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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

GARY MINNIS, et al.,)
)
Plaintiff,)
)
v.) CIVIL ACTION
)
GENE JOHNSON,) 1:10-cv-96
)
Defendant.)
)

REPORTER'S TRANSCRIPT

MOTIONS HEARING

Friday, November 13, 2015

BEFORE: THE HONORABLE T.S. ELLIS, III
Presiding

APPEARANCES:

LANA MARIE MANITTA, ESQ.
Rich Rosenthal Brincefield Manitta
Dzubin & Kroeger LLP
201 N. Union St.
Suite 230
Alexandria, VA 22314

DEBORAH GOLDEN, ESQ.
Washington Lawyers' Committee
11 Dupont Circle, NW #400
Washington, DC 20036

For the Plaintiff

MICHAEL A. RODRIQUEZ, RPR/CM/RMR
Official Court Reporter
USDC, Eastern District of Virginia
Alexandria Division

1 THE CLERK: Gary Minnis, et al., versus Gene
2 Johnson, et al.

3 Civil case number 1:10-cv-96.

4 THE COURT: All right.

5 Ms. Manitta, you are here?

6 ATTORNEY MANITTA: Yes, your Honor.

7 THE COURT: Who -- is anyone here for the
8 government?

9 ATTORNEY MANITTA: No.

10 I believe that the --

11 THE COURT: Yes, I have the pleading. But
12 the pleading arrived only late yesterday. And I am
13 going to make clear to that person that when I set a
14 hearing it's not up to them whether they want to appear.
15 They need to appear; and if they don't want to appear,
16 they have to ask the court's leave not to appear. But I
17 know you wish to be released.

18 Can you give me a brief thumbnail sketch of
19 this matter? I know it's an ADA claim by a number of
20 inmates, and that it was, originally, after I appointed
21 you and another entity, you all settled the matter.

22 Am I correct?

23 ATTORNEY MANITTA: Not quite, your Honor.

24 And --

25 THE COURT: All right.

1 ATTORNEY MANITTA: -- Deborah Golden, of the
2 Washington Lawyers' Committee for Human Rights and Urban
3 Affairs, is joining me.

4 Their organization was a part of the
5 original group of counsel that settled this matter with
6 the Commonwealth. And this settle agreement is an
7 interesting settlement agreement.

8 It is a class of plaintiffs, but it's not a
9 class-action suit. And so what that, basically, means
10 is that there is a settlement agreement that has very
11 limited enforcement -- enforcement provisions.

12 The court asked me to represent the
13 plaintiffs, and I am doing so in conjunction with the
14 Washington Lawyers' Committee after --

15 THE COURT: So, you weren't in the original
16 case.

17 ATTORNEY MANITTA: I was not in the original
18 case.

19 THE COURT: All right.

20 ATTORNEY MANITTA: Mr. Richardson, the
21 plaintiff, from whose representation we are seeking to
22 withdraw today, about a year and a half ago, filed a
23 motion to reinstate the original lawsuit, alleging that
24 the Commonwealth is not complying with the settlement
25 agreement and the conditions in the Virginia Department

1 of Corrections were not -- were not as they should be.

2 In that motion, he also sought sanctions
3 against his, then, current counsel, and he asked for the
4 appointment of new counsel.

5 I undertook the work, but along with working
6 alongside the Washington Lawyers' Committee, who had
7 been working on this case for years.

8 Since that time, we have engaged in -- I
9 have visited two -- I have visited the facility on a
10 number of occasions. I have, actually, visited both
11 facilities at which deaf inmates are housed -- Powhatan
12 and Greenville. I have been to Greenville twice.

13 My co-counsel and I have discussed, in an
14 ongoing manner, developments, and changes, and
15 improvements that are being made to the accommodations
16 at Greenville's Correctional Center.

17 To update the court, at the time of the
18 settlement, all of the deaf inmates were in Powhatan
19 Correctional. They were moved approximately 18 months
20 ago or so to Greenville. Greenville, frankly, was not
21 ready for them, and there were significant problems.

22 The accommodations that should have been in
23 place were not. And that's round the time that Mr.
24 Richardson filed his motion to reinstate, which skipped
25 a few of the steps required by the settlement agreement

1 but alerted the court, nonetheless, to the fact that
2 there were some problems, alerted Washington Lawyers'
3 Committee of some of the things that were still going on
4 and, myself, as new counsel.

5 So, we have been working, very doggedly, on
6 seeing the right accommodations put in place at
7 Greenville. But there has been a break between counsel
8 and Mr. Richardson, specifically.

9 He has, again, filed a motion to reinstate
10 on his own behalf, which we did not sign off on, and
11 with which we do not agree. And part of the agreement,
12 especially, when I came on to the case, was that that
13 really wasn't going to work, as far as an
14 attorney-client relationship, there couldn't be sort of
15 pro se motions being filed and what's not.

16 And, obviously, this is a very significant
17 motion. He has asked that the case be reopened,
18 reinstated, started from scratch on his own behalf.
19 This time he did not file it on behalf of all of the
20 plaintiffs.

21 And the other plaintiffs -- our position is
22 that we wish to continue representing all the rest of
23 the plaintiffs who are still active plaintiffs, who are
24 still in the Department of Corrections custody.

25 We want to continue doing the work that we

1 have been doing. And I am happy to report there have
2 been some significant improvements in the situation.
3 But Mr. Richardson -- Mr. Richardson's chosen course has
4 made that relationship completely untenable.

5 And it would be our plan to take no position
6 on his motion in any formal capacity. In other words,
7 we are not going to have the plaintiffs pitted against
8 one another. We would simply take no position so that
9 we can continue representing the remaining three men who
10 are still in the Department of Corrections custody who
11 are deaf inmates. And Mr. Richardson would be either
12 pro se or, I believe, he has, actually, asked the court
13 for appointment of new counsel.

14 Oddly, he has asked, in his motion to
15 reinstate, for new counsel but, then, objected to our
16 motion to withdraw as his counsel. So, I am not
17 sure -- you know, I think we've put that in our motion.
18 We've alerted the court to that.

19 He, certainly, has objected to our -- our
20 trying to object as his counsel. But I am not sure what
21 other solution there would be.

22 THE COURT: Well, he is not entitled to
23 counsel. When I, originally, appointed counsel, I don't
24 know how they got the Washington Lawyers' Committee. I
25 am glad they did. But it was -- I appointed you because

1 I am fully familiar with your competence, your
2 dedication, and I was -- I was confident that you would
3 represent these individuals fairly, and fully, and
4 competently, and it would get done. And I think you
5 did. And I am glad to hear that you are going to
6 continue.

7 Now, let's -- let's -- and I also want to
8 give you an opportunity to be heard. I hope you are
9 going to continue as well. But you all aren't saying --

10 ATTORNEY GOLDEN: Yes, your Honor.

11 THE COURT: -- that the -- you all are
12 negotiating with the Department of Corrections, and you
13 are not saying that you want to sue on the settlement
14 agreement. You want to go ahead and get things done.
15 And, in the end, if something isn't done, you can bring
16 a new lawsuit.

17 ATTORNEY GOLDEN: Yes, your Honor.

18 THE COURT: Well, that's what I think this
19 person ought to do, because circumstances have changed
20 so significantly and dramatically.

21 Litigating whether there is something in
22 this settlement agreement which, certainly, wouldn't go
23 on forever, in this event -- I don't know, did it have a
24 term?

25 ATTORNEY MANITTA: It did. It did, your

1 Honor. This was to expire in October.

2 THE COURT: Of?

3 ATTORNEY MANITTA: Of 2015. There are --

4 THE COURT: All right.

5 So, it's still in effect. What do you
6 recommend? I mean, I am perfectly happy to have Mr. --
7 what's his name?

8 ATTORNEY MANITTA: Mr. Richardson.

9 THE COURT: Mr. Richardson go ahead with any
10 claim he might have. But it seems to me that that
11 should not halt the efforts of the two of you to make
12 improvements and achieve results short of litigation.
13 That's much better than litigating things.

14 ATTORNEY GOLDEN: Certainly, agree. If we
15 can negotiate a resolution that's satisfactory to the
16 rest of the plaintiffs to make sure the current
17 conditions comply with the ADA, and the Constitution,
18 without assistance of your Honor or another court, we
19 are very happy to do so.

20 THE COURT: Well, I would hope it can be
21 done, because I don't think the Department of
22 Corrections wants to violate the law, and they don't
23 want to violate the Constitution.

24 Now, you may have a good difference of
25 opinion as to how much is required. And that, of

1 course, the court can hear. But it seems to me we are
2 not here yet.

3 What do you suggest I do for Mr. Richardson?
4 I think what he has done, he has filed a what, a motion
5 to reopen?

6 ATTORNEY MANITTA: To reinstate, which is,
7 basically, yes, to reopen.

8 THE COURT: And the other three don't want
9 that?

10 ATTORNEY MANITTA: They do not.

11 THE COURT: Well, I guess I could reopen it
12 just for his claim, and he could proceed alone, relieve
13 you, and he could proceed with or without counsel.
14 Maybe he can retain counsel somewhere.

15 ATTORNEY MANITTA: He could. There are
16 certain provisions within the settlement agreement,
17 certain prerequisites to reinstatement. And, again, we
18 are not taking the position --

19 THE COURT: All right.

20 I will look at those.

21 ATTORNEY MANITTA: Yes.

22 THE COURT: You don't need to be heard on
23 those.

24 ATTORNEY MANITTA: Thank you.

25 THE COURT: All right.

1 I will grant your motion to withdraw.

2 ATTORNEY MANITTA: Thank you.

3 THE COURT: And my view, at the moment, is,
4 and I'll enter an order after I reflect a bit more about
5 it, is that I will make clear that the desire to reopen
6 and reinstate is only his, not the other plaintiffs;
7 that the other plaintiffs are proceeding, represented by
8 competent counsel, to resolve these matters. And,
9 therefore, it won't be reopened as to them.

10 And I'll consider whether I reopen it as to
11 him based on your -- or based on my being alerted to the
12 need to go back to the agreement and look at the
13 prerequisites.

14 ATTORNEY MANITTA: I -- I concur with the
15 court's decision on all counts.

16 THE COURT: Thank you.

17 ATTORNEY MANITTA: Thank you, your Honor.

18 THE COURT: And I thank -- let me give a
19 special thanks to your committee and to you, Ms.
20 Manitta, for the work that you do.

21 I appointed you because of your
22 recognized -- that I recognized -- I have been here
23 since, before you started. And you have always
24 demonstrated competency, and that's why I pointed you,
25 and I have not been disappointed.

1 In fact, I have been pleased. And your
2 committee has that same reputation.

3 ATTORNEY GOLDEN: Thank you.

4 ATTORNEY MANITTA: Thank you.

5 THE COURT: All right.

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