

Hart v. Maricopa County Sheriff's Office

United States District Court for the District of Arizona

September 28, 2006, Decided

No. 77-479-PHX-EHC

Reporter: 2006 U.S. Dist. LEXIS 89545

Damian Hart, et al., Plaintiffs, vs. Maricopa County Sheriff's Office, Joe Arpaio, the duly Elected Sheriff of Maricopa County, et al., Defendants.

Subsequent History: Motions ruled upon by Hart v. Agnos, 2008 U.S. Dist. LEXIS 40459 (D. Ariz., Apr. 24, 2008)

Prior History: Hart v. Maricopa County Sheriff's Office, 2005 U.S. Dist. LEXIS 22300 (D. Ariz., Sept. 30, 2005)

Counsel: [*1] For Damian Hart, Michael G McKane, Bartholomew L Trumble, Plaintiffs: Alice Loeb Bendheim, Alice L Bendheim PC, Phoenix, AZ.; David Cyrus Fathi, ACLU National Prison Project, Washington, DC.; David B Rosenbaum, Diane M Meyers, Jason J Romero, Larry A Hammond, Debra Ann Hill, Osborn Maledon PA, Phoenix, AZ.; Theodore C Jarvi, Law Offices of Theodore Jarvi, Tempe, AZ.

For Fulton Brock, Maricopa County Supervisor, District 1, Don Stapley, Maricopa County Supervisor, District 2, Andrew Kunasek, Maricopa County Supervisor, District 3, Max W Wilson, Maricopa County Supervisor, District 4, Mary Rose Wilcox, Maricopa County Supervisor, District 5, Plaintiffs: Adam S Poison, Dennis Ira Wilenchik, Wilenchik & Bartness PC, Phoenix, AZ.

Tom Agnos, the duly Elected Sheriff of Maricopa County, Henry H Haws, Bob Corbin, Maricopa County Supervisors, Board of, Defendants: Adam S Poison, Dennis Ira Wilenchik, Wilenchik & Bartness PC, Phoenix, AZ.

For Ed Pastor, Defendant: Dennis Ira Wilenchik, Wilenchik & Bartness PC, Phoenix, AZ.

For Allan S MacDonald, Movant, Pro se, Tucson, AZ.

Winfred Brown, Movant, Pro se, St Johns, AZ.

Theodore Chester Kulas, Movant, Pro se, Tucson, [*2] AZ.

James Anthony Sanchez, Movant, Pro se, Florence, AZ.

For Maricopa County Sheriffs Office, Defendant: Michele Marie Iafate, Iafate & Associates, Phoenix, AZ.

Judges: Earl H. Carroll, United States District Judge.

Opinion by: Earl H. Carroll

Opinion

ORDER

Pending before the Court is Magistrate Judge Sitver's Report and Recommendation and Order ("R&R") (Dkt. 1105), and the parties' objections to that R&R (Dkts. 1106 & 1108).

The following motions are also pending before the Court:

1. Plaintiffs' Motion for Partial Judgment. (Dkt. 946.)
2. Defendants' Motion for Protective Order. (Dkt. 1108.)
3. Defendants' Motion for Hearing. (Dkt. 1109.)
4. Plaintiffs' Motion to Enforce Magistrate Judge's Order. (Dkt. 1113.)
5. Alice Bendheim's Motion to Withdraw as Counsel of Record. (Dkt. 1153.)
6. Plaintiffs' Motion for Reconsideration of Order Granting an Extension of Time. (Dkt. 1154.)
7. Defendants' Motion for Leave to File Excess Pages. (Dkt. 1159.) The Court will address each in turn.

Magistrate Judge Sitver's Report and Recommendation

Plaintiffs' Motion for Partial Judgment (Dkt. 946)

Legal Standard

After a magistrate [*3] judge has issued a recommendation on a dispositive motion, and objections have been filed, the "district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written

objection has been made in accordance with this rule." Fed. R. Civ. P. 72(b). The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions. Id.

Discussion

Magistrate Judge Sitver recommended that Plaintiffs' Motion for Partial Judgment (Dkt. 946) be denied in its entirety. R&R, p. 37 (Dkt. 1105.)

Plaintiffs objected to the Report and Recommendation. Plaintiffs argued that (1) the Magistrate Judge erred in applying the *Eighth Amendment* "deliberate indifference" standard to the claims of pretrial detainees, (2) the Magistrate Judge erred in requiring Plaintiffs to show municipal liability in cases dealing only with injunctive relief, (3) the Magistrate Judge erred in suggesting that Defendants may be entitled to qualified immunity in cases [*4] dealing only with injunctive relief, (4) the Magistrate Judge erred in requiring Plaintiffs to prove that actual harm has already occurred to be entitled to relief, and (5) the Magistrate Judge erred in concluding that Defendants' admitted practice of holding detainees overnight without providing beds is not unconstitutional.

Rule 52 of the Federal Rules of Civil Procedure provides,

If during a trial without a jury a party has been fully heard on an issue and the court finds against the party on that issue, the court may enter judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue, or the court may decline to render any judgment until the close of all the evidence. Fed. R. Civ. P. 52(c). The Court, having considered Plaintiffs' objections to Magistrate Judge Sitver's Report and Recommendation, "declin[e] to render any judgment until the close of all the evidence." Id. The Court will deny Plaintiffs' Motion for Partial Judgment.

Defendants' Objection

[*5] Defendants object to Magistrate Judge Sitver's order requiring Defendants to produce certain discovery, as described in that order (Dkt. 1105).

Legal Standard

When a magistrate judge enters an order on a pretrial matter that is not dispositive of a claim or defense of a party, that party may serve and file objections to the order. Fed. R. Civ. P. 72(a). "The district judge to whom the case is assigned shall consider such objections and shall modify or set aside any portion of the magistrate judge's order found to be clearly erroneous or contrary to law."

Discussion

Defendants argue that disclosure of these documents should not be disclosed or discovered for various reasons. The Court, having reviewed the Magistrate Judge's Order, finds that it is not clearly erroneous or contrary to law. The Court will overrule Defendants' objections.

Defendants note, however, that "[s]hould the Court Order that the County produce the documents objected to herein, it is requested that these documents should then be subject to a protective order confidentially restricting use of these documents only to the instant litigation after in camera review. [*6] " Objection, p. 1 (Dkt. 1108.) Plaintiffs claim that Defendants "are pushing at an open door," and that Plaintiffs are not only amenable to an appropriate protective order, but "have repeatedly suggested that a protective order would address defendants' confidentiality concerns." Response, p. 7-8 (Dkt. 1112.) The Court will lift the stay on Magistrate Judge Sitver's Order. ¹ Defendants will be ordered to produce the documents outlined in Judge Sitver's Order within 40 days of the filing date of this Order. Should the parties find it necessary, the parties will also be ordered to file a Proposed Protective Order within 20 days of the filing date of this Order. Defendants' Motion for Protective Order will be denied without prejudice.

Accordingly,

IT IS ORDERED that the stay (Dkt. 1120) on Magistrate Judge Sitver's R&R / Order [*7] (Dkt. 1105) is **LIFTED**.

IT IS FURTHER ORDERED that Defendants produce the documents outlined in Judge Sitver's Order (Dkt. 1105) within 40 days of the filing date of this Order.

IT IS FURTHER ORDERED DENYING without prejudice Defendants' Motion for a Protective Order (Dkt. 1108.)

IT IS FURTHER ORDERED that the parties are to submit a Stipulated Proposed Protective Order within 20 days of the filing date of this Order, if the parties determine a protective order is necessary.

¹ This Court had previously stayed Magistrate Judge Sitver's Report and Recommendation and Order pending review of the parties' Objections to that Order. *See* Order (Dkt. 1120.)

IT IS FURTHER ORDERED DENYING Plaintiffs' Motion for Partial Judgment. (Dkt. 946.) Pursuant to Rule 52(c), the Court "decline[s] to render any judgment until the close of all the evidence."

IT IS FURTHER ORDERED DENYING as moot Plaintiffs' Motion to Enforce Court Order. (Dkt. 1113.)

IT IS FURTHER ORDERED DENYING Defendants' Motion for Hearing on Objections to Magistrate Judge Sitver's Report and Recommendation. (Dkt. 1109.)

IT IS FURTHER ORDERED GRANTING Alice Bendheim's Motion to Withdraw as Counsel of Record. (Dkt. 1153.)

IT IS FURTHER ORDERED DENYING Plaintiffs' Motion for Reconsideration of this Court's Order Granting an Extension of Time. (Dkt. [*8] 1154.)

IT IS FURTHER ORDERED GRANTING Defendants' Motion for Leave to File Excess Pages. (Dkt. 1159.)

IT IS FURTHER ORDERED that the Court will rule on Plaintiffs' Omnibus Discovery Motion by separate order. In that order, the Court will set a schedule for further proceedings.

DATED this 28th day of September, 2006.

Earl H. Carroll

United States District Judge