

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

TAKEI MCFARLAND

PLAINTIFF

VS.

CIVIL CASE NO. 4:14cv90-DMB-SAA

STANLEY BROOKS, ET AL.

DEFENDANTS

**PLAINTIFF'S MEMORANDUM BRIEF IN OPPOSITION TO
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Plaintiff Takei McFarland files this Memorandum Brief in Opposition to Defendants' Motion for Summary Judgment and would show as follows:

I. STATEMENT OF MATERIAL FACTS

Takei McFarland ("McFarland") was incarcerated at the Mississippi State Penitentiary in Parchman, Mississippi. (*See* Aff. of Takei McFarland, attached to Pl.'s Response as Exhibit "A"). McFarland was assigned to work in the poultry farming facility at the Penitentiary. (*See* Exhibit "A" at ¶ 2; Offender Log, attached as Exhibit "B"). McFarland worked in the facility for about six (6) months, from October 2013, until April 2014. (*Id.*).

McFarland was given no option in his job assignment but was forced to work in the poultry facility. (*See, e.g.,* Depo. of Henry Gibson at 9, attached to Pl.'s Resp. as Exhibit "C"). McFarland's case manager assigned him to work at the facility. (*Id.*).

McFarland testifies that the conditions at the facility in which he was forced to work were deplorable. (*See generally,* Exhibit "A"). McFarland testifies that he was exposed to deep collections of liquid chicken manure. (Exhibit "A" ¶ 4(a)). The drains in the facility were plugged and chicken manure was allowed to accumulate. (*Id.*). In addition to collections of manure, there was inadequate ventilation in the facility. (Exhibit "A" ¶ 4(b)). The resulting smell of the chicken facility was repulsive. (*Id.*). The stench was unbearable. (*Id.*). Inmates

working in the facility could not escape the smell on their persons even after taking showers. (*Id.*).

McFarland was required to work in the presence of dead chickens throughout the facility. (Exhibit “A” at ¶ 4(c)). There were many decomposing chickens and the resulting infestations of maggots and flies in the facility. (Exhibit “A” at ¶ 4(c) and (d)). McFarland’s was forced to work in dangerous conditions and freezing temperatures, with no functioning heat in the facility. (Exhibit “A” at ¶ 4(e)).

The Penitentiary’s own safety inspections document, to some extent, the horrid conditions at the chicken farm. (*See* MDOC Safety Inspections, attached collectively to Pl.’s as Exhibit “D”). However, the full extent of the conditions was documented by the Mississippi State University Extension Service following a site visit on January 15, 2015. (*See* Parchman Prison Site Visit Report, attached to Pl.’s Resp. as Exhibit “E”). The Extension Service’s report is compelling evidence of the cruel conditions to which McFarland was subjected at the facility. (*Id.*).

The Report was prepared by Dr. Tom Tabler and Dr. Morgan Farnell, two (2) Poultry Specialists with the MSU Extension Service. The Report documents the conditions at the facility, in pertinent part, as follows:

1. Liquid chicken manure was flowing out of the buildings onto the roads, sidewalks and loading ramps.
2. None of the buildings were adequately sealed, allowing exposure to the elements.
3. Numerous signs of predation, including body parts, feathers and possibly coyote feces.
4. Water lines had burst during freezing temperatures.
5. Approximately 20% of the birds appeared to have died recently, likely from hypothermia. There were many dead birds that had not been removed for some time. The skin of these birds had turned black, the bodies had flattened and the carcasses had started to mummify. Skeletons of birds were also found.

6. The floors were covered with approximately 2 feet of liquid manure and spilled feed. There were many live and dead birds within this fecal slurry. The drains were plugged and cannot drain to the lagoons.
7. The buildings did not have operational heating systems. While layer barns are typically heated by the body heat of the hens, this was not possible because of the drafty condition of the barns.
8. Lights were not serviceable in many locations and some were hanging from their wiring. The electrical system overall seemed to be in bad repair with a corroded breaker box and exposed wiring throughout.
9. Insulation was no longer intact in any barn because of a major rodent infestation.
10. There is currently no way to control or manage of 1) house temperature, 2) ventilation, 3) feed, or 4) water.
11. Workers were observed feeding and caring for the birds as best able, but were exposed to dangerous and extremely difficult working conditions such as unsure footing, open drains, undoubtedly a significant bacterial load, insects in warmer weather and exposed wiring.

(Exhibit "E" at p. McFarland 126-128). The pictures, worth the proverbial thousand words, are as follows:

1-2' Deep Manure Slurry



Manure Flowing out of Barn



Numerous Mortalities



(Exhibit "E" at McFarland p. 132-33).

Three of the remaining individual Defendants in this case were in charge of the operations of the poultry facility in various capacities. Stanley Books is the Director of Agricultural Enterprise and Statewide Food Service. (Depo. of Stanley Brooks at p. 5, attached to Pl.'s Resp. as Exhibit "F"). Brooks is ultimately in charge of the poultry facility, in addition to several other facilities. (*Id.* at 7). Part of Brooks' responsibilities was to oversee the operation of the facility and to remedy any undesirable conditions. (*Id.* at 13). Brooks testified that all of the "chain of command" within the poultry facility had the responsibility to fix the bad conditions. (*Id.* at 12-13).

Below Brooks in the hierarchy is Ed Cole. (*See* Depo. of Ed Cole at 6, attached to Pl.'s Resp. as Exhibit "G"). Ed Cole was, at the time the "Farm Manager 2" over the poultry facility. (*Id.* at 6-7). The "Farm Manager 2" is responsible for the day-to-day operations of the poultry facility. (*Id.*). Cole was responsible for all of the day-to-day decisions. (*Id.* at 8-9). Cole had front-line responsibility to see that whatever improper conditions existed were remedied. (*Id.*).

Below Cole in the hierarchy is Henry Gibson. (*See* Depo. of Henry Gibson at 7-8, attached to Pl.'s Resp. as Exhibit "C"). Gibson was supervisor of the inmate workers. (*Id.* at 8-10). Gibson was responsible to tell the inmates what tasks to complete. (*Id.*). Gibson testified that he and Cole were jointly responsible for the daily operations of the facility. (*Id.* at 20, 24, 25 27).

All three of these Defendants, Brooks, Cole and Gibson, were aware of the awful conditions at the poultry facility during McFarland's imprisonment.¹ (*See, e.g.*, Brooks Depo. at 9-13; Brooks Depo. at 19-21; Cole Depo. at 13-17). Supervisor Brooks' testimony sums it up as follows:

¹ Defendant Richard Gibson was the fire and safety director at the prison and responsible for safety inspections of the poultry facility. As discussed below, Plaintiff concedes dismissal of Richard Gibson as a party.

Q. You've seen that condition at the chicken farm, haven't you?

A. Yes, I have.

Q. Would you and I agree that it was terrible conditions out there?

A. I'd agree they were terrible, but I'm not sure about that date.

(Gibson Depo. at 20).

Despite knowledge of the terrible conditions, none of the three Defendants remedied the conditions. As discussed below, Plaintiff has presented sufficient evidence of claims under the Eighth Amendment. There is evidence from which a jury could properly determine that Defendants Brooks, Cole and Gibson were deliberately indifferent to conditions at the poultry facility and to McFarland being subjected to unconstitutional cruel punishment.

Accordingly, as discussed fully below, summary judgment should be denied.

II. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate only where there is no genuine dispute of any material fact and when the movant is entitled to judgment as a matter of law. FED. R. CIV. P. 56(a). The party seeking summary judgment carries the burden of demonstrating that there is no evidence to support the non-movant's case and that the party is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986).

In ruling on a motion for summary judgment, the Court is not to make credibility determinations, weigh evidence, or draw inferences from the facts. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Rather, the evidence of the non-movant is to be believed and all justifiable inferences are to be drawn in favor of the non-movant. *Anderson*, 477 U.S. at 255.

III. ARGUMENT

A. THERE ARE GENUINE ISSUES OF MATERIAL FACT AS TO MCFARLAND'S EIGHTH AMENDMENT CLAIM.

The Eighth Amendment to the United States Constitution prohibits the imposition of cruel and unusual punishments. U.S. Const. Amend. VIII. The Eighth Amendment has been incorporated to the States through the Fourteenth Amendment. *Robinson v. California*, 370 U.S. 660, 667 (1962).

The United States Supreme Court has explained that "[t]he Constitution does not mandate comfortable prisons, but neither does it permit inhumane ones, and it is now settled that the treatment a prisoner receives in prison and the conditions under which he is confined are subject to scrutiny under the Eighth Amendment." *Farmer v. Brennan*, 511 U.S. 825, 832, 114 S. Ct. 1970, 128 L. Ed. 2d 811 (1994) (internal quotations omitted).

An inmate may prevail on an Eighth Amendment claim by showing that the conditions of confinement constitute cruel and unusual punishment so long as such conditions are not "part of the penalty that criminal offenders pay for their offenses against society." *Whitley v. Albers*, 475 U.S. 312, 319, 106 S. Ct. 1078, 89 L. Ed. 2d 251 (1985) quoting *Rhodes v. Chapman*, 452 U.S. 337, 347, 101 S. Ct. 2392, 69 L. Ed. 2d 59 (1981); *Gillespie v. Crawford*, 833 F.2d 47, 50 (5th Cir. 1987).

In order to prevail on such a conditions-of-confinement claim, a plaintiff must show: (1) objectively, that the deprivations are sufficiently serious; and (2) subjectively, that the defendant prison officials knew of the deprivations but nevertheless have shown a "deliberate indifference" to the plaintiff's health or safety. *Wilson v. Seiter*, 501 U.S. 294, 303, 111 S. Ct. 2321, 115 L. Ed. 2d 271 (1991); *see also Davis v. Scott*, 157 F.3d 1003, 1005 (5th Cir.1998).

The prisoner must suffer from an extreme deprivation of any "minimal civilized measure of life's necessities." *Id.* at 304. The Eighth Amendment's prohibition against cruel and unusual

punishment requires that prisoners be afforded "humane conditions of confinement" and prison officials are to ensure that inmates receive adequate food, shelter, clothing, and medical care. *Farmer v.*, 511 U.S. at 832.

Deliberate indifference is established by showing that the defendant officials "(1) were aware of facts from which an inference of excessive risk to the prisoner's health or safety could be drawn and (2) that they actually drew an inference that such potential for harm existed." *Bradley v. Puckett*, 157 F.3d 1022, 1025 (5th Cir. 1998); *see also Herman v. Holiday*, 238 F.3d 660, 664 (5th Cir. 2001).

The summary judgment record shows that the conditions at the poultry facility during McFarland's forced labor there were sufficiently cruel as to be unconstitutional. The MSU Extension Service Report, standing alone, supports this claim. During his imprisonment, McFarland was forced to work in mountains of chicken dung. McFarland was forced to work in an unbearable stench which, according to the Report, he was subjected to an "undoubtedly a significant bacterial load." McFarland was subjected to exposed electrical wires, constant risk of electrocution, unsteady footing and generally deplorable conditions. McFarland had nightmares from the dead, decomposing and maggot-infested chicken carcasses to which he was continuously exposed.

The Eighth Amendment recognizes the principle that "[t]he degree of civilization in a society can be judged by entering its prisons." FYODOR DOSTOEVSKY, *THE HOUSE OF THE DEAD* (1862) (C. Garnett trans. 1957) 76. The United States Constitution mandates that inmates not be subjected to the sort of conditions in which McFarland was forced to labor. The conditions at the poultry facility were inhumane. The conditions at the poultry facility are intolerable, and unconstitutional, for a prisoner in the United States in this century.

It is fairly undisputed on the summary judgment record that three of the Defendants, Stanley Brooks, Ed Cole and Henry Gibson all knew of the unconstitutional conditions. These Defendants' job responsibilities required them to observe the poultry facility routinely. All three Defendants generally admit that they knew the conditions were intolerable and they actually drew the inference of danger required for Eighth Amendment liability. None of the Defendants did anything. Rather, they all generally claim they were impotent to remedy the conditions at the time due to an insufficient amount of prisoner labor.

Defendants must generally argue that to remedy the ongoing violations of constitutional rights they needed to subject even more prisoners to the unconstitutional conditions. This argument is illogical, and provides no basis to escape liability.

There is sufficient evidence on the summary judgment record for a reasonable jury to determine that Defendants Stanley Brooks, Ed Cole and Henry Gibson were deliberately indifferent to the violations of McFarland's Eighth Amendment rights.

Accordingly, as genuine issues of fact preclude summary judgment, Defendants' Motion for Summary Judgment should be denied.

B. THERE IS NO ELEVENTH AMENDMENT IMMUNITY ISSUE.

The Magistrate's Report and Recommendation following the *Spears* hearing in this case recommended dismissal of all claims other than the claims against Stanley Brooks, Ed Cole, Henry Gibson and Richard Gibson in their individual capacities. (*See* Order and Report and Recommendation, Doc. No. 13). The Court approved and adopted the Report and Recommendation. (Doc. No. 18). Thus, the only remaining claims are the individual capacity claims against these four (4) Defendants.

Defendant correctly argue that the State enjoys Eleventh Amendment immunity for claims against the State or claims against State officials in their official capacity. *Board of*

Trustees of Univ. of Ala. v. Garrett, 531 U.S. 356, 363 (2001); *Perez v. Region 20 Educ. Serv. Ctr.*, 307 F.3d 318, 326 (5th Cir. 2002). However, the Eleventh Amendment is inapplicable to claims such as these against individual Defendants, in their individual capacity, for violation of constitutional rights. *See, e.g., Porter v. Epps*, 659 F.3d 440, 444 (5th Cir. 2011). An Eleventh Amendment immunity analysis applies to claims against the State, or “official capacity” claims, while a qualified immunity analysis applies to claims against individuals. *See, e.g., McIntosh v. Partridge*, 540 F.3d 315, 325 (5th Cir. 2008); *Mayfield v. Tex. Dep't of Crim. Justice*, 529 F.3d 599, 604 (5th Cir. 2008); *Stidham v. Tex. Comm'n on Private Sec.*, 418 F.3d 486 (5th Cir. Tex. 2005).

The only remaining claims in this case are individual capacity claims against the individual Defendants. There is no Eleventh Amendment immunity issue in this case. As discussed above, the individual Defendants Stanley Brooks, Ed Cole and Henry Gibson are not qualifiedly immune because the record establishes deliberate indifference to McFarland’s constitutional rights.

Because there are no remaining claims against the State, nor any official capacity claims, and all claims are in the Defendants’ individual capacity, Eleventh Amendment immunity is inapplicable.

C. PLAINTIFF CONCEDES SUMMARY JUDGMENT AS TO RICHARD GIBSON.

Plaintiff concedes dismissal of the claims against Richard Gibson.

IV. CONCLUSION

McFarland has produced evidence that he was subjected to conditions which constituted cruel and unusual punishment while incarcerated. McFarland has presented evidence that three (3) of the Defendants knew of the conditions, had the responsibility to remedy the conditions but did nothing to avert the ongoing constitutional violations.

These Defendants were deliberately indifferent to McFarland's constitutional rights. The Motion for Summary Judgment should be denied.

RESPECTFULLY SUBMITTED, this the 21st day of September, 2015.

MCLAUGHLIN LAW FIRM

By: /s R. Shane McLaughlin
R. Shane McLaughlin (Miss. Bar No. 101185)
Nicole H. McLaughlin (Miss. Bar No. 101186)
338 North Springs Street, Suite 2
Post Office Box 200
Tupelo, Mississippi 38802
Telephone: (662) 840-5042
Facsimile: (662) 840-5043
rsm@mclaughlinlawfirm.com

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I certify that I have this day electronically filed the foregoing document with the Clerk of Court using the ECF system, which sent notification to the following:

**Benny M. May
Office of the Attorney General
Civil Litigation Division
Post Office Box 220
Jackson, Mississippi 39205
bemay@ago.state.ms.us**

This the 21st day of September, 2015.

/s R. Shane McLaughlin