IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

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| FREDERICK V. HARPER, et al.,<br>Plaintiffs,<br>v.<br><br>FULTON COUNTY, GEORGIA, et al.,<br>Defendants. | CIVIL ACTION FILE<br>NO. 1:04-CV-1416-TWT |

OPINION AND ORDER

This is a class action involving conditions at the Fulton County Jail. It is before the Court on the Plaintiffs' Motion to Order the Defendants[1] to Show Cause Why They Should not be Held in Contempt [Doc. 300]. For the reasons set forth below, the motion is granted.

## I. Background

On May 19, 2004, the Plaintiff Frederick Harper, an inmate at the Fulton County Jail, filed this action *pro se*, alleging the use of excessive force by jail staff. On June 22, 2004, attorneys from the Southern Center for Human Rights entered their

[1] Fulton County and the individual members of the Fulton County Board of Commissioners will be referred to collectively as the "Fulton County Defendants."

appearance on behalf of the Plaintiffs and filed an amended class action complaint on behalf of all inmates at the Fulton County Jail seeking declaratory and injunctive relief with regard to allegedly deplorable conditions at the jail. The amended complaint alleged, among other things, that the jail was dangerously overcrowded and understaffed, and that the locks on many of the cells did not work. Am. Compl. [4] ¶¶ 24-26.

In December 2005, the parties reached a settlement and presented the Court with a comprehensive Consent Order enumerating the actions the Defendants had agreed to undertake to remedy the conditions at the jail. Following a fairness hearing, the Court approved the settlement and entered the Consent Order on February 7, 2006. Among other things, the Consent Order placed a cap of 2,500 on the number of inmates that may be housed at the jail's Rice Street facility[2] and provides that "[n]o inmate shall be required to sleep on the floor." Consent Order [89] ¶¶ 18-19. The Consent Order also established mandatory minimum staffing levels for each cellblock and required that "[a]ll cell doors at the Jail shall be equipped with functioning locks which can be opened remotely from the tower," and that "[t]hese locks shall be maintained in good working order." Id. ¶¶ 16, 25-26.

[2] The Consent Order originally set a cap of 2,250, but the Court later agreed to increase the cap to 2,500. Order of April 29, 2010 [247] at 2.

Pursuant to the terms of the Consent Order, a monitor selected by the parties inspects the jail at least once a quarter and provides a report to the Court and the parties on the Defendants' compliance. Id. ¶ 103. The current monitor, Calvin Lightfoot, inspects the jail every month and produces a quarterly report. The monitor's latest report, issued last month, states that due to an increase in the number of inmates and the Fulton County Defendants' decision to eliminate funding for outsourcing inmates to other jails, the population at the Rice Street facility has exceeded the cap of 2,500. Twenty-Eighth Quarterly Report of the Court Monitor [303] at 7. Consequently, large numbers of inmates are sleeping on the floor. Id. The monitor also reports that the jail continues to be understaffed, with officer and supervisor mandated posts achieving only 88% and 78% coverage, respectively. Id. at 6-7. Finally, the monitor reports that a contractor hired by the County has begun replacing malfunctioning locks at the jail, but that the process will not be completed until April or May of 2014. Id. at 9. As a result of overcrowding, understaffing, and the continued existence of malfunctioning locks, it is the monitor's opinion that "the Fulton County Jail, at this juncture, is an unsafe facility for inmates and staff." Id. at 11.

On October 10, 2013, the Plaintiffs moved for an order requiring the Defendants to show cause why they should not be held in contempt. The Plaintiffs

allege that the Defendants are violating the Consent Order by forcing inmates to sleep on the floor, failing to staff all mandated posts in the jail, and continuing to detain inmates in cells whose locks are broken or compromised. The Plaintiffs allege that these violations have led to unconstitutional conditions of confinement and violations of the constitutional rights of inmates by creating an objectively substantial risk of serious harm. The Plaintiffs seek an order imposing monetary sanctions until compliance with the Consent Order is achieved, and requiring the Defendants to submit a plan to the Court to bring themselves into compliance with the Consent Order.

In response to the Plaintiffs' motion, Sheriff Jackson does not dispute that inmates are sleeping on the floor, that the jail is not adequately staffed, and that the population of the Rice Street facility has exceeded 2,500 in recent months.[3] The Sheriff contends, however, that he cannot be held in contempt for these admitted violations of the Consent Order because he is unable to comply with its provisions. The Sheriff argues that he is unable to comply with the provisions regarding the population cap and inmates sleeping on the floor because the Fulton County Board of

[3] The Sheriff does not directly address the issue of malfunctioning locks, but he does note that the County is in the process of installing new locks in the cells, which has exacerbated the overcrowding problem because inmates must be moved from the cell blocks where new locks are being installed.

Commissioners has eliminated all funding for outsourcing inmates to other jails. The Sheriff states that he has negotiated agreements with other jurisdictions willing to house Fulton County inmates, and that he could eliminate overcrowding at the Rice Street facility if the Commissioners would provide the necessary funding.

With regard to staffing, the Sheriff cites several conditions that he says prevent him from complying with the Consent Order's requirements, all of which relate either to a lack of adequate funding or a lack of cooperation by the Fulton County Defendants. First, the Sheriff argues that despite numerous requests, the County has not funded a staffing analysis to determine exactly how many positions at the jail should be funded and how those positions should be allocated. Second, the Sheriff contends that the County has decreased his staffing total for the last three years in a row, making it impossible for him to adequately staff the jail and also fulfill his other obligations to provide court security, serve legal process, and transport inmates for court appearances. Third, the Sheriff contends that County regulations prevent him from filling vacant positions until the County has paid out accrued leave time to the former staff member, and that the County has refused to modify this requirement. Fourth, although the County's hiring freeze does not apply to the Sheriff's Office, the Sheriff points out that he is still required to obtain approvals from multiple County departments before filling a position, as a result of which it takes a candidate

approximately seven months to navigate the hiring process. Finally, the Sheriff notes that all of these conditions contribute to a high attrition rate as deputies seek employment elsewhere rather than remaining in a jail that is regularly understaffed and where they are subject to a dangerous work environment and frequent overtime.

In their response to the Plaintiffs' motion, the Fulton County Defendants deny that they are violating any provision of the Consent Order. They contend that their only obligation is to adequately fund sufficient positions for the Sheriff to be able to perform his statutory duties and to maintain the physical plant of the jail, and that they have done so. The Fulton County Defendants do not dispute that the Rice Street facility has recently exceeded the population cap and that inmates are being required to sleep on the floor. They argue, however, that they cannot be held in contempt for such violations because the provisions of the Consent Order relating to these matters do not unambiguously apply to them. In addition, the Fulton County Defendants argue that the parties' course of dealing and the Court's previous orders indicate that these requirements are solely the Sheriff's responsibility. The Fulton County Defendants also contend that provisions in the Consent Order addressing actions to be taken if the population exceeds the cap show that the parties anticipated the cap would be violated, and that such a violation therefore cannot serve as a basis for contempt. Finally, the Fulton County Defendants argue that they cannot be held in

contempt for eliminating funding for outsourcing because the Consent Order does not require outsourcing. And when the inmate population increased after funding for outsourcing was eliminated, the County agreed to lease the South Fulton Municipal Regional Jail in Union City to provide additional bed space.

With regard to staffing, the Fulton County Defendants contend that their sole obligation is to fund the number of positions set out in Appendix B to the Consent Order and not to freeze or otherwise prevent the filling of these positions. They contend that they have complied with this obligation. In stark contrast to the Sheriff's argument, the Fulton County Defendants argue that rather than hindering the Sheriff in filling these positions, they have actually taken steps to speed up the Sheriff's hiring process. The Fulton County Defendants note that the total number of positions approved for the Sheriff's Office for 2012 far exceeded the number of positions needed to staff the positions mandated by the Consent Order.

Finally, with regard to the locks, the Fulton County Defendants acknowledge that they have undertaken to replace all of the existing locks at the jail. Nevertheless, the Fulton County Defendants contend that the old locks continue to be maintained and are in compliance with the terms of the Consent Order. Even if the locks are not in compliance, the Fulton County Defendants argue that they cannot be held in contempt for failing to maintain functioning locks because it is the Plaintiffs

themselves who have created the condition about which they complain by vandalizing and otherwise attempting to destroy the locks.

## II. Discussion

"[I]njunctions, including consent decrees, . . . are enforced through the trial court's civil contempt power." Reynolds v. Roberts, 207 F.3d 1288, 1298 (11th Cir. 2000) (citation omitted). A petitioner "must [first] establish by clear and convincing evidence that the alleged contemnor violated [a] court's earlier order." United States v. Roberts, 858 F.2d 698, 700 (11th Cir. 1988) (citation omitted). Once this prima facie showing of a violation is made, the burden then shifts to the respondent "to produce evidence explaining his noncompliance" at a "show cause" hearing. Citronelle-Mobile Gathering, Inc. v. Watkins, 943 F.2d 1297, 1301 (11th Cir. 1991). At the show cause hearing, the respondent is allowed to show either that he did not violate the court order or that he was excused from complying. Chairs v. Burgess, 143 F.3d 1432, 1436 (11th Cir. 1998) The respondent may be excused because of an "inability" to comply with the terms of the order. Id. To satisfy this burden, the respondent must "offer proof beyond the mere assertion of an inability." Id. (quoting (Watkins, 943 F.2d at 1301). Instead, the respondent "demonstrate [s] an inability to comply only by showing that [he has] made 'in good faith all reasonable efforts to comply.'" Id. (quoting Watkins, 943 F.2d at 1301).

In this case, the Plaintiffs have clearly stated a case of non-compliance. First, they have cited provisions of the Consent Order capping the population of the Rice Street facility at 2,500 inmates, stating that no inmate shall be required to sleep on the floor, mandating certain minimum staffing levels, and requiring that cell doors be equipped with functioning locks. Next, they have produced evidence that the jail's population has frequently exceeded the cap in recent months, that large numbers of inmates have been required to sleep on the floor, that the jail remains chronically understaffed, and that locks in most areas of the jail do not function properly and permit inmates to leave their cells at will. The Defendants do not seriously dispute the Plaintiffs' factual allegations. Instead, they argue that a show cause order should not issue because they cannot legally be held in contempt. The Court finds the Defendants' arguments without merit.

First, the Sheriff confuses the findings this Court must make to hold him in contempt with the Plaintiffs' burden to obtain a show cause hearing. At this stage, the Plaintiffs must show only that the Consent Order has been violated, a showing that the Sheriff concedes that the Plaintiffs have made. Once this prima facie showing of a violation is made, the burden then shifts to the Sheriff to produce evidence explaining his non-compliance at a show cause hearing. The Sheriff asserts that he is unable to comply because of a lack of funding and cooperation from the Fulton County

Defendants, but to satisfy his burden the Sheriff must offer proof beyond the mere assertion of an inability. He must show that he has made in good faith all reasonable efforts to comply.

Second, contrary to the Fulton County Defendants' argument, the Consent Order's provisions regarding the population cap and inmates sleeping on the floor clearly apply to both them and the Sheriff. Where the parties intended responsibility for compliance to be placed on only the Sheriff or the Fulton County Defendants, the Consent Order clearly says so. Where responsibility for compliance is not so specified – as in the provisions regarding the population cap and inmates sleeping on the floor, Consent Order [89] ¶¶ 18-19 – the only reasonable interpretation is that the parties intended the Sheriff and the Fulton County Defendants to be *jointly* responsible for compliance. Indeed, this is how the Fulton County Defendants themselves interpret the Consent Order's provision regarding functioning locks, which also does not specify who is responsible for compliance. See County Defs.' Resp. [308] at 13-14 (arguing that County is in compliance with this provision). Their contrary interpretation of the provisions regarding the population cap and inmates sleeping on the floor is not only inconsistent with this understanding but also violates black letter principles of contract law, because it would essentially nullify these provisions by rendering them completely unenforceable. See Florida Polk Cnty. v. Prison Health

Servs., 170 F.3d 1081, 1084 (11th Cir. 1999) ("It is a venerable principle of contract law that the provisions of a contract should be construed so as to give every provision meaning."); see also O.C.G.A. § 13-2-2 ("The construction which will uphold a contract in whole and in every part is to be preferred").

Third, the fact that the Consent Order requires the Sheriff to take certain actions to reduce the number of inmates in the event that the jail's population approaches or exceeds the cap, see Consent Order [89] ¶¶ 35-38, does not mean that the Defendants cannot be held in contempt for violating the cap. The parties obviously anticipated that the population might approach or even exceed the cap on occasion, and these provisions were intended either to avoid or promptly remedy any such violation. Where such measures are ineffective, however, and the population remains above the cap, nothing in these provisions relieves the Defendants of the obligation to take whatever further steps may be necessary to comply with the cap, and their failure to do so may result in a finding of contempt.

Fourth, the Fulton County Defendants are wrong when they argue that their elimination of funding to house Fulton County inmates in other jails cannot support a finding of contempt. It does not matter that the Consent Order does not expressly require outsourcing of inmates. The Consent Order does clearly require that the population not exceed the established cap and that inmates not be required to sleep on

the floor. If the evidence shows that the Fulton County Defendants' decision to eliminate funding for outsourcing resulted in the violation of these provisions, then that decision may support a finding of contempt. It also does not matter that this Court has previously disapproved of outsourcing as a means to remedy overcrowding. Although it would have been preferable if the Fulton County Defendants had pursued other, more reasonable and cost-effective means to address this problem – such as expanding the capacity of the Rice Street facility or acquiring another existing facility[4] – their failure to do so does not relieve them of their obligations under the Consent Order. If outsourcing is the only available means to eliminate overcrowding, then the Fulton County Defendants must fund outsourcing.

Fifth, the Fulton County Defendants' obligations with regard to staffing are not as limited as they contend. The Consent Order provides that the number of uniformed officers shall not be decreased below the level authorized on June 1, 2005, as set out in Appendix B, and that the Board of Commissioners shall not "freeze" or otherwise prevent the filling of these positions. Consent Order [89] ¶ 12. The Fulton County Defendants' obligations, however, do not end there. The Consent Order also requires

[4] In August, the Fulton County Board of Commissioners approved the lease of the South Fulton Municipal Regional Jail in Union City, which is now being used to house female inmates. While commendable, the County's action has not solved the problem. Overcrowding at the Rice Street facility continues despite the transfer of the female inmates.

the Sheriff to assign a minimum number of uniformed officers to each floor on each shift and specifically states that "[m]aintaining sufficient personnel to meet these staffing levels 24 hours a day seven days a week is necessary for the safety and security of inmates and jail personnel and shall be a high priority of the Sheriff." Id. ¶¶ 25-26, 28. In order for the Sheriff to satisfy these requirements, the County must fund a sufficient number of positions to fill all of the mandated posts. According to the monitor, over the last three years, the County has reduced overall staffing for the Sheriff's Office by more than 10%, from 1,102 to 987 positions. Twenty-Sixth Quarterly Report of the Court Monitor [292] at 4. The Sheriff contends that these reductions have made it impossible for him to adequately staff the jail while also carrying out his other statutory duties. If this is true, then the County's actions in reducing the overall staffing level of the Sheriff's Office may support a finding of contempt. See Order of Jan. 26, 2009 [216] at 2 ("[I]t is [the County defendants'] obligation to budget sufficient funds to enable the Sheriff to comply with all requirements set out in the Consent Decree. This obligation is unconditional.") (emphasis in original).

Finally, the Fulton County Defendants' argument that the Plaintiffs cannot enforce the Consent Order's provision requiring functioning locks because plaintiff class members rendered the locks inoperable through acts of vandalism is also without

merit. Even assuming it was the acts of certain class members that rendered the locks inoperable, the unclean hands of some class members does not justify denying relief to the entire class. See Harris v. City of Philadelphia, 47 F.3d 1333, 1342 (3d Cir. 1995) ( "[E]ven if the isolated acts of certain members of the plaintiff class reflect fraud, unconscionability, or bad faith, those acts do not justify denying relief to the plaintiff class as a whole, which has not been shown to have acted in bad faith.").

## III. Conclusion

For the reasons set forth above, the Plaintiffs' Motion to Order the Defendants to Show Cause Why They Should not be Held in Contempt [Doc. 300] is GRANTED. A show cause hearing will be scheduled in the near future. The Chairman of the Fulton County Commission and the Sheriff of Fulton County will be required to attend the hearing in person.

SO ORDERED, this 25 day of November, 2013.

/s/Thomas W. Thrash
THOMAS W. THRASH, JR.
United States District Judge