

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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TANISHA WELLS,

Plaintiff,

v.

MEMORANDUM and ORDER  
06-C-345-S

DANE COUNTY,

Defendant.

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Plaintiff Tanisha Wells commenced this civil action against defendant Dane County under 42 U.S.C. § 1983. She alleges in her amended complaint that she was denied due process protections when she was taken into custody.

On December 1, 2006 defendant filed a motion for summary judgment under Rule 56, Federal Rules of Civil Procedure, submitting proposed findings of fact, conclusions of law, affidavits and a brief in support thereof. Plaintiff cross-moved for partial summary judgment on liability. These motions have been fully briefed and are ready for decision.

On a motion for summary judgment the question is whether any genuine issue of material fact remains following the submission by both parties of affidavits and other supporting materials and, if not, whether the moving party is entitled to judgment as a matter of law. Rule 56, Federal Rules of Civil Procedure.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. An adverse party may not rest upon the mere allegations or denials of the pleading, but the response must set forth specific facts showing there is a genuine issue for trial. Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

There is no issue for trial unless there is sufficient evidence favoring the non-moving party that a jury could return a verdict for that party. If the evidence is merely colorable or is not significantly probative, summary judgment may be granted. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

#### FACTS

In deciding the motions for summary judgment the Court finds that there is no genuine dispute as to any of the following material facts.

Plaintiff Tanisha Wells is an adult resident of Madison, Wisconsin. Defendant Dane County is a Wisconsin municipal corporation.

On April 16, 2003 plaintiff was convicted in Dane County Circuit Court for driving while intoxicated. She was sentenced to

60 days in Dane County Jail starting June 13, 2003 with Huber privileges. At the time of plaintiff's intake into the county jail she was determined to be a good candidate for a type of Huber program known as the STAR program because of her job and her young child at home.

Under the terms of the STAR program inmates are permitted to remain in their own residences, go to their jobs and take care of their children under strictly controlled conditions. The jail monitors the inmates through a telephone system that telephones their homes frequently to insure that they are present. This program differs from the regular Huber release program because the person does not return to the jail after work or school but remains in his or her home.

Before an inmate takes part in this program she must sign a document agreeing to abide by the terms of the program which include consequences for rule violations. Plaintiff signed a consent form that stated, "It has been explained to you that any violation, while participating in the Dane County Jail Diversion Program, may result in your immediate return to the jail." The contract that plaintiff signed stated specifically, "I understand that if I violate any of these rules or any law, it may result in my being terminated from the program and returned to the Dane County Jail."

One of the conditions of the contract was that plaintiff had to provide urine samples at random intervals as requested by the jail to be tested for drug use. Participants in the program are advised that the use of drugs is a violation of the program rules.

On July 3, 2003 plaintiff was asked to come in to provide a urine sample and she did so. On July 10, 2003 Dane County Sheriff's Deputy Todd Diring tested a urine sample that bore plaintiff's name. The sample tested positive for cocaine. The test indicated that plaintiff had broken the law and the rules of the STAR program by using cocaine.

On July 11, 2003 two deputies went to plaintiff's place of employment, took her into physical custody and advised her that she had tested positive for cocaine use. The deputies brought her to the jail but medical staff would not accept her because of medical difficulties she was having with her pregnancy.

Plaintiff was taken to Meriter hospital where she remained for three days for medical treatment. She was kept under constant guard by a deputy and handcuffed to the bed. Plaintiff was released from the hospital on July 14, 2003 and taken to the jail. She was advised that there would be a hearing on her positive drug tests the next day. The Notice of Hearing which she received on July 14, 2003 advised her that she may remain in her current housing status pending the outcome of her disciplinary hearing.

At the time she received the Notice she was confined at the Dane County Jail.

On July 15, 2003 plaintiff was found guilty of violating a jail rule on the basis of the positive drug test result and received a copy of these findings in writing. The panel recommended that plaintiff's Huber privileges be revoked. On July 16, 2003 plaintiff appealed the finding and asked for a retest of her urine sample.

On July 17, 2003 plaintiff's urine sample was retested and was negative for cocaine. When Sgt. Yearman, the head of the jail diversion program, learned of the negative result she ordered plaintiff reinstated to the STAR program. Plaintiff was returned home that day. Dane County provided plaintiff with a letter verifying that her drug test was negative.

It is the custom and policy of the Dane County Sheriff's Office to apprehend an inmate in the STAR program with a positive drug test before affording that inmate an administrative hearing. This practice was called "held in pending a hearing".

The AxSYM machine used to test the plaintiff's urine had been 100% accurate in the previous four years that it was used by the Dane County Sheriff's Department. Plaintiff's urine test was the only false positive test by the machine.

## MEMORANDUM

Plaintiff claims that she was deprived of a protected liberty interest without due process when she was denied her release privileges under the STAR program without a hearing. Plaintiff was detained in the custody of the Dane County Sheriff prior to her July 15, 2003 disciplinary hearing for a rule violation based on her urine test which was positive for cocaine. It is undisputed that she was apprehended by deputies on July 11, 2003 and that she was in the custody of the Dane County Sheriff's Department from July 11-July 14, 2003 because while she was in the hospital she was guarded by a Sheriff's deputy and handcuffed to the bed. She was returned to the jail on July 14, 2003. This detention was pursuant to the Dane County Sheriff's Department policy to apprehend an inmate in the STAR program with a positive drug test before affording that inmate an administrative hearing.

The Wisconsin Statutes provide rules for Huber release inmates. The statute specifically provides that the Sheriff may refuse to permit the prisoner to exercise privileges to leave the jail not to exceed five days for any breach of discipline or other violation of jail regulations. §303.08(1), Wis. Stats.

The policy of the Dane County Sheriff's Office entitled "Formal Discipline for Serious Violations of Jail/Huber Rules" provides that an inmate be afforded a formal hearing in the jail

before the imposition of disciplinary measures including the forfeiture of Huber privileges for up to five days for each violation. This policy is consistent with the Wisconsin Administrative Code §DOC 350.15(3) that provides the procedures for disciplining inmates who violate Huber work release rules.

This statute, regulation and policy create an expectation that a Huber release inmate would not be punished with a denial of Huber release privileges without a hearing. Plaintiff was a STAR program participant rather than a regular Huber release inmate. Plaintiff had Huber release privileges but instead of being required to return to the jail each evening she was accepted into the STAR Program which allowed her the privilege of residing in her own home.

When she was accepted into the program, she signed both a consent form and a contract. The consent form stated, "It has been explained to you that any violation, while participating in the Dane County Jail Diversion Program, may result in your immediate return to the jail." The contract she signed stated, "I understand that if I violate any of these rules or any law, it may result in my being terminated from the program and returned to the Dane County Jail."

After signing these documents for the STAR program, plaintiff would have known that she could have been returned to the jail

prior to a hearing for a rule violation. Based on the STAR program contract, she did not have a protected liberty interest in remaining in her own residence after being suspected of a rule violation. Her urine test which tested positive for cocaine indicated that she had broken the law and a rule of the STAR program and could be returned to jail.

The STAR program had different rules than the Huber release program which plaintiff consented to follow. These rules were different because the participant remained in the community rather than being housed in the jail. Leaving a person who had tested positive for cocaine in her own residence presented more of a possibility that she would continue to use drugs than if she was returned to the jail. Plaintiff as a participant in the STAR program had no entitlement to a pre-detention hearing.

After her detention she did receive due process when she received an administrative hearing before being disciplined for the rule violation. She was found guilty but allowed to appeal. Her urine was then re-tested and found to be negative for cocaine. She was immediately released from the jail and allowed to continue in the STAR Program.

In hindsight, plaintiff was mistakenly detained because the test was wrong and she did not break a rule. The deputies, however, reasonably relied on the test results to suspect plaintiff



of a rule violation and to apprehend her because the previous test results of the AxSYM machine had been 100% accurate.

Plaintiff concedes that the error concerning her urine test does not rise to the level of a constitutional violation. She also agrees that erroneously testing urine for drugs was not a policy of the County. It is possible, however, that the false positive urine test and the failure to retest the urine before detaining plaintiff may have been the result of negligence by Dane County Sheriff's Department employees.

Plaintiff's due process rights were not violated. Accordingly, plaintiff's motion for partial summary judgment will be denied and defendant's motion for summary judgment will be granted.

ORDER

IT IS ORDERED that plaintiff's motion for summary judgment is DENIED.

IT IS FURTHER ORDERED that defendant's motion for summary judgment is GRANTED.

IT IS FURTHER ORDERED that judgment is entered in favor of defendant against plaintiff DISMISSING her complaint and all claims contained therein with prejudice.

Entered this 11<sup>th</sup> day of January, 2007.

BY THE COURT:

S/

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JOHN C. SHABAZ  
District Judge