

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

CIVIL ACTION NO. 86-233

JOHN C. VANCE, ET AL.,

PLAINTIFFS,

VS:

REPORT AND RECOMMENDATION

GEORGE WILSON, ET AL.,

DEFENDANTS.

INTRODUCTION

The above-styled action was instituted by the guardians for the children of and the representatives of the estates of two Boyle County residents who were allegedly killed in August, 1985, by one Randy Haight, an escapee from the Johnson County Jail. The plaintiffs contend that the prisoner escaped by virtue of the defendants' intentional acts or negligence. Currently before the undersigned is the motion to dismiss filed by the defendant Corrections Commissioner, George Wilson.

DISCUSSION

The motion to dismiss asserts that the claims against George Wilson are "based on a legal theory that the defendant . . . operates or exercises control over the operation of the Johnson County Jail." Wilson noted that, pursuant to KRS 71.020 et seq., the Johnson County Jailer maintained custody and control of the County Jail while the defendant operated and maintained control over the Kentucky adult penal institutions.

The head of a state department of corrections is entitled to qualified immunity in areas where he is required to exercise some modicum of official discretion. Sampson v. King, 693 F.2d 566, 569 (5th Cir. 1982). In cases when the official is not personally involved with the complained-of activity, the outer limits

of liability are determined ultimately by pinpointing persons in the decision-making chain whose deliberate indifference permitted constitutional abuses to go unchecked; final determination generally is one of fact, not law, although state statutes fixing administrator's legal duties provide a useful guide in determining who had the responsibility and capability to end offensive practices. Slakan v. Porter, 737 F.2d 368, 372-373 (4th Cir. 1984), cert. den. 105 S. Ct. 1413 (1985).

The plaintiffs have, however, made a persuasive argument. They state that the Corrections Cabinet retained control over Haight since he was continuing to service a sentence imposed by the Madison Circuit Court, and had only temporarily been transferred out of the Northpoint Training Center. Further, they note that, under KRS 441.055 and 441.064, the Corrections Cabinet is in charge of establishing minimum standards for the operation of county jails and correcting violations thereof; the statutes specifically authorize Cabinet regulations involving, jail operations, the custody of prisoners, jail equipment, and building renovations. The copy of administrative regulations attached to the plaintiff's memorandum indicates that the Cabinet has addressed these matters, and has formulated regulations on such subjects as inmate surveillance and security procedures. 501 KAR 3:060.

No reply has been filed by the defendant.

#### RECOMMENDATION

Having considered the record as a whole, the undersigned RECOMMENDS that the motion to dismiss be denied.

Objections to this Report and Recommendation must be filed within ten days of the date of entry of the same or further appeal is waived. Fed. R. Civ. P. 72(b). Thomas v. Arn, 728 F.2d 813 (6th Cir. 1984). aff'd \_\_\_\_ U.S. \_\_\_\_ (1984).

This the \_\_\_\_\_ day of November, 1986.

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JOSEPH M. HOOD,  
UNITED STATES MAGISTRATE