

Washington v. Reno

United States District Court for the Eastern District of Kentucky, Lexington Division
November 9, 1999, Decided ; November 9, 1999, Filed
CIVIL ACTION NO. 93-290

Reporter: 1999 U.S. Dist. LEXIS 22485

CONCHITA WASHINGTON, ET AL., PLAINTIFFS VS:
JANET RENO, ET AL., DEFENDANTS

Disposition: [*1] Plaintiff's motion for temporary restraining order which construed as motion for preliminary injunctive relief [Record No. 611] DENIED. Plaintiff's motion for evidentiary hearing [Record No. 610] DENIED.

Counsel: For GLORIA BATTON ROBINSON, ANTOINETTE M. FRINK, CONCHITA WASHINGTON, PATRICIA M. DARKS, NORMA FAY COOK, MARTHA MARIE PRESTON, LOVEN L. LEWIS, LORI SAUNDERS, RESHAWN RICHARDSON, plaintiffs: Douglas L. McSwain, Sturgill, Turner, Barker & Maloney, PLLC, Lexington, KY.

CONCHITA WASHINGTON, plaintiff, Pro se, Ft. Worth, TX.

OZIE B. COLLINS, plaintiff, Pro se, Florence, CO.

For JANE DOE(S), JOHN HOE, JANE ROE, JANE POE, JANE MOE, JANE TOE, JANE ZOE, intervenor plaintiffs: Douglas L. McSwain, Sturgill, Turner, Barker & Maloney, PLLC, Lexington, KY.

For KATHLEEN HAWK, JANET RENO, FEDERAL BUREAU OF PRISONS, DAVID WOODY, MICHAEL A. ATWOOD, USA, ARTHUR F. BEELER, defendants: David L. Bunning, U.S. Attorney's Office, Covington, KY.

For KATHLEEN HAWK, FEDERAL BUREAU OF PRISONS, DAVID WOODY, MICHAEL A. ATWOOD, defendants: Vincent M. Garvey, Kathleen E. Moriarty, U.S. Department of Justice, Washington, DC.

For JANET RENO, defendant: Vincent M. Garvey, Kathleen [*2] E. Moriarty, Raphael O. Gomez, U.S. Department of Justice, Washington, DC.

For USA, defendant: Vincent M. Garvey, Kathleen E. Moriarty, Jeff Clair, U.S. Department of Justice, Washington, DC.

For JANET RENO, KATHLEEN HAWK, USA, BUREAU OF PRISONS, ARTHUR F. BEELER, intervenor defendants: David L. Bunning, U.S. Attorney's Office, Covington, KY.

For JANET RENO, KATHLEEN HAWK, USA, BUREAU OF PRISONS, intervenor defendants: Vincent M. Garvey, Kathleen E. Moriarty, U.S. Department of Justice, Washington, DC.

PATRICIA M. DARKS, movant, Pro se, Fort Worth, TX.

MELVIN P. DEUTSCH, movant, Pro se, Otisville, NY.

JAMES A. MCKINES, movant, Pro se, Lompoc, CA.

JIMMY G. NIXON, SR., movant, Pro se, Texarkana, TX.

BILLY RAY HASTINGS, movant, Pro se, Marianna, FL.

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WILLIE BUD REED, JR., movant, Pro se, Miami, FL.

MICHAEL JOSEPH KEARNS, movant, Pro se, Texarkana, TX.

GEORGE D. FARQUHAR, movant, Pro se, Texarkana, TX.

Judges: HENRY R. WILHOIT, JR., CHIEF JUDGE.

Opinion by: HENRY R. WILHOIT, JR.

Opinion

MEMORANDUM ORDER

This matter is before the court for consideration of the plaintiffs motion for temporary [*3] restraining order, which is construed as a motion for preliminary injunctive relief [Record No. 611]. Additionally, the matter is before the court for consideration of the plaintiffs motion for an evidentiary hearing [Record No. 610].

The plaintiff complains: (1) Warden Joseph Bogan at the Carswell Federal Medical Center for Women in Fort Worth, Texas, has ignored the plaintiff's requests for access to current copies of the Federal Register; (2) plaintiff has not been provided with ITS inmate telephone system information to which she claims an entitlement; (3) plaintiff has been denied opportunities for correspondence to which she claims entitlement; (4) plaintiff was only permitted a monitored telephone call to an attorney who

no longer represented her; (5) plaintiff experienced retaliation for exercising her *first amendment* right to file grievances; (6) plaintiff has had difficulty exhausting administrative remedies; (7) an unspecified provision in the Settlement Agreement regarding a prisoner's financial responsibility program has not been implemented at the Carswell Federal Medical Center for Women; (8) the Federal Medical Center at Carswell does not provide the inmates with [*4] advance notice of inmate telephone system changes to which the plaintiff claims an entitlement; (9) the plaintiff has not received an account of disbursements under the Settlement Agreement, to which she claims entitlement; (10) the inmate welfare fund was abolished without notice to the plaintiff, to which she claims entitlement; (11) telephone lists have not been destroyed; (12) prisoner telephone list information is sold to outside private telephone carriers, constituting invasion of privacy; and (13) Federal Medical Center at Carswell telephone calls are improperly billed.

In considering a motion for preliminary injunctive relief, a court must consider and balance four factors: "(1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury without the injunction; (3) whether issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be served by issuance of the injunction." *Memphis Planned Parenthood, Inc. v. Sundquist*, 175 F.3d 456, 460 (6th Cir. 1999) (citations omitted).

The movant does not have a strong likelihood of success on the merits of [*5] any of her asserted claims. The plaintiffs claims are vaguely pled in several respects. Often the plaintiff claims an entitlement without specifying a foundation or source for that alleged entitlement. The plaintiff repeatedly takes issue with the conditions under which she is confined, without pleading a factual situation that establishes any constitutional violation. Vague and general allegations are made regarding actions that are taken against inmates generally, so as to cloud whether different ones of the more than thirteen complaints the plaintiff registers have, in fact, involved the plaintiff to a degree that would afford her standing to bring this motion. To the extent the plaintiff is

attempting to act as an attorney on behalf of the plaintiff class, she may not do so and participate in the unauthorized practice of law. Thus, there are serious questions about whether the movant has a strong likelihood of success on the merits of any of the complained-of activities.

In considering whether the movant would suffer irreparable injury without the injunction, the court reiterates that because the movant has not conclusively established that she has, in fact, been harmed by various [*6] of the complaints she brings, the only thing that is clear is that it is unclear whether the movant herself would ever suffer an injury without the injunction. As it is seriously unclear whether the movant would be personally injured with regard to each and every one of the more than thirteen claims, it cannot be said that the second prong of the four factors to be considered in a motion for preliminary injunctive relief has been met by this movant.

Issuance of an injunction at this time could cause substantial harm to others. The complaints the plaintiff brings and the relief she apparently seeks are so widespread and wide-ranging that without additional specific factual detail and greater understanding of the intricacies of the vast systems the plaintiff challenges, it is entirely possible that to issue an injunction at this time would cause substantial harm to others.

In considering whether the public interest would be served by issuance of an injunction, at this time it cannot be said that from the face of this complaint the public interest would be served by issuance of an injunction.

Accordingly, the plaintiff's motion for temporary restraining order, which is construed as [*7] a motion for preliminary injunctive relief [Record No. 611], is hereby DENIED. Additionally, as the motion for temporary restraining order is denied and there is no need for an evidentiary hearing on this matter, plaintiff's motion for an evidentiary hearing [Record No. 610] is hereby DENIED.

This the 9 day of November, 1999.

HENRY R. WILHOIT, JR., CHIEF JUDGE