UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Michelle Semelbauer, Paulette Bosch, Denise Vos, Crisa Brown, Latrece Baker, Tammy Speers, Londora Kitchens, and Stashia Collins, individually and on behalf of all similarly situated persons,

Plaintiffs,

vs.

Muskegon County, a municipal corporation; **Dean Roesler**, in his official capacity as Muskegon County Sheriff; **Lt. Mark Burns**, in his official capacity as Jail Administrator; Correctional Officers **Ivan Morris**, **Grieves, DeYoung**, and **David Gutowski**, in their individual capacities; and unknown correctional officers, in their individual capacities

Defendants.

Case No. 1:14-cv-01245-JTN

HON. JANET T. NEFF

DEFENDANTS' REQUEST FOR PRE-MOTION CONFERENCE FOR SUMMARY JUDGMENT

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DEFENDANTS' REQUEST FOR

PRE-MOTION CONFERENCE FOR SUMMARY JUDGMENT

Defendants request a pre-motion conference for their motion for partial summary judgment. Defendants sought concurrence, which was denied by Plaintiffs' counsel. Defendants' dispositive motion is based on the following:

1. Plaintiffs allegations do not rise to the level of a constitutional violation and, therefore, are subject to dismissal under Fed. R. Civ. P. 12(c).

2. Plaintiffs' allegations regarding access to feminine hygiene products and toilet paper do not state a constitutional violation. Plaintiffs do not assert they were denied feminine hygiene products or toilet paper. They merely allege a single, temporary delayed delivery of either feminine hygiene products or toilet paper. For example, Plaintiff Vos was incarcerated for approximately 7.5 months, but alleges one time she waited several hours to receive feminine hygiene products. Similarly, Plaintiff Kitchens was incarcerated for 8 months, but only asserts a single delayed delivery of feminine hygiene products. It is clearly established that temporary deprivations such as these do not rise to the level of a constitutional violation. See ***Gilland v. Owens***, 718 F.Supp. 665, 685 (W.D.Tenn. 1989); ***Metcalf v. Veita***, No. 97–1691, 1998 WL 476254, at *2 (6th Cir. Aug. 3, 1998).[1]

3. Plaintiffs allege problems with the showers such as the water being too hot or were inoperable for up to three days. Again, such allegations do not rise to the level of a constitutional violation. See ***Gilland***, *supra*.

4. Plaintiffs' allegation that the jail at times exceeded its rated population capacity is not a constitution violation. It is clearly established that overcrowding, in and of itself, is not necessarily unconstitutional. ***Johnson v. Hefron***, 88 F.3d 404, 407 (6th

[1] Some inmates, such as Plaintiff Bosch, who was housed for approximately 4.5 consecutive months, do not even allege a denial of or delayed access to feminine hygiene products.

Cir. 1996) (citing ***Rhodes v. Chapman***, 452 U.S. 337 (1981)). Further, violations of state law are insufficient to support a 1983 claim. Therefore, Plaintiffs' allegations that Defendants failed to comply with state jail population statutes do not state a claim.

5. Plaintiffs assert inmates slept on cots or on the floors due to overcrowding. However, such an allegation fails to state a valid constitutional violation. ***Mann v. Smith***, 796 F.2d 79, 85 (5th Cir. 1986); ***Hubbard v. Taylor***, 538 F.3d 229, 235 (3d Cir. 2008); ***Grissom v. Davis***, 55 F. App'x 756, 758 (6th Cir. 2003); ***Jones v. Toombs***, 77 F.3d 482 (Table), 1996 WL 67750, at *1 (6th Cir. 1996).

6. There is no genuine issue of material fact Defendants were deliberately indifferent. Therefore, Plaintiffs' claims should be dismissed under Fed. R. Civ. P. 56.

7. For example, in a single year more than 27,600 sanitary napkins were purchased. They were distributed to the female population, which by Plaintiffs' own admission, constituted about 20% of the total jail population. The fact of regular distribution and no more than a few temporary delayed deliveries, defeats any claim that Defendants were deliberately indifferent in violation of the 8th or 14th Amendments.

8. Plaintiffs allege some cells had sewage and toilet issues. The evidence will establish that whenever Defendants were aware of an issue with toilets, sewage, drainage, showers, or other physical conditions, immediate steps were taken to alleviate the problem. The jail staff submitted work orders to County Maintenance for each problem. All requests for repairs were appropriately addressed. Further, Defendants contracted with a pest control company which conducted monthly site visits. Defendants were not deliberately indifferent to jail conditions. Defendants took active steps to address complaints and/or repairs. Defendant County is not deliberately indifferent and, in

fact, an entirely new jail is currently under construction and scheduled to open in July 2015. Plaintiffs simply cannot establish that Defendants were deliberately indifferent to their constitutional rights.

9. Plaintiffs allege the jail does not provide an adequate or effective grievance system. However, in their reply to Defendants' response to the motion for class certification, Plaintiffs concede this is not a basis for their claim for class certification. (See **Dkt. No. 21**, at 8, fn. 6) There is no constitutional or federal right to an effective grievance system. See, e.g., ***Shelton v. Christian Cnty. Jail***, No. 5:14-CV-P146-GNS, 2015 WL 236853, at *1 (W.D. Ky. Jan. 16, 2015) (summarizing and collecting cases on point). Therefore, any claim regarding the grievance procedure must be dismissed.

10. Plaintiffs cannot establish either objective or subjective components that Defendants were indifferent to medical needs.

Wherefore, Defendants request this Court conduct a pre-motion conference and establish a briefing schedule.

Respectfully submitted,

CUMMINGS, McCLOREY, DAVIS & ACHO, P.L.C.

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