

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
NORTHERN DIVISION**

JUN 01 2004

JAMES W. McCORMACK, CLERK
By: _____
DEP CLERK

SCHAWANNA NELSON

PLAINTIFF

v.

CASE NO: 1:04CV00037

**CMS, DOCTOR MAX MOBLEY,
JANE DOES NURSES FOR CMS,
LARRY NORRIS DIRECTOR OF THE ADC,
AND OFFICER TURENSKI**

DEFENDANTS

FIRST AMENDED COMPLAINT

Comes the Plaintiff, Shawanna Nelson, by and through her attorneys, and for her first Amended Complaint states:

1. Plaintiff amends her complaint pursuant to Fed. Rules of Civil Procedure 7 (a), 15, 19 and 20, to more fully develop the issues and allegations raised in grievances filed and exhausted by the Plaintiff and to conform to the evidence which will be developed and presented during the course of this case and to add parties needed for the just adjudication of the Plaintiff's claim so that complete relief may be afforded to the Plaintiff and to insure that all parties are joined who are pertinent to the events and relief sought arising out of the same transaction and occurrences which form the basis for this cause of action. There is no need for the Plaintiff to file a motion for leave to amend, in that F.R.C. P. 15 (a) provides that a party may amend a pleading "once as a matter of course before a responsive pleading is served..." The term "pleading" must be read in

connection with Fed. R. Civ. P. 7 (a), which enumerates the pleadings permitted under the federal rules as follows: a complaint, an answer, a reply to the counterclaim, an answer to a cross-claim, a third-party complaint, a third-party answer, and, pursuant to a court order, a reply to an answer or a third-party answer. Accordingly, a motion, including a motion to dismiss, does not qualify as a "pleading" that terminates a party's right to amend a pleading as a matter of course, without leave of court, under Rule 15(a).

2. This is an action to secure the rights, privileges and immunities guaranteed by the Eighth Amendment to the United States Constitution as authorized by 42 U.S.C. 1983; for a permanent injunction prohibiting the Defendants, named in this pleading from continuing policies and customs which constitute cruel and unusual punishment by way of denial of appropriate medical care to inmates in labor and subjecting inmates to being restrained during labor; and to prohibit further retaliation against the Plaintiff for raising and exercising her Constitutional Rights through the prison grievance system, in violation of 42 U.S.C. 1983; to award Plaintiff damages for the infliction of extreme pain and suffering and mental anguish as a result of the violations described below; and to award the Plaintiff costs, attorneys fees and any other relief to which she would be entitled resulting from the violation of her Eighth Amendment Right to be free of cruel and unusual punishment and the denial of necessary medical care in retaliation for filing grievances.

3. Jurisdiction of this Court is invoked under 28 U.S.C. 1342 (3) and (4) and is also a proceeding brought pursuant to 28 U.S.C. 2201 and 2202.

4. Plaintiff, filed grievance number MCP 2970 setting forth her grievances with regard to the allegations found in this complaint related to the intentional denial of

necessary medical care for a serious medical condition and for infliction of cruel and unusual punishment by restraining Plaintiff during the latter stages of her labor and delivery. The Plaintiff exhausted this grievance by receiving a final response from the Deputy Assistant Director. A copy of the documentation of that grievance is attached hereto and incorporated herein as exhibit A.

5. Plaintiff filed grievance number MCP 0204 setting forth her grievances with regard to retaliatory actions engaged in by officer Turenski when medical care for her continuing pain was intentionally denied Plaintiff. Plaintiff failed to receive an appropriate response from the prison and filed a second grievance number MCP 0488 related to the continuing actions of Officer Turenski wherein the Plaintiff reiterates and references the complaints she made in the earlier grievance numbered 0204. Plaintiff received a final response for these two grievances by way of a memo from the Deputy Director dated March 25, 2004. Due to the failure of the prison unit to properly respond to the Plaintiff's grievances 0204 and 0488, the Plaintiff affirmatively alleges that she has exhausted all available remedies with regard to the allegations contained in this complaint setting forth the continuing intentional denial of medical care by officer Turenski in retaliation for the filing of grievance number 2970. A copy of documents related to the above cited grievances are attached and incorporated herein as exhibit B.

6. Plaintiff is a citizen and resident of Union County, Arkansas, currently incarcerated at the Arkansas Department of Corrections, McPherson Unit, Newport, Arkansas.

7. Defendant CMS is a corporation acting under color of state law whose policies and customs with respect to female inmates in labor violate the

Eighth Amendment prescription against cruel and unusual punishment. Defendant CMS is being sued in its official and individual capacity as entity that has the power to implement policy concerning the medical welfare of female inmates in labor and the protocol that is necessary to protect both mother and child from serious medical ramifications resulting from the failure to provide adequate monitoring of the progress of the labor as well as the heart rate of the fetus.

8. Defendants Jane Doe nurses, represented official policy of Defendant CMS in failing to provide adequate medical care to Plaintiff while she was in labor, to perform necessary examination to determine the progress of the Plaintiff's labor, by delaying Plaintiff's access to appropriate monitoring through a fetal monitor and by denying Plaintiff adequate medication as her labor progressed. Defendants Jane Doe nurses are being sued in their individual and official capacities.

9. Defendant Max Mobley is Medical Director for the Arkansas Department of Correction and failed to see to it that proper policies and customs were implemented to protect inmates in labor from enduring extreme pain and mental anguish and from insuring that proper fetal monitoring equipment is present in the prison infirmary or that proper procedures are implemented to insure that mothers such as the Plaintiff, are sent to the hospital within a reasonable time frame following the onset of labor. Defendant Mobley is being sued in both his official and individual capacities.

10. Defendant, Larry Norris is the Director of the Arkansas Department of Correction and failed to see to it that proper policies and customs are implemented with

respect to restraints of female inmates who are in labor. Defendant Larry Norris is being sued in his official and individual capacity.

11. Defendant, Officer Turenski is an employee and agent of the Department of Correction and inflicted injury upon the Plaintiff by refusing to remove Plaintiff's restraints while Plaintiff was approaching the end stages of labor, which interfered with appropriate positioning and relaxation crucial to the control of pain and to the proper and safe delivery of the child. Defendant Turenski's actions represented official policy of the ADC by refusing to consider the pain and suffering of the Plaintiff while she approached the latter stages of the delivery process. Defendant Turenski has continued to inhibit Plaintiff's access to appropriate medical care and relief of her continuing painful back symptoms, in retaliation for the grievance that Plaintiff filed against Defendant Turenski immediately following Plaintiff's labor and delivery. Defendant Turnenski is being sued in her official and individual capacity.

12. On or about June 3, 2003, Plaintiff was incarcerated at the Arkansas Department of Correction located in Newport, Arkansas.

13. At approximately 5:00 am on September 20, 2003 the Plaintiff began her labor. Plaintiff reported to the infirmary and was told that she would not be allowed to report to the local hospital until her contractions were 4 to 5 minutes apart. The Defendant Nurses refused to examine the Plaintiff to determine the progress of her cervical dilation, and therefore failed to provide the most appropriate manner in which to gauge the progress of labor. Defendants failed to provide any equipment at the prison infirmary that is typically utilized at all hospitals to measure and monitor the strength of the Plaintiff's contractions as well as the effect of the contractions on the fetal heart rate.

The Plaintiff was not allowed to go to the hospital until late in the evening on September 20, 2003 and upon admission, the Plaintiff was 100% effaced and dilated to 7 centimeters. By the time Plaintiff was allowed to obtain proper medical care, she was in the most painful and stressful progress of labor that is known as "transition." The failure to release Plaintiff to the care of a well-equipped hospital that could relieve Plaintiff's pain and anxiety and provide proper monitoring of the plaintiff's labor and the fetal heart rate was the result of policies and customs that have been implemented and practiced by CMS and adopted and ratified by Dr. Max Mobley. Such practices caused the plaintiff to endure extreme mental anguish and pain and suffering and represents medical care that is so inappropriate as to evidence an absolute refusal to provide essential care as well as a deliberate and intentional indifference to a serious medical condition.

14. At the time that the Plaintiff arrived at the hospital, Officer Turenski refused to remove the Plaintiff's shackles and leg restraints, despite requests from the nurses and the Doctor. At the time the Plaintiff was enduring the most painful part of labor, Officer Turenski intentionally allowed Plaintiff's pain and anxiety to be aggravated through the refusal to remove the restraints despite requests made by trained obstetrical nurses and by the physician in charge. The Plaintiff's restraints were not removed until Plaintiff was placed on the delivery table. The actions of Officer Turenski represents policies of the Arkansas Department of Correction which are implemented and enforced by Defendant Larry Norris and which demonstrate an intentional disregard for the suffering of women inmates such as the Plaintiff and is a clear violation of the Eighth Amendment proscription against cruel and unusual punishment.

15. As a result of the above described conduct, Plaintiff endured extreme mental anguish and pain and suffering and sustained permanent injury to her back. The failure to remove the restraints and shackles upon admission to the hospital has caused continuing back pain and damage to the sciatic nerve.

16. Following the Plaintiff's return to incarceration, and after Plaintiff filed her first grievance, Officer Turenski has retaliated against Plaintiff by inhibiting her access to medical care for the back injuries caused by Officer Turenski.'s conduct.

17. The rights of the Eighth Amendment and its prescription against cruel and unusual punishment particularly as it relates to the denial of essential medical care is well-established and is known by all the Defendants named in this lawsuit. Administrator and employees of prisons have been clearly directed to provide essential medical care to inmates who are experiencing serious medical problems. The process of childbirth poses serious risks to both mother and child and the process deserves appropriate care monitoring and treatment. Delaying proper medical care and monitoring to a woman in labor represents a violation of the Eighth Amendment. Refusing to remove restraints is clearly an infliction of cruel and unusual punishment upon helpless women who are already enduring extreme pain and stress and who are vulnerable to back injury during the course of labor and delivery.

18. As a result of the damages inflicted upon the Plaintiff, she is entitled to the following relief:

PRAYER FOR RELIEF:

(a) that this Court enter a declaratory judgment that the actions of the defendants violated the Eighth Amendment and 42 U.S.C. 1983.

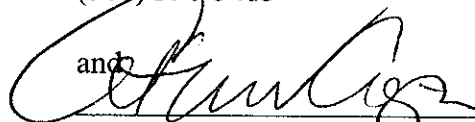
- (b) that Plaintiff be awarded both compensatory damages for her pain and suffering and permanency of her back injury;
- (c) that Plaintiff be awarded punitive damages;
- (d) that Plaintiff be awarded attorney's fees and costs;
- (e) that a permanent injunction be entered prohibiting further retaliation against the Plaintiff by Officer Turenski; and prohibiting Defendants from engaging in practices outlined in this complaint so that mothers and babies are provided essential medical care during the course of labor and delivery and that female inmates may be admitted to maternity wards without restraints that pose a threat to the well being of the mother and baby;
- (f) A trial by a jury of twelve of her peers; and
- (g) that Plaintiff be awarded such additional and further relief to which she is entitled and which this Court deems is just and proper; and for any additional relief to which she may become eligible during the pendency of this litigation.

Respectfully submitted,



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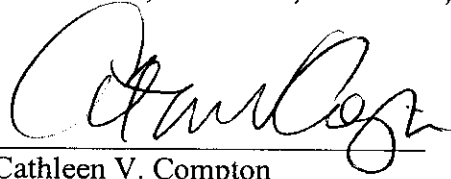
and



Cathleen V. Compton, #85031
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Certificate of Service

I certify that a copy of the foregoing pleading has been mailed this 1st day of June, 2004 to Alan Humphries, Humphries & Lewis, P.O. Box 9068, Pine Bluff, AR 71611, 870-541-9311.



Cathleen V. Compton
Attorney for Plaintiff

UNITED STATE DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

*Exhibits Attached
to Original
Document in
Courts's Case File*