

United States District Court
WESTERN DISTRICT OF MICHIGAN

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CLERK OF COURT
U.S. DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
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8/11/16

Timothy Finley #266047
plaintiff

CIVIL ACTION NO:

v.

2:16-cv-253

Gordon J. Quist, U.S. District Judge
Timothy P. Greeley, Magistrate Judge

ERICA HUSS, DEPUTY WARDEN;
SARAH SCHROEDER, DEPUTY WARDEN;
Both sued in their official capacities;
Defendants.

Jury trial DEMANDED

VERIFIED COMPLAINT for Injunctive AND DECLARATORY RELIEF

I. Introduction

THIS IS A § 1983 Action Filed by plaintiff Timothy DANIEL FINLEY, A State prisoner, Alleging violations of His Constitutional rights of Deliberate Indifference And Due process. Plaintiff Also seeks an injunction pursuant to the AMERICANS WITH DISABILITIES ACT and the Rehabilitation Act.

II. Jurisdiction

THIS COURT HAS jurisdiction under 28 U.S.C §§ 1331 And 1343 (A)(3).

The western District is An appropriate venue under

28 U.S.C. § 1391(b)(2) because it is where the events giving RISE TO THIS CLAIM OCCURRED.

III. PARTIES

① PLAINTIFF, Timothy DANIEL Finley, is and was at all times mentioned herein a prisoner of the state of MICHIGAN in the custody of the Michigan Department of Corrections (MDOC). HE is currently confined in Marquette Branch Prison (MBP), in Marquette, Michigan.

② DEFENDANT, ERICA NUSS, is the Deputy WARDEN of MBP, she is legally responsible for classifying me to ADMINISTRATIVE Segregation (AD-SEG), and for the operation of the Security Classification Committee (S.C.C.)

③ Defendant, SARAH SCHROEDER, is the Acting Deputy WARDEN of MBP. SHE is legally responsible interfering with Recommended treatment.

④ EACH defendant is sued in their official capacity. At all times mentioned in this complaint each defendant acted under the color of LAW.

IV. FACTS

⑤ Plaintiff suffers from a severe mental illness defined by the A.D.A 42 U.S.C. § 1201 et seq. PLAINTIFF HAS A SUBSTANTIAL Disorder of thought and mood which significantly impairs

Judgment of thought and behavior.

⑥ Plaintiff was recently seen by a psychiatrist, DR. Terry Meden here at MBP on 10/07/16 who has said such in his assessment and ordered involuntary treatment upon plaintiff (exhibit-A 2 pages)

⑦ Plaintiff's diagnosis is bipolar, Borderline personality disorder, and Anti-social personality disorder... — Bipolar disorder can be serious need for mental health treatment. See Page v Norvell, 186 F.Supp.2d 1134, 1136 (D.DRE 2000); and threats or risk of suicide certainly are as well. Conn v City of Reno, 572 F.3d 1047, 1055 (9th Cir. 2009).

⑧ Plaintiff has a long history of suicide attempts as well as self-injurious behavior.

⑨ As of recent, from 8/30/16 to 10/05/16 Plaintiff has cut his arm open with a razor making at least 25 lacerations. I have swallowed 9 razors, been transferred to Marquette General Hospital a total of five times, transferred to St. Francis in Escanaba once, and put on a medical jet and flown to U.of.M in Ann Arbor for emergency surgery. I've had a total of four neck surgeries to remove a razor lodged in my throat on 9/2/16. I've been hooked up to breathing machines to sustain life. I've had 4 stomach surgeries as well to remove razors. Those were a bad couple of months for me due to my mental illness.

⑩ I'm on psychiatric medicines such as Depicote, Wellbutrin, Trazadone, and Benadryl. I've also been shot

with powerful Anti-psychotic medications as well (exhibit B)

Quality Assurance

(11) Each week on wendsdays Custody staff consisting of the Deputy wardens And the Resident Unit managers meet with the Mental Health personnel AS well AS the medical personnel. They go over topics, issues and prisoners.

(12) My name HAS been brought up and discussed a total of 8 times during this span of episodes. Treatment recommendations HAVE been discussed. So everybody in All departments HAVE Actual knowledge of plaintiffs mental illness and treatment Recommendations.

ADMINISTRATIVE SEGREGATION (AD-SEG)

(13) Plaintiff is currently in AD-SEG for taking a RAZOR and using it to HARM myself due to my mental illness. Courts HAVE held that the constitution forbids punishment for behavior caused OR influenced by mental illness. Coleman v Wilson, 912 F.Supp 1282, 1320-22 (E.D. Cal 1995); Arnold on behalf of H.B v Lewis, 803 F.Supp 246, 256 (D. Ariz 1997).

(14) MBP HAS A system and procedures that allow for isolation and Segregation from the general population. Such isolation and Segregation may be used for disciplinary purposes.

(15) Inmates held by MBP who ARE alleged to HAVE committed An Act of MAJOR MISconduct are Subject to placement in Segregation by S.C.C. The deputy warden in this case HAS

the final SOY-50, which would be the defendant, ERICA NUSS.

(16) Discharge from Segregation Requires the Same S.C.C determination. According to the MDCC policy directive 04.05.120 (exhibit C - 12 pages) See paragraphs N and NNH

DUE PROCESS

(17) As of 9/26/16 plaintiff was classified to AD-Seg by the defendant ERICA NUSS (exhibit D).

(18) My primary handler on my case load in the mental health department, MS. MAANDI SALMI, was not present as required to be at the hearing. So defendant NUSS made a determination without any recommendation from mental health.

(19) Looking at exhibit-D you'll notice the section where it says, "this section should be filled out by a Qualified Mental Health professional (QMHP) if the person is receiving outpatient mental health services and their recommendation in regards to placement other than AD-Seg". Plaintiff receives out-patient care.

(20) This was never done, defendant ERICA NUSS, violated my rights at the hearing and unlawfully classified me to AD-Seg.

(21) If the courts will examine exhibit-E, they will see documents that was done by my psych MS. SALMI two weeks prior (9/12/16) to the AD-Seg hearing, that I suffer from a disability, I'm on a mental health case load, and prolonged segregation placement is likely to deteriorate my

Mental Health Status.

(22) This gives ground to a violation of Due process And as well to deliberate indifference ~~of~~ the defendants part.

Deterioration of Mental Health in AD-SEG.

(23) Prisoners in Ad-Seg at MBP are subjected to social isolation and sensory deprivation that approach the limit of Human Endurance. They are entombed in concrete cells with bars, and others are locked behind enclosed structures on base cutting off complete social isolation 24 hours a day, seven days a week. Plaintiff is in one of these base cells.

(24) Prisoners in Ad-Seg are deprived of virtually all social contact and environmental stimulation. They are allowed no congregative activity and very few possessions and there is no programming available. Prisoners in Ad-Seg can often spend months in a state of almost total idleness.

(25) Inmates like plaintiff, spend most of their time simply pacing around their cells; the image created is hauntingly similar to that of caged felines pacing at a zoo.

(26) When human beings are subjected to social isolation and reduced environmental stimulation, they deteriorate mentally. Davenport v DeRobertis, 844 F.2d 1310, 1316 (7th Cir. 1988).

(27) Several courts have found the confinement of mentally ill prisoners in Ad-Seg to be unconstitutional — extremes of isolation in the form of solitary confinement behind solid doors. Hoptowitz v Roy, 682 F.2d 1237, 1257-58 (9th Cir 1982);

Inmates of Occoquan v Barry, 717 F.Supp 854, 868 (D.D.C 1989) (Inmates with mental illness must be placed in a separate area or a hospital and not in Ad-Seq); Tillery v Owens, 719 F.Supp 1256, 1303-04 (W.D Pa 1989) (Constitution requires separate unit for mentally ill); Ruiz v Estell, 37 F.Supp.2d 851, 915 (S.D. Tex 1999) Holding ("Ad-Seq is being utilized unconstitutionally to house mentally ill inmates — inmates whose illness can only be exacerbated by the depravity of their confinement").

Defendant's State of Mind

(28) The record amply demonstrates Erica Nuss violation of Due process and deliberate indifference to plaintiff's mental health needs. The total disregard for plaintiff's pain and suffering that should surely shock the conscience of this court, especially when she sat in countless meetings with the mental health personnel regarding my illness. Sheer callousness aside, defendant Nuss behavior unambiguously evinces a conscious disregard for plaintiff's serious mental health need. Defendant knew that the plaintiff had a serious mental health need and failed to remedy it.

(29) Defendant's denial and attitude typifies her deliberate indifference to the clear danger, pain and suffering plaintiff was endured. Further, through her actions and inactions, Nuss subjected plaintiff who suffers from a mental illness to these conditions and circumstances which have exacerbated my mental illness and caused irreparable harm.

Interfering with Recommended Treatment

(30) The MDOC HAS policy and procedure regarding mentally ill prisoners in Segregation - 04.06.182 (EXHIBIT F - 4 pages)

(31) In this policy once plaintiff was placed in AD-SEG A DMNP, MY PSYC MS. Solmi, WAS SUPPOSE TO APPEAL THE ERICA NUSS DECISION AND MAKE HER RECOMMENDATION ON PLACEMENT SAYING PLAINTIFF WOULD BE BETTER SUITED IN A MENTAL HEALTH SETTING AS MY MENTAL HEALTH NEEDS CAN NOT BE MET IN AD-SEG

(32) MS. Solmi submitted this appeal and recommendation and it landed on the desk of Deputy Warden Sarah Schroeder, the other defendant in this complaint.

(33) In this said policy it reads, upon receipt of the recommendation by my DMNP the Deputy Warden, MS Schroeder makes her decision. IF she concurs with the recommendation, she shall ensure that plaintiff is released from segregation and moved as recommended as soon as possible, but no later than three business days after receipt of the recommendation.

(34) The recommendation was that I be released from segregation and moved to the Mental Health Unit here at MBP in F-Block called Interim Care Program (ICP), and defendant Schroeder concurred with that recommendation.

(35) Plaintiff to this date, is still in AD-SEG and has not been released and moved to the mental health program.

(36) Defendant Schroeder, who is responsible for this has not ensured my release and move to the program within

three business days, therefore interfering with Recommended treatment.

Cause of Action

(32) The Conditions Described in this Complaint Result in Gratuitous pain and suffering, and pose an imminent Danger to plaintiff's mental health status.

(38) In imposing the conditions described in this Complaint, Defendants HAS acted with deliberate Indifference to the Serious Health, Safety, and mental health needs of plaintiff who suffers from this illness, and to the rise plaintiff will suffer from this illness more injury or possible death. Defendants have been made aware of these conditions and recommendations but have failed to take reasonable corrective action.

(39) Plaintiff is housed at an MDCC Facility and suffers from a mental illness defined by the ADA and qualifies as an individual with disabilities as defined in Section 504

(40) The conditions described in this complaint are likely to persist unless enjoined by this court. Plaintiff HAS no adequate remedy at law.

(41) By subjecting plaintiff with a mental illness to the Conditions of confinement described herein, with Full knowledge of those conditions and of their devastating effects on plaintiff, Defendants' HAS acted, and continues to act, with deliberate indifference to plaintiff's Serious Health, Safety, and mental health needs and HAS subjected plaintiff to cruel and unusual punishment,

in violation of the eighth Amendment to the United States Constitution.

(42) By placing plaintiff with mental illness in AD-Seg because of behaviors which are related to his mental illness, defendant Nuss ~~is~~ has denied plaintiff of the benefits of the facilities services, programs or activities, thus discriminating against the plaintiff on the basis of his disability in violation of the ADA and § 504. She has also violated plaintiff's due process rights at the hearing protected by the Fourteenth Amendment.

(43) By interfering with the recommended treatment made by mental health about releasing me from Seg and placing me in the mental health program after she concurred, defendant Schroeder was and still is deliberately indifferent to my mental health needs violating the eighth Amendment and because I suffer from a mental illness she has denied me of the benefits of the facilities services, programs, or activities in violation of the ADA and § 504.

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully request the Court:

1. Grant a preliminary injunction ordering MBP to follow their policy by releasing me from AD-Seg and placing me in the recommended mental health program here at MBP immediately without delay.

2. Order a permanent injunction for plaintiff not to be housed in Ad-5eg in the future. That plaintiff at all times should be housed in some type of mental health setting and programming designed for people with mental illness during my incarceration so he can receive treatment and rehabilitative structure before entering society.

3. Issue a judgment declaring that the actions of defendants described herein are unlawful and constitute cruel and unusual punishment in violation of the 8th amendment, and discrimination in violation of the ADA and § 504. As well as violating my Due Process in violation of the 14th amendment.

4. Grant such other relief as the court considers just and proper.

Pursuant to 28 U.S.C 1746 I verify under penalty of perjury that the following is true and correct.

* * *

Respectfully Submitted
Timothy Finley 266147
in pro se

Marquette Branch Prison
1960 US Highway 41 South
Marquette, Michigan 49855



DATE: OCTOBER 31ST, 2016

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