

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION
CIVIL ACTION NO. 3:11-cv-8-H

| | | |
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| FUNDA HAMMONDS |) | PLAINTIFF |
| Kentucky Correctional Institution for Women |) | |
| P.O. Box 337 |) | |
| Pewee Valley, Kentucky 40056 |) | |
| |) | |
| v. |) | |
| |) | |
| CORRECTIONS CORPORATION OF AMERICA |) | |
| Serve: CT Corporation System |) | |
| 4169 Westport Road |) | |
| Louisville, Kentucky 40207 |) | |
| |) | |
| AND |) | |
| |) | |
| DWIGHT CROWELL |) | |
| 327 Correctional Road |) | |
| Wheelwright, Kentucky 41669 |) | |
| |) | |
| AND |) | |
| |) | |
| JEFF LITTLE (Individually and in his Official Capacity) |) | |
| as Warden of Otter Creek Correctional Center) |) | |
| Otter Creek Correctional Center |) | |
| Highway 306, P.O. Box 500 |) | |
| Wheelwright, Kentucky 41669 |) | |
| |) | |
| AND |) | |
| |) | |
| JOHN D. FERGUSON (Individually and in his Official |) | |
| Capacity as an Officer of CCA) |) | |
| 10 Burton Hills Blvd. |) | |
| Nashville, Tennessee 37215 |) | |
| |) | |
| AND |) | |
| |) | |
| TONY GRANDE (Individually and in his Official |) | |
| Capacity as an Officer of CCA) |) | |
| 10 Burton Hills Blvd. |) | |
| Nashville, Tennessee 37215 |) | DEFENDANTS |

COMPLAINT

1. Comes now the Plaintiff, Funda Hammonds, and for her Complaint against the Defendants hereby alleges and states as follows:

PARTIES

2. Plaintiff, Funda Hammonds, is a German citizen with permanent residency status in the United States of America which status was granted to her on or before 1999. She is the mother of five (5) children who reside in the United States.

3. During the relevant times herein, Hammonds was convicted by the Jefferson Circuit Court in Kentucky in April 2007, was originally housed at Kentucky Correctional Institution for Women (“KCIW”), but on February 26, 2008 she was transferred without her consent from KCIW to Corrections Corporation of America’s (“CCA”) Otter Creek Correctional Center (“OCCC”) in Wheelwright, Kentucky. Hammonds remained at CCA/OCCC until approximately the time that facility was closed at which time she was returned to KCIW.

4. The CCA/OCCC was a prison owned and operated by Corrections Corporation of America pursuant to its contract with the Commonwealth of Kentucky, the purpose of which was, among other things, the safe and secure housing of female inmates at Otter Creek Correctional Center.

5. Defendant, Corrections Corporation of America is a privately held Maryland Corporation, and based upon information and belief, owned and operated the Otter Creek Correctional Center in Wheelwright, Kentucky under contract with the Commonwealth of Kentucky, Department of Corrections (“DOC”). CCA was authorized to do business in the Commonwealth of Kentucky at all relevant times herein.

6. During the relevant time herein, Defendant, Dwight Crowell, was an employee of CCA/OCCC, who held the position of Internal Affairs (“IA”) Officer at CCA/OCCC, and upon information and belief his last known address was 327 Correctional Road, Wheelwright, Kentucky, 41669.

7. Defendant, Jeff Little, was, at the relevant times herein, the Warden of the CCA/OCCC and is responsible for overseeing its operations. In his capacity as Warden, Little was responsible for the training, assignment, supervision, discipline and investigation of correctional officers and correctional employees assigned to or working at OCCC. Also, at all relevant times herein, Little was responsible for the custody, safety, protection, fair treatment and rehabilitation of female prisoners at OCCC. In addition, Little was responsible for ensuring that the facilities housing female prisoners were operated according to proper correctional standards, developing procedures for implementing policies and for ensuring adequate and effective mechanism for safe reporting of staff misconduct and treatment of victims of custodial abuse.

8. Defendants, John D. Ferguson and Tony Grande, named individually and in their capacity as officers of CCA, based upon information and belief, are and were at all times relevant, residents of Nashville, Tennessee and are or were Chief Executive Officers of CCA responsible for the operations of OCCC.

JURISDICTION AND VENUE

9. Jurisdiction is conferred upon this Court by 28 U.S.C. Sec. 1331, which provides for original District Court jurisdiction over cases presenting questions of federal law under the Civil Rights Act of 1871, 42 U.S.C. Section 1983, for gross and unconscionable violations of the rights, privileges, and immunities guaranteed to Plaintiff Hammonds by the Eighth and Fourteenth Amendments to the Constitution of the United States.

10. Jurisdiction over Plaintiff Hammonds' state law claims is conferred upon the Court by 28 U.S.C. Sec. 1367, which provides supplemental jurisdiction over state law claims so related to federal law claims that one case or controversy exists for Article III purposes.

11. Venue in this District is proper pursuant to 28 U.S.C. Sec. 1391.

NATURE OF DEFENDANTS' CONDUCT

12. Plaintiff Hammonds, at the time she was an inmate at CCA/OCCC, was a victim of sexual assault, rape and sodomy, perpetrated by Defendant Crowell, a CCA/OCCC Internal Affairs Officer. Hammonds sues for injuries arising from several sexual encounters with Defendant Crowell which extended over an approximate eighteen (18) month period before Plaintiff and other female inmates were alerted by CCA that they would be transferred from the confines of CCA/OCCC and the facility closed. Hammonds brings suit against the prison and its officials as individuals for their direct and indirect actions, their decisions and non-decisions, their failures to prevent the sexual assaults, and their maintenance of flawed policies all of which combined to create a culture within the CCA/OCCC that helped facilitate the sexual batteries.

13. Hammonds alleges that Defendants, individually and jointly with one another, engaged in negligent, reckless and wanton conduct described herein under color of the law, thereby violating Hammonds' rights protected by the Commonwealth of Kentucky and protected by the laws and the Constitution of the United States of America.

14. The individual Defendants named above knowingly participated or otherwise contributed to, encouraged, implicitly authorized or approved the conduct described herein. Defendants' conduct was intentional and grossly negligent, indicative of active malice toward Ms. Hammonds and represented deliberate and reckless disregard for and indifference to her life

and her Constitutional and common-law rights, and justifies an award of punitive damages in addition to the actual damages Hammonds is entitled to recover.

FACTS RELEVANT TO ALL CLAIMS

15. At all relevant times herein, Defendants owned and operated and/or were employees of CCA/OCCC.

16. Defendant Crowell was, at all times relevant herein, under the supervision and/or control of Defendants, CCA, Little, and/or Ferguson and Grande, all of whom individually or jointly and severally had a duty to citizens incarcerated there a reasonably safe environment during incarceration, and to employ properly screened, trained, and supervised staff.

17. Defendants CCA, Little, and/or Ferguson and Grande have a duty to provide adequate policies and procedures to incarcerated citizens who wish to report abuse by employees in order to prevent violations of rights guaranteed by federal and state law.

18. For the reasons stated herein, Plaintiff Hammonds alleges that Defendants, CCA, Little and/or Ferguson and Grande, failed to satisfy these duties.

19. Although Plaintiff has a right to be free from physical abuse, harassment, sexual assault, assault, battery, false imprisonment, and intentional infliction of emotional distress, while incarcerated at CCA/OCCC on or about February 2008, Plaintiff was abused, harassed, and raped and sodomized by Defendant Crowell. These sexual assaults commenced sometime after Plaintiff Hammonds was incarcerated at CCA/OCCC.

20. Beginning in approximately July of 2008, Hammonds learned that her mother, who resided in Germany, was seriously ill with cancer and that if she wished to be able to communicate with her via telephone she was required to make that request of CCA/OCCC Internal Affairs Officer Crowell. After making that request of Crowell, Defendant Crowell

allowed her to come to his office to make a telephone call to her mother, after which he advised her that the “payback” for the call was that she had to have sex with him. Defendant Cromwell sexually assaulted her at that time. Thereafter, at any time that Crowell summoned her to his office, Hammonds was required to perform oral sex on Defendant Crowell in order that she might be allowed to have any further long-distance telephonic communications with her mother.

21. Defendant Crowell threatened and coerced Hammonds into these sexual acts. In fact, Crowell specifically threatened her that “she better not tell” anyone about “this” or he would make a report to the parole board to disrupt her chances at parole and/or he would “report her to immigration” so she would be deported and be at risk of never seeing her children again.

22. Moreover, Plaintiff Hammonds was never provided any procedure by which she could safely and effectively file a grievance to report Defendant Crowell for his sexual assaults and sodomies. What Hammonds understood about the CCA inmate grievance procedure was that every such inmate grievance was routed through Defendant Crowell’s office and Crowell had the authority to place any such inmate who made a grievance in segregation. Hammonds was exceedingly fearful that if she made an inmate grievance against Crowell, Crowell would in fact place her in segregation indefinitely.

23. Thereafter, when CCA officials did alert inmates such as Hammonds that the OCCC facility would be closed and they would be transferred back to KCIW, they were informed that while they were still at OCCC if they had any complaints regarding sexual misconduct by the corrections officers they could report same “anonymously” via phones placed throughout the facility. Plaintiff Hammonds and other inmates were told that they could use these phones to report misconduct by calling a number listed on a poster near the phones. The number listed was the contact number for the CCA Internal Affairs Office, manned by Defendant

Crowell. Therefore, Hammonds (and any other inmate's) allegedly "anonymous" reports for sexual assaults would be made directly to Defendant Crowell. Furthermore, any reports made via this phone system were in fact not "anonymous" because in order to use the phone system the inmate had to punch in her prison ID number, effectively identifying themselves to Crowell when and if such a report were made.

24. Plaintiff Hammonds was effectively foreclosed from any meaningful remedy available to report her grievance against Defendant Crowell, and therefore she was unable to exhaust any available administrative remedies.

25. In addition, when Plaintiff Hammonds was finally transferred to KCIW and when she was being interviewed regarding another matter, she alerted a sergeant at KCIW that she had been sexually assaulted and sodomized by CCA/OCCC's IA Officer Crowell. This sergeant alerted KCIW's IA Officer. After his interview of Hammonds, *the KCIW's Internal Affairs Officer specifically instructed Hammonds -- when she asked whether this was a matter about a which a grievance should be filed against Crowell -- that "no" she should not file a grievance; that she should not tell anyone at the prison; that she shouldn't tell any family members or others; because Crowell was under investigation and "we don't want this to get back to him" so as to "blow the investigation."*

26. Thereafter, Plaintiff was interviewed by someone from the Kentucky Department of Corrections ("DOC"), and *again she was specifically instructed by the investigator from DOC that Crowell was under investigation and "not to tell anyone about it."*

27. No reasonable employee at a prison like CCA/OCCC could have thought that sexually abusing, intimidating and threatening citizens entrusted to his care, custody and control, like Hammonds, was lawful.

28. Upon information and belief, prior to the time that CCA's IA Officer Crowell began forcing Hammonds to engage in these non-consensual sexual acts, Defendants, CCA, Little, Ferguson and/or Grande, were aware of prior complaints by other female prisoners against male staff in general at CCA/OCCC, which complaints included, but were not necessarily limited to other sexual harassment, offensive sex-based language, invasion of privacy, and assaults, and also including knowledge of on-going investigations of male staff for sexual assaults upon female prisoners. Despite this knowledge, Defendants herein failed to, among other things: (a) take adequate steps to remedy the situation and/or to deter such sexual misconduct against female prisoners such as Hammonds, including failure to properly train, assign, supervise, investigate and discipline corrections officers; and (b) failed to implement an effective mechanism to identify, investigate and prevent sexual, emotional and physical abuse and discriminatory treatment of women prisoners at CCA/OCCC, including Plaintiff Hammonds.

29. Defendants CCA and its officers and directors knew or should have known that as a result of their acts and omissions there was a strong likelihood of further sexual misconduct and/or bodily harm and injury to female prisoners, including Plaintiff Hammonds, by male staff working at CCA/OCCC.

30. Upon information and belief, sexual assault, unwanted sexual advances, and other forms of improper behavior by Crowell were known or should have been known to CCA and its officers and directors prior to his assaults on Hammonds, but none of these Defendants took reasonable actions to ensure Plaintiff's safety at this facility.

31. The acts and omissions by Defendants created a hostile environment and pervasive risk of harm to female prisoners at CCA/OCCC, including Hammonds, and said Defendants knew or should have known of the undue threats to Plaintiff Hammonds have

resulted from placing inadequately trained and/or supervised male staff on duty in the areas where female prisoners, including Hammonds, are subjected to sexual misconduct in violation of their rights by said corrections officers including Defendant Crowell.

32. Defendants' acts and omissions regarding screening, training, supervision, investigation, discipline of staff and failures to protect women prisoners, including Plaintiff, from retaliation, permitted, encouraged and ratified the discriminatory and sexually abusive and degrading treatment of Plaintiff.

33. Defendants in supervisory positions exhibited reckless disregard and deliberate indifference to the sexual harassment, sexual misconduct, assaults, degrading treatment and violations of the basic privacy rights of Plaintiff by failing to take adequate steps to deter violations of Plaintiff's rights, including but not limited to: failing to adequately investigate allegations of sexual harassment, assaults and degrading treatment of female prisoners, failing to provide adequate supervision of staff, failing to adequately discipline staff who violated Plaintiff's rights and/or failing to adequately train and screen their staff, including investigators and supervisory staff.

34. The management and supervisory practices, rules, procedures and acts of the Defendants were so deficient in their failure to limit the risks of sexual misconduct by male staff against female prisoners as to constitute deliberate indifference to the safety needs of female prisoners under their jurisdiction, including Plaintiff.

35. The failures, acts and/or omissions of Defendants, as set forth above, were and are a proximate cause of Plaintiff's injuries.

36. The deprivation of constitutional rights alleged in this complaint are the result of official policies, custom and practices of Defendants and each of them.

CAUSES OF ACTIONS

COUNT ONE — UNCONSTITUTIONAL SEARCH AND SEIZURE

37. Plaintiff adopts and incorporates by reference all preceding paragraphs as if said paragraphs were fully set forth herein.

38. The above described acts, including, but not necessarily limited to, non-consensual sexual acts, rape and sodomy, constitute excessive and unreasonable searches and seizures, depriving Plaintiff Hammonds of her liberty and invading her privacy and bodily integrity, without adequate penalogical justification depriving Hammonds of her rights secured by the Fourth and Eighth Amendment of the United States Constitution and/or Section 10 of the Kentucky Constitution.

39. As a proximate result of the aforesaid acts, Plaintiff Hammonds has suffered serious physical injury and emotional distress for which she is entitled to recover damages from Defendants, individually and/or jointly and severally, in an amount of compensatory and putative damages to be determined by a jury.

COUNT TWO — VIOLATION OF CIVIL RIGHTS

40. Plaintiff adopts and incorporates by reference all preceding paragraphs as if said paragraphs were fully set forth herein.

41. Defendants CCA, Little, Ferguson and/or Grande failed to take reasonable measures to prevent sexual assaults and sexual abuse of female inmates by male employees at CCA/OCCC and in fact allowed sexual abuses and sexual assaults to be perpetrated at CCA/OCCC thereby creating and allowing a sexually harassing and hostile environment for Plaintiff Hammonds and other similarly situated women.

42. These Defendants knew, or should have known of the sexual abuse, sexual assaults, harassment, hostile and discriminatory environment and the embarrassment and humiliation to which Plaintiff Hammonds and other women were subjected to at CCA/OCCC.

43. The failure by these Defendants to implement and enforce appropriate policies and procedures, properly train, screen, supervise and/or investigate the employees at CCA/OCCC to prevent sexual abuse, intimidation, discrimination, sexual assaults and threats upon Plaintiff Hammonds and other women constitutes a violation of the United States Constitution and the Kentucky Civil Rights Act for which said Defendants, individually and/or jointly and severally, are proximately liable to Plaintiff Hammonds for the injuries and compensatory and putative damages in an amount to be determined by a jury.

COUNT THREE -- CRUEL AND UNUSUAL PUNISHMENT

44. Plaintiff adopts and incorporates by reference all preceding paragraphs as if said paragraphs were fully set forth herein.

45. The above-described acts of Defendants constitute the unnecessary and wanton infliction of pain and suffering and emotional distress on the Plaintiff Hammonds, without penalogical justification.

46. Defendants' failure to prevent and remedy the sexual abuse, harassment, degrading treatment and retaliatory acts to which Plaintiff Hammonds was subjected constitutes deliberate indifference to the Plaintiff's psychological and emotional needs and amounts to cruel and unusual punishment under the United States and Kentucky Constitutions, and constitutes cruel and degrading treatment or punishment in derogation of Article 16 of the Convention Against Torture and Other Cruel, Inhumane and Degrading Treatment or Punishment.

47. These Defendants have engaged in conduct that shocks the conscience and as a result of the aforesaid acts, Plaintiff Hammonds is entitled to recover damages from Defendants compensatory and punitive damages in an amount determined by a jury.

COUNT FOUR -- EQUAL PROTECTION

48. Plaintiff adopts and incorporates by reference all preceding paragraphs as if said paragraphs were fully set forth herein.

49. Defendants' failure to prevent and remedy the sexual abuse, harassment, degrading treatment, retaliation and ongoing violations of Plaintiff Hammonds' privacy violates her right to equal protection of the law under the United States and Kentucky Constitutions and customary international standards.

50. Defendants' employment and assignment of male officers and other male employees to women's prisons, in positions where they may coerce women into unwanted sexual contact and where Defendants have failed to remedy sexual assaults and sexual harassment of plaintiff, is a ratification of the hostile conditions and treatment for women prisoners which constitutes discrimination based on sex. This inferior treatment is not substantially related to an important and legitimate government interest and violates Plaintiff Hammonds' rights to equal protection under the law and the United States and Kentucky Constitutions.

51. The denial of Plaintiff of the equal opportunity for rehabilitation and the subjection of Plaintiff to a hostile prison environment constitutes prohibited discrimination based on their sex in violation of the Kentucky Constitution, the Fifth and Fourteenth Amendments to the United States Constitution and customary international standards.

52. At all times relevant hereto, Defendants were acting under the color of law and, in doing so, deprived Plaintiff of the equal protection of the law under the Kentucky Constitution,

the Fifth and Fourteenth Amendments of the United States Constitution, and under customary international law and articles 2, 3 and 26 of the International Covenant on Civil Rights and Political Rights and Plaintiff Hammonds is entitled to recover compensatory and punitive damages from Defendants in an amount determined by a jury.

COUNT FIVE -- NEGLIGENCE

53. Plaintiff adopts and incorporates by reference all preceding paragraphs as if said paragraphs were fully set forth herein.

54. Defendants CCA, Little, Ferguson and Grande negligently hired, supervised, and retained Crowell, as well as other prison employees, *inter alia* by (a) failing to care for and ensure the safety of Plaintiff while at OCCC; (b) failing to properly train, supervise, discipline, retain, hire and or discharge their employees/agents and/or representatives; (c) placing male officers in supervisory positions over every aspect of the plaintiff's confinement where they were in positions of authority and could use that authority to harass, intimidate and coerce said female inmates such as Hammonds into unwanted sexual assaults; and (d) were otherwise negligent in their care and treatment of Plaintiff. As a direct and proximate result Plaintiff has sustained general and special damages in an amount to be proved at trial.

55. Defendant Crowell's actions violate KRS 510.040 thru 510.070 and 510.110 and constitute negligence per se.

56. The injuries alleged in this cause of action are the direct result of official policy, custom and practices of Defendants and each of them is individually and/or jointly and severally liable to plaintiff for her physical injury, emotional distress and other compensatory and putative damages caused thereby in an amount to be determined by a jury.

**COUNT SIX – NEGLIGENT AND
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS/OUTRAGE**

57. Plaintiff adopts and incorporates by reference all preceding paragraphs as if said paragraphs were fully set forth herein.

58. Defendants, each of them individually and/or jointly and severally negligently caused Plaintiff to sustain severe emotional distress and as a direct and proximate result of said conduct, Plaintiff has sustained substantial compensatory and punitive damages in an amount to be determined by a jury.

59. Defendants, each of them have intentionally inflicted severe emotional distress upon Plaintiff, as a direct and proximate result of such outrageous conduct, Plaintiff has sustained substantial compensatory and punitive damages in an amount to be determined by a jury.

COUNT SEVEN - RESPONDENT SUPERIOR

60. Plaintiff adopts and incorporates by reference all preceding paragraphs as if said paragraphs were fully set forth herein.

61. The conduct of Defendant Crowell and other CCA prison employees engaged in within the scope of their employment, and Defendant employers, including Defendants CCA, Ferguson, Grande and Little are liable for said conduct under the doctrine of respondent superior, and or through ratification of policies and customs that proximately caused force Plaintiff's injuries.

62. Plaintiff has sustained substantial personal injuries and emotional distress for which she is entitled to compensatory and punitive damages an amount to be determined by a jury.

COUNT EIGHT — ASSAULT AND BATTERY

63. Plaintiff adopts and incorporates by reference all preceding paragraphs as if said paragraphs were fully set forth herein.

64. While Plaintiff Hammonds was in the care, custody and control of Defendants CCA, Little, Ferguson and Grande, Defendant Crowell assaulted, battered, sexually assaulted and sodomized Hammonds by forcibly requiring her to engage in non-consensual sexual acts and all of which caused Plaintiff Hammonds physical, mental and emotional pain and suffering.

65. As a result of the aforesaid acts, Plaintiff Hammonds is entitled to recover compensatory and punitive damages from Defendants individually and/or jointly and severally in an amount to be determined by a jury.

COUNT NINE -- FALSE IMPRISONMENT

66. Plaintiff adopts and incorporates by reference all preceding paragraphs as if said paragraphs were fully set forth herein.

67. While Plaintiff Hammonds was in the care, custody and control of Defendants CCA, Little, Ferguson and Grande, Defendant Crowell assaulted, battered, sexually assaulted and sodomized Hammonds and Defendant Crowell's actions violated the state tort of false imprisonment, also violating KRS 509.020, and thereby constitutes negligence per se under this count.

68. As a result of the aforesaid acts, Plaintiff Hammonds suffered physical, mental and emotional pain and distress for which she is entitled to recover compensatory and punitive damages from Defendants individually and/or jointly and severally in an amount to be determined by a jury.

COUNT TEN -- PUNITIVE DAMAGES

69. Plaintiff adopts and incorporates by reference all preceding paragraphs as if said paragraphs were fully set forth herein.

70. Based on the conduct alleged herein Defendants have engaged in conduct that has been willful and wanton and in callous disregard for the rights and sensibilities of Plaintiff Hammonds and Plaintiff is entitled to an award of punitive damages against said Defendants individually and/or jointly and severally in an amount sufficient to punish said Defendants and to deter others from engaging in similar conduct.

COUNT TEN -- COMPENSATORY DAMAGES

71. Plaintiff adopts and incorporates by reference all preceding paragraphs as if said paragraphs were fully set forth herein.

72. The acts and omissions of Defendants constituting violations of Plaintiff's constitutional, statutory and common law rights were and are a proximate cause of Plaintiff's damages.

73. As a result of Defendants' acts and omissions, Plaintiff has suffered emotional and physical injuries and damages, severe psychological injuries and damages, loss of freedom and rehabilitation opportunities.

WHEREFORE, Plaintiff requests as follows:

- a) Judgment be entered in her behalf against all Defendants;
- b) That she be awarded such general, special and punitive damages as are proved at trial;
- c) That she be awarded reasonable attorneys fees and costs incurred in prosecuting this action pursuant to 42 U.S.C. Section 1988, KRS 431.082 and other statutes;

- d) That she be awarded pre-judgment and post-judgment interest in the maximum amount allowed by law;
- e) That the Court award such other and further relief as it deems just and equitable under the circumstances; and,
- f) Trial by jury.

Respectfully submitted,

/s/ Christina R.L. Norris
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