SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MERCER COUNTY

DOCKET NO. C-123-07

KATHLEEN JONES, LAKESHA JONES, SYLVIA FLYNN and HELEN L. EWELL, on behalf of themselves and all individuals similarly situated

Plaintiffs

v.

GEORGE W. HAYMAN et al.

Defendants

DECISION

Motion for Class Certification

MARIA M. SYPEK, P.J. Ch.

July 21, 2008

The matter comes before the Court on a Motion for Class Certification filed by American Civil Liberties Union of New Jersey Foundation, Mia Lewis, Esq., admitted Pro Hac Vice and Edward L. Barocas, Esq., appearing on behalf of the plaintiffs' and opposition having been filed by the Office of the Attorney General, Dianne M. Moratti, Deputy Attorney General appearing on behalf of the Defendants' and the Court having reviewed all documents submitted and having heard oral argument and for good cause shown, the Court makes the following findings:

This matter arises from a class action complaint and order to show cause with temporary restraints filed on December 12, 2007 by Kathleen Jones ("Kathleen"), Lakesha Jones ("Lakesha"), Sylvia Flynn and Helen L. Ewell (collectively "Plaintiffs") against George W. Hayman, the Commissioner of the New Jersey Department of Corrections ("DOC"), James Barbo, the Acting Deputy Commissioner of the DOC, Lydell Sherrer, the Acting Assistant Commissioner of the DOC, William Hauck, the Acting Administrator of the Edna Mahan Correctional Facility ("EMCF"), Michelle Ricci, the Administrator of the New Jersey State Prison ("NJSP"), Alfred N. Kandell, an Assistant Administrator of the NJSP, James Drumm, an Assistant Administrator of the NJSP, Herbert A. Kaldany, the Director of Psychiatry of the DOC and Thomas F. Dechan, the Director of Education of the NJSP (collectively "Defendants") alleging that their confinement in the NJSP and the conditions in which they are held violate the New Jersey Constitution, New Jersey Civil Rights Act and New Jersey Law Against Discrimination. On January 22, 2008, the parties entered into a consent order whereby the parties agreed that the DOC would not transfer any female inmates from the EMCF to Section 1EE of the NJSP until further order of the court. The consent order also permitted the DOC to transfer

female inmates from the EMCF to the administrative segregation unit or the Stabilization Unit of the NJSP so long as they were later returned to the EMCF. Plaintiffs now move for class certification of a class of individuals defined as all general population women prisoners who are now or in the future will be confined in the NJSP.

The facts of the matter are discussed in detail in the Court's opinion on Defendants' summary judgment motion but are briefly recited here. Plaintiffs are four of forty women prisoners who were transferred by the DOC from the EMCF to the NJSP in March 2007. The NJSP is a maximum-security men's prison which holds approximately 1,800 male prisoners. Plaintiffs claim that since arriving at the NJSP, they and the other women prisoners have been subject to inhumane and inequitable conditions of confinement. Plaintiffs state generally that the women prisoners' health has deteriorated, that they have been deprived of psychiatric and medical care, and have been denied rightful legal access, educational opportunities, work opportunities, their right to exercise, right to privacy and other rehabilitative programming. Plaintiffs therefore contend that they are being treated differently than the male prisoners at the NJSP and differently than how they were treated when they were confined at the EMCF. Plaintiffs subsequently filed their class action complaint arguing that these conditions

violate their rights under the New Jersey Constitution, New Jersey Civil Rights Act and the New Jersey Law Against Discrimination.

Plaintiffs now ask the Court to certify this action as a class action and to define the class as "all general population women prisoners who are now or in the future will be confined in New Jersey State Prison." Plaintiffs contend that the joinder of all the class members would be impractical, that there exist questions of law and fact common to the class, that the claims of Plaintiffs are representative of those in the class, and that Plaintiffs will fairly and adequately protect the interests of the class. Furthermore, Plaintiffs state that Defendants have acted on grounds which are generally applicable to the entire class. Therefore, Plaintiffs maintain that their motion for class certification should be granted.

In response, Defendants contend that it is clear that not all of the women prisoners who were transferred to the NJSP want to be transferred back. Senior Corrections Officer Naomi Coleman, the first shift 1EE housing officer, certifies that her conversations with the female inmates has led her to believe that they have adjusted to the conditions at the NJSP and are content with their housing. Ms. Coleman provides that she is on the floor the majority of the time in Unit 1EE five days a week. She claims that when the media recently visited the NJSP to interview women on 1EE, she

heard one of the female inmates state that she didn't want to participate because she had complaints about the unit. She alleges that another inmate remarked that this pending action contained "lies" that "needed to be squared away." Ms. Coleman maintains that many of the female inmates like being housed in 1EE because it provides structure which leads to fewer disciplinary charges being handed out. Ms. Coleman concludes that 1EE is a relatively stable housing unit of the NJSP, and therefore, several female inmates do not want to be part of this lawsuit or be transferred back to the EMCF. See Cert. of Naomi Coleman.

Additionally, Mr. Drumm certifies that ten of the female inmates housed in 1EE have signed letters requesting that they remain at the NJSP. Mr. Drumm states that these letters were hand delivered to him by Lucretia Stone, an inmate of 1EE. Mr. Drumm further asserts that these letters were not solicited by Defendants, but rather voluntarily submitted by these inmates. See Cert. of James Drumm.

Defendants conclude that Plaintiffs simply do not represent the interests of the other female inmates at the NJSP. Defendants contend that any details of alleged wrongful activity and conditions are very specific to Plaintiffs, and that it is apparent that many of the female inmates wish to

remain at the NJSP. Therefore, Defendants maintain that class certification should not be granted in this matter.

The issue before the Court is whether to grant class certification in this matter to define the class as "all general population women prisoners who are now or in the future will be confined in New Jersey State Prison." R. 4:32-1 governs the requirements for maintaining a class action and provides, in pertinent part:

> (a) General Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.
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> (b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of paragraph (a) are satisfied, and in addition:
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> . . .
>
> (2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole

As R. 4:32-1 replicates the federal rule on class action, F.R.C.P. 23, Riley v. New Rapids Carpet Ctr., 61 N.J. 218, 226 (1972), New Jersey courts have consistently looked to the interpretations of the federal counterpart for

guidance in construing R. 4:32-1. Delgozzo v. Kenny, 266 N.J. Super. 169, 188 (App. Div. 1993). The rule is required to be liberally construed and the class action permitted to be maintained unless there is a clear showing that it is inappropriate or improper. Varacallo v. Mass Mutual Life Ins., 332 N.J. Super. 31, 45 (App. Div. 2000). The Court will analyze each requirement of the class action rule in turn.

(1) Numerosity

The first requirement Plaintiffs must demonstrate is that the class is so numerous that joinder of all members will be impracticable. This numerosity requirement "is more than a mere 'numbers game.'" West Morris Pediatrics, P.A. v. Henry Schein, Inc., 385 N.J. Super. 581, 595 (Law Div. 2004) (quoting Liberty Lincoln Mercury, Inc. v. Ford Marketing Corp., 149 F.R.D. 65, 74 (D.N.J. 1993)). Accordingly, the number of purported class members is not wholly dispositive of the analysis. Ibid. Rather, an equal part of the inquiry centers around whether "the difficulty and or inconvenience of joining all members of the class calls for class certification." Id. at 596 (quoting Lerch v. Citizens First Bancorp, Inc., 144 F.R.D. 247, 250 (D.N.J. 1992)). Additionally, where the primary relief sought by the plaintiffs is injunctive, a strict application of the numerosity

requirement would be unwarranted. Weiss v. York Hospital, 745 F.2d 786, 808 (3d Cir. 1984), cert. den. 470 U.S. 1060 (1985).

The Third Circuit in Weiss declared that in most cases where a plaintiff seeks injunctive relief against discriminatory practices by a defendant, the defendant will not be prejudiced if the plaintiff proceeds on a class action basis because the requested relief generally will benefit not only the claimant but all other persons subject to the practice under attack. Id. at 808. The Weiss court provided that a judicial determination that a particular practice infringes upon protected rights and is therefore invalid will prevent its application by the defendant against many persons not before the court. Ibid. Therefore, the Weiss court held that rigorous application of the numerosity requirement would not appear to be warranted. Ibid. See also Jones v. Diamond, 519 F.2d 1090, 1100 (5th Cir. 1975) (finding a class where forty eight prisoners sought injunctive relief).

Likewise, in this matter, Plaintiffs seek to certify a class of approximately forty female prisoners who are seeking injunctive relief to prohibit Defendants from violating their civil and constitutional rights. Any injunctive relief granted by the Court will generally benefit all members of the class. Therefore, the Court does not find that a strict application of this requirement in this matter would be appropriate.

Furthermore, the Court finds that other factors are present which cause the Court to hold that this requirement has been satisfied here. Although the number in the class is not dispositive of the requirement, Plaintiffs seek to establish a class of approximately forty prisoners, and this number has been presumed to satisfy this requirement. See e.g., Stewart v. Abraham, 275 F.3d 220, 226-27 (3d Cir. 2001), cert. den., 536 U.S. 958 (2002); Consolidated Rail Corp. v. Town of Hyde Park, 47 F.3d 473, 483 (2d Cir.), cert. den., North Rockland Central School Dist. v. Consolidated Rail Corp., 515 U.S. 1122 (1995). Additionally, it would be difficult to join all the members of the class at issue because of the fact that each of the members is currently imprisoned. Moreover, any future members of the class are unknown at this time, and will also be imprisoned. Therefore, the Court finds that Plaintiffs have demonstrated that the number of class members renders the joinder of all members impracticable.

(2) Commonality

The second requirement Plaintiffs must demonstrate is that there are questions of law or fact common to the class. It is not necessary that all questions of fact or law raised be common; to the contrary, a single common question is sufficient. West Morris Pediatrics, supra, at 600. Furthermore, class members can assert such a single common complaint even if they have

not all suffered actual injury; demonstrating that all class members are subject to the same harm will suffice. Baby Neal for & by Kanter v. Casey, 43 F.3d 48, 56 (3d Cir. 1994). Class relief is consistent with the need for case-by-case adjudication, especially where it is unlikely that differences in the factual background of each claim will affect the outcome of a legal issue. Id. at 57 (citing Califano v. Yamaski, 442 U.S. 682, 701 (1979)). This is especially true where the plaintiffs request declaratory and injunctive relief against a defendant engaging in a common course of conduct toward them, and there is therefore no need for individualized determinations of the propriety of injunctive relief. Ibid.

In this matter, Plaintiffs have stated that all members of the class will be those female inmates housed as general population women prisoners. Plaintiffs allege that all such prisoners are subject to the policies and practices of Defendants. Plaintiffs further allege that such practices and policies have subject the class to cruel and unusual punishment and inhumane and inequitable conditions of confinement in violation of the New Jersey Constitution, New Jersey Civil Rights Act and New Jersey Law Against Discrimination. Therefore, it appears that Plaintiffs have demonstrated that common questions of law and fact exist as to the class members.

Defendants argue that their certifications effectively refute the allegations made by Plaintiffs. Defendants also contend that any details of the alleged wrongful acts of Defendants are very specific to the individual prisoners. However, the question of whether Plaintiffs' allegations can eventually be proven is not a factor to be considered in determining whether a class should be certified. The merits of a complaint are not involved in the determination as to whether a class action may be maintained, unless of course the allegations are patently frivolous. Olive v. Graceland Sales Corp., 61 N.J. 182, 189 (1972). A review of the evidence submitted by Plaintiffs makes it clear that their allegations are not frivolous but rather that they truly believe they are being subject to inhumane conditions and have been denied and deprived of certain rights. Therefore, the Court finds that Plaintiffs have demonstrated that common questions of law or fact exist as to the members of the class.

(3) Typicality

The third requirement Plaintiffs must demonstrate is that the claims and defenses of Plaintiffs are typical of the claims and defenses of the class. Typicality requires that the "harm complained of be common to the class." West Morris Pediatrics, supra, at 603 (quoting Hassine v. Jeffes, 846 F.2d 169, 177 (3d Cir. 1988)). Where the legal or factual positions of the class

representatives are markedly different from those of the putative class members, typicality will not be satisfied. Ibid. Accordingly, in order to meet their burden, Plaintiffs must demonstrate that their claims "have the essential characteristics common to the claims of the class." Ibid. (quoting In re Cadillac V8-6-4 Class Action, 93 N.J. 412, 425 (1983)).

The Court finds that Plaintiffs have satisfied the typicality requirement in this matter. The underlying claims of Plaintiffs and the other members of the class arise from their transfers from the EMCF to the NJSP, the conditions of confinement at the NJSP and the discriminatory actions of Defendants. Although each of Plaintiffs and the members of the class may allege somewhat different facts depending on how each was individually treated, their factual positions are not markedly different as each arises from the same underlying claims. Therefore, the Court finds that Plaintiffs have demonstrated that the claims and defenses of Plaintiffs are typical of the claims and defenses of the class.

(4) Adequacy of Representation

The fourth requirement Plaintiffs must demonstrate is that they fairly and adequately protect the interests of the class. As a general rule, the interest of the named representatives must be coextensive with the interest of the other members of the class. Gallano v. Running, 139 N.J. Super. 239,

246 (Law Div. 1976), cert. den. 75 N.J. 600 (1978). Coextensive interests exist when the representatives and the class members share common objectives and legal or factual positions; in other words, when there are no antagonistic interests between the representatives and the class. Ibid. The court must also be assured that the representatives will vigorously prosecute or defend that interest, and this will usually require the assistance of responsible and able counsel. Ibid.

In this matter, the Court finds that Plaintiffs satisfy the fourth requirement of class certification. The allegedly unlawful practices and policies that Defendants enforce affect all of the members of the class. Each member has a strong interest in ensuring that her constitutional and civil rights are being protected. Plaintiffs have vigorously prosecuted the interests of the class as they have filed numerous motions and have opposed the motions filed by Defendants. Finally, Plaintiffs are being represented by the American Civil Liberties Union and the Court has not been given any reason to believe that counsel has been irresponsible or unable to represent them.

Defendants argue that Plaintiffs' interests do not align with those of the other class members because other female inmates have expressed a desire to remain in Unit 1EE of the NJSP. However, the question is not

whether there is a 100% concurrence of interests within the class, but rather whether the class as a whole and as to some primary issues being litigated is adequately represented. Wyatt by & Through Rawlins v. Poundstone, 169 F.R.D. 155, 161 (M.D. Ala. 1995). As the Court has determined that the members of the class have similar primary issues at stake, the Court finds that Plaintiffs are adequately and fairly representing the interests of the class in this matter.

(5) Have Defendants Acted on Grounds Generally Applicable to the Class?

Finally, Plaintiffs state that Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole. R. 4:33-1(b)(2). This requirement is almost automatically satisfied in actions seeking primarily injunctive relief. Baby Neal, supra, at 58 (citing Weiss, supra, at 811). When a lawsuit seeks to define the relationship between the defendants and the world at large, (b)(2) certification is appropriate. Ibid. It is the (b)(2) class which serves most frequently as the vehicle for civil rights actions and other institutional reform cases that receive class action treatment. Id. at 58-59. In fact, the injunctive class provision was designed specifically for civil rights cases seeking broad

declaratory or injunctive relief for a numerous and often unascertainable or amorphous class of persons. Id. at 59.

In this matter, Plaintiffs have brought a lawsuit alleging a violation of their constitutional and civil rights and are primarily seeking injunctive relief. Furthermore, the Court has found that Plaintiffs have satisfied the requirements of class certification under subsection (a) of R. 4:33-1. Therefore, the Court finds that Defendants have acted on grounds generally applicable to the class.

The Court thereby finds that Plaintiffs have satisfied all four requirements of class certification under R. 4:33-1 and one of the requirements under R. 4:33-1(b). Therefore, the Court finds that it will grant class certification to Plaintiffs and define the class as "all general population women prisoners who are now or in the future will be confined in New Jersey State Prison."

For the above stated reasons, Plaintiffs' motion for class certification is hereby GRANTED.

The Court entered an order this date in accordance with this decision.

PREPARED BY THE COURT

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MERCER COUNTY

DOCKET NO. C-123-07

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ORDER

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IT IS ON THIS 21ST day of July, 2008

ORDERED that the Plaintiffs' motion for class certification is hereby GRANTED for the reasons set forth in the decision issued by this Court.

IT IS FURTHER ORDERED that a copy of this decision and order shall be served on all parties within seven (7) days of the date herein.

Maria M. Sypek, P.J. Ch.