisions of this court and the Third Circuit Court of Appeals cited by the plaintiff do not hold that all inmates are entitled to certain amounts of recreation or to a certain amount of time out of doors. These cases concerning recreation are specifically in the context of inmates who are in overcrowded prisons. In cases involving double-celling the courts have held that a way to mitigate the effects of the overcrowding is to allow one hour of recreation a day. *Inmates of Allegheny County Jail v. Wecht*, 745 F.2d 120 (3d Cir.1985); *Union County Jail Inmates v. DiBuono*, 713 F.2d 984, 996 n. 17, 1000-1 n. 29 (3d Cir.1983), cert. denied 465 U.S. 1102. *Monmouth County Correctional Inst. Inmates v. Lanzaro*, 595 F.Supp. 1417, 1435 (D.N.J.1984). In the instant case the plaintiff is not in an overcrowded cell, she is alone in a hospital room. There has been no showing that she is not free to leave her bed and to move around the room nor that there is not adequate space in the room to walk around. Indeed, there was testimony that the plaintiff's hospital room is approximately 12 x 16. The court is mindful of the fact that plaintiff is not permitted to go outdoors and will address the equal protection problems with that restriction later on in its opinion.

The fact that plaintiff is for most of the day in solitary

confinement, *i.e.*, alone in a single room, is obviously not the preferable custody placement for an inmate who is not being placed in such a situation because of disciplinary problems but rather because she has had the misfortune to contract an incurable disease. The prison's position is that isolating her from the general population is a reasonable medical approach which is in the best interest of the plaintiff and the rest of the prison population. Testimony showed that there is dispute both medically and ethically as to whether other approaches could be devised within a prison setting which would be both more humane and would protect all relevant individuals from harm. Plaintiff has not shown that the defendants' reasons are so insupportable and the treatment is so cruel as to constitute deliberate indifference to plaintiff's medical needs or cruel and unusual punishment. The court cannot at this time find that plaintiff has shown a probability of success on the merits of her allegations that her confinement to a hospital room is a violation of her Eighth Amendment rights.

*3 Furthermore, plaintiff does not appear to have a probable chance of success on the merits on her claim of inadequate dental care. In order to show inadequate dental care which rises to the level of a constitutional violation plaintiff must show that there has been deliberate indifference to her serious medical needs. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). The dentist who has been treating the plaintiff indicates that he is proceeding with her dental care pursuant to his own diagnosis. She has been fitted for two new crowns and when the crowns are in place he will fit her for upper and lower dentures. Based upon the evidence before it the court cannot find that plaintiff has a probable chance of success on the merits on her claim of inadequate medical care. The precautions being taken by defendant may be excessive but it cannot be said that they are so definitively excessive given the state of medical knowledge as to be callously indifferent to serious medical needs or the malicious imposition of pain.

Plaintiff alleges that her rights to equal protection under the Constitution have been violated because she is not treated the same as male prisoners with AIDS in remission. Male inmates with AIDS are housed in a Special Medical Unit where they do have limited opportunities for recreation and for interaction with the other inmates in the unit. Plaintiff argues that male prisoners assigned to the Special Medical Unit are not subject to the restrictions placed on her. Pursuant to prison policy once an inmate is diagnosed as suffering from AIDS he or she is not permitted to return to the general prison population. Male AIDS victims are confined to the Special Medical Unit and, at the moment, female AIDS victims are confined to St. Francis Medical Center. The Department of Corrections ["DOC"] has begun the process of constructing a Special Medical Unit for female AIDS victims on the grounds of Clinton

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according to the testimony of Gary Hilton. Prison officials have indicated that at least in terms of the privileges allowed, plaintiff's confinement is similar to that of the male AIDS victims in the Special Medical Unit. The male inmates are allowed two contact visits per week as is the plaintiff. Male inmates are shackled and handcuffed when they travel outside the prison as was the plaintiff when she was taken to the dentist. Male inmates are allowed unlimited attorney visits and permitted to make legal telephone calls. The plaintiff has not complained that these rights have been denied her.

Plaintiff argues that she has not had legal access in the form of access to a law library. She does not, however, make any showing that she has requested legal access and it has been denied. The court notes that pursuant to *Bounds v. Smith*, 430 U.S. 817 (1977), plaintiff has a constitutional right to legal access. She does not, however, have a right to actually go to a prison law library. Those prisoners who do not have physical access to a law library must obtain their legal access either through access to reference materials and requests from the law library and/or through access to prisoner paralegals or other research assistance.

*4 Unlike male inmates plaintiff does not have the opportunity to speak with other inmates. It appears that plaintiff is, at this time, the only female AIDS patient in remission identified in the prison system. Even if she were in a unit identical to the men's unit, there is no indication that she would have any other inmates to talk with. The court cannot find that this particular situation violates the equal protection clause.

Male inmates do get one hour of recreation a day and if the temperature is over 32 degrees they are allowed outdoors. Plaintiff does apparently have space to move around in her hospital room, but is never permitted

out-of-doors for recreational purposes. As far as the court can tell from the evidence presented, apart from her trips to the dentist plaintiff has not been outside for nine months.

The Department of Corrections has not, at this time, shown that denying plaintiff any access to the outdoors for nine months is rationally related to a legitimate state purpose. Although defendants state that "Roe's desire for additional recreation must inevitably yield to the greater need to protect her life and health," the defendants have not shown that allowing plaintiff some opportunity to have outdoor recreation would put her life at risk.

Based on the evidence now before the court, we cannot find that plaintiff is suffering irreparable harm in any area other than the deprivation of recreation comparable to the male AIDS victims. Plaintiff has not shown a probability of success on the merits on her claims of violations of her rights under the Eighth Amendment or on her claims that she may be suffering violations of the equal protection clause. Without a showing of a violation of her constitutional rights, plaintiff has not shown irreparable harm. Plaintiff has not met the two crucial criteria for obtaining a preliminary injunction—probability of success on the merits and irreparable harm except with respect to outdoor recreation. The court will deny the plaintiff's motion for an injunction returning plaintiff to Clinton at this time and requests that the parties meet with the court on May 27, 1988 at 10:00 a.m. for a status conference and a report on the construction of the new unit at Clinton.

Defendants are to submit an order consistent with this opinion within ten (10) days.