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Unpublished Disposition

NOTICE: THIS IS AN UNPUBLISHED OPINION.

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United States Court of Appeals, Ninth Circuit.

John ARMSTRONG; James Amauric, Richard Ponciano; Jack Swensen; Billy Beck; Judy Fendt; Walter Fratus; Grogory Sandoval; Darlene Madison; Peter A. Richardson; Steven Hill, Plaintiffs-Appellees,

v.

Gray DAVIS, Governor of the State of California; Robert Presley, Secretary of Youth and Corrections Agency; C.A. Terhune, Director of the Department of Corrections; Susann Steinberg, M.D., Deputy Director for Health Care Services, Judith McGillivray, Deputy Director of the Planning and Construction Division; David Tristan, Deputy Director of the Institutions Division; Midge Carroll, Deputy Director of the Parole Community Services Division, Defendants-Appellants.

No. 99-15152. | D.C. No. CV 94-02307 CW. | Argued and Submitted Jan. 10, 2000. | Decided April 11, 2000.

Appeal from the United States District Court for the Northern District of California, Claudia Wilken, District Judge, Presiding.

Before VAN GRAAFEILAND,²ALARCÓN, and SILVERMAN, Circuit Judges.

Opinion

MEMORANDUM¹

I.

*1 Plaintiff-appellees, a certified class of all present and future California state prison inmates and parolees with various physical and learning disabilities, sued defendant-appellants, California state officials acting in their official capacity (hereinafter referred to as the California Department of Corrections, or CDC). Plaintiffs sought injunctive relief for state prison violations of the Rehabilitation Act ("RA") and the Americans with Disabilities Act ("ADA").

In lieu of a trial, the parties and the district court embarked on an extensive settlement process, under which the CDC stipulated that some of its facilities were not in compliance with the statutes, and thereafter worked to develop a proposed plan to remedy its specific statutory violations. The plaintiffs objected to a number of the CDC's proposals, as was contemplated by the settlement agreement. Although most issues were resolved by the parties as a result of negotiation, fifteen specific aspects of the CDC's proposed plan were submitted to the district court for evidentiary hearings and resolution.

Although the CDC now raises a number of issues on appeal, its primary argument is that the district court incorrectly applied an "undue burden" standard in rejecting as noncompliant two particular aspects of its proposed plan: its Disability Placement Plan for housing disabled inmates in appropriate facilities; and its screening process for identifying inmates with disabilities (the "verification process"). The department urges us to find that the court erred in ordering it to adopt the plaintiffs' extensive modifications to these aspects of the plan. The CDC also contends that the district court's final injunction violated 18 U.S.C. § 3626 (the Prison Litigation Reform Act) to the extent that it ordered the CDC to comply with negotiated portions of the remedial plan without first finding that those portions were the least restrictive remedies necessary to comply with the ADA and the RA.

We have jurisdiction pursuant to 28 U.S.C. § 1292(a). See *Armstrong v. Wilson*, 124 F.3d 1019, 1021-22 (9th Cir.1997) (*Armstrong I*). We agree with the CDC that the district court applied the incorrect legal standard in evaluating the Disability Placement Plan and the verification process. We also agree that the district court's injunction violated the Prison Litigation Reform Act. Accordingly, we reverse.

II.

Title II of the ADA prohibits discrimination on the basis of disability by public entities.³ See 42 U.S.C. § 12132. Title II is applicable to state prisons. See *Pennsylvania Dep't of Corrections v. Yeskey*, 524 U.S. 206, 213 (1998).

In *Gates v. Rowland*, 39 F.3d 1439, 1447 (9th Cir.1994), we held that the correct standard for reviewing claimed violations of prisoners' statutory rights under the RA is the standard articulated by the Supreme Court in *Turner v. Safley*, 482 U.S. 78 (1994). In *Turner*, the Supreme Court held that "when a prison regulation impinges on inmates' constitutional rights, the regulation is nonetheless valid if it is reasonably related to legitimate penological interests." *Id.* at 89. The *Turner* Court identified four factors relevant to determining the reasonableness of a policy or practice: (1) whether there is a valid, rational connection between the practice and a legitimate governmental interest; (2) whether "alternative means" exist for inmates to exercise the constitutional right at stake; (3) the impact of accommodation on prison security, administrative efficiency, prison staff, and the inmate population as a whole; and (4) whether the prison's policy represents an "exaggerated response" to prison concerns. *Id.* at 87.

*2 *Turner* places on the prison inmates the burden of demonstrating that the challenged prison policy or regulation is unreasonable. See *id.*; see also *Casey v. Lewis*, 4 F.3d 1516, 1520 (9th Cir.1993). Indeed, we recently emphasized that under the first prong of *Turner*, the plaintiff-inmates bear the initial burden of refuting a "common sense connection between a prison regulation and the objective that the government's counsel argues the policy was designed to further." *Frost v. Symington*, 197 F.3d 348, 357 (9th Cir.1999). Without such a showing, the government's proffered "common sense" objective is presumed legitimate and neutral. See *id.*

Although the panel in *Gates* acknowledged that the *Turner* standard was created as a means of review of constitutional rights in a prison setting, it nonetheless found the standard equally appropriate for a review of statutory rights. See *Gates*, 39 F.3d at 1447 ("It is highly doubtful that Congress intended a more stringent application of the prisoners' statutory rights created by the [RA] than it would the prisoners' constitutional rights.").

Given *Gates*'s clear holding that the *Turner* reasonableness standard is applicable in this context, the standard applied by the district court, namely, that the prison officials had to show that the inmates' proposed accommodations posed an undue burden, is incorrect. *Gates* clearly requires that the initial burden of proof be placed on the prisoners to demonstrate why the CDC's proposed plans were unreasonable.

Both sides presented below substantial evidence in favor of their respective legal arguments, but the essential facts are not disputed. These undisputed facts clearly establish that the CDC's proposed Disability Placement Plan and verification process are "reasonably" related to legitimate penological interests. *Turner*, 482 U.S. at 89. Therefore, we reverse the district court and vacate those portions of the injunction giving rise to this appeal.

III.

We also agree with the CDC that the district court's final injunction was in violation of the Prison Litigation Reform Act, 18 U.S.C. § 3626(a)(1)(A), to the extent that it ordered the CDC to comply with the negotiated portions of the plans (i.e. those portions of the proposed plan which were initially objected to by the plaintiff prisoners, and which the CDC subsequently modified as a result of negotiations between the parties), without having made the findings required by the PLRA.

The PLRA mandates that "in any civil action with respect to prison conditions" a court "shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right." 18 U.S.C. § 3626(a)(1)(A). Under the PLRA, prospective relief in prison cases can be granted only if accompanied by these findings.⁴

*3 In this case, the district court failed to make the requisite PLRA findings with respect to the negotiated portions of the

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CDC's proposed remedial plans.⁵ Accordingly, we vacate that portion of the final injunction ordering the CDC to comply with the negotiated portions of the plans. The CDC and the inmates entered into a settlement agreement under which the CDC has agreed to remedy various violations. If the CDC fails to live up to the agreement and violations persist, the plaintiffs may return to court and seek appropriate redress, including an enforceable injunction in conformity with the PLRA if appropriate. This approach is consistent with the purpose of the PLRA, which is to minimize judicial involvement in prison administration unless the requisite findings can be made. *See Hadix v. Johnson*, 133 F.3d 940, 942 (6th Cir.1998)

We therefore VACATE the district court's order to the extent that it applies to the Disability Placement Plan and the verification process, and to the extent that it orders the CDC to comply with the negotiated portions of its remedial plan. We REMAND the case for any further proceedings not inconsistent with this decision, as may be necessary.

Parallel Citations

2000 WL 369622 (Table)

Footnotes

² The Honorable Ellsworth A. Van Graafeiland, Senior Circuit Judge for the United States Court of Appeals for the Second Circuit, sitting by designation.

¹ This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by 9th Cir. R. 36-3.

³ Title II was expressly modeled after § 504 of the Rehabilitation Act of 1973, 28 U.S.C. 794a. As we have noted, “[t]here is no significant difference in analysis of the rights and obligations created by the ADA and the Rehabilitation Act.” *Zukle v. Regents of the University of California*, 166 F.3d 1041, 1045 n. 11 (9th Cir.1999) (citing 42 U.S.C. § 12133).

⁴ The district court apparently recognized the necessity of the PLRA findings. When the CDC raised this issue below, the court proposed two options: either the court would issue its final injunction without the PLRA findings if the CDC would agree not to challenge the order on those grounds; or the court would issue an order with the PLRA certification, but it would permit the CDC to subsequently modify its plan if it could demonstrate that any particular part of the plan was inconsistent with the PLRA. The CDC rejected both options, insisting instead on strict compliance with the PLRA.

⁵ Moreover, we reject the plaintiffs' argument that the CDC, by agreeing to the settlement procedure, also agreed that any disputed portions would be subject to an automatic certification of the PLRA findings. According to the plain language of the district court's Remedial Order, which delineated the settlement procedure, the negotiated portions of the plans were not to be subject to an automatic PLRA certification; only those portions of the CDC's plan to which the plaintiff prisoners did *not* object were to be incorporated into a court order which would certify that the measures were the least restrictive necessary to ensure compliance with the statutes.