

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

ALBERT HERNANDEZ,
ADC #65214

PLAINTIFF

v.

5:09-cv-00328-JLH-JTK

RAYMOND MOLDEN, et al.

DEFENDANTS

ORDER

Plaintiff Hernandez, a state inmate incarcerated at the Diagnostic Unit of the Arkansas Department of Correction (ADC), filed this pro se 42 U.S.C. § 1983 action against Defendants, alleging deliberate indifference to his serious mental health needs.

This Court held a Pre-Jury Evidentiary Hearing in this matter on February 28, 2011, to determine whether the case should proceed to a jury trial. At the Hearing, Plaintiff testified that Defendant Edwards forcibly medicated him with Haldol in 2008-2009, without providing Plaintiff with a hearing before a medical review panel. Plaintiff alleged this violated his Fourteenth Amendment right, together with ADC and mental health policies which mandated a hearing prior to forced medication. Plaintiff was not able to produce any of these policies, however, and Defendants' attorney stated she was unaware of the policies. Defendants' attorney also stated Plaintiff's allegations against Defendants were previously litigated in another lawsuit.

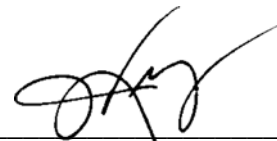
Following the Hearing, the Court provided Plaintiff an opportunity to submit copies of the policies to which he referred. Although Plaintiff did not submit any policies, he submitted a brief to the Court in which he referred to the case of Doby v. Hickerson, 120 F.3d 111 (8th Cir. 1997). This case concerned an allegation of involuntary medication by a former ADC prisoner. The Court in that case referred to an ADC policy which required prior notice to the prisoner and a hearing

before a medications review panel. 120 F.3d at 112. The Court also cited to Washington v. Harper, 494 U.S. 210, 221-22 (1990), where the United States Supreme Court held that prisoners possess “a significant liberty interest in avoiding the unwanted administration of antipsychotic drugs under the Due Process Clause of the Fourteenth Amendment.”

In light of the Doby and Washington cases, the reference in Doby to an ADC policy concerning involuntary medication of inmates, and Defendants’ attorney’s unawareness of such, the Court will hold in abeyance its determination of whether Plaintiff presented sufficient evidence to proceed to a jury trial, until Defendants are provided an opportunity to address these issues in a summary judgment motion. Defendants also should address the effect, if any, of Plaintiff’s prior lawsuit (Hernandez v. Arkansas Department of Correction, et al., 2:09-cv-00036-SWW), on the issues presented in this case. Accordingly,

IT IS, THEREFORE, ORDERED that Defendants shall file a dispositive motion addressing the issues raised in this Order within thirty days of the date of this Order.

IT IS SO ORDERED this 1st day of April, 2011.



JEROME T. KEARNEY
UNITED STATES MAGISTRATE JUDGE