

**Matter of Barnes v Fischer**

2012 NY Slip Op 30899(U)

March 26, 2012

Supreme Court, Franklin County

Docket Number: 2011-1023

Judge: S. Peter Feldstein

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**STATE OF NEW YORK  
SUPREME COURT**

**COUNTY OF FRANKLIN  
X**

In the Matter of the Application of  
**JESSIE J. BARNES, #09-B-2707,**  
Petitioner,

for Judgment Pursuant to Article 78  
of the Civil Practice Law and Rules

**DECISION, ORDER AND  
JUDGMENT**

**RJI #16-1-2011-0436.85**

**INDEX # 2011-1023**

**ORI #NY016015J**

-against-

**BRIAN FISCHER**, Commissioner, NYS  
Department of Corrections and Community  
Supervision, **KAREN BELLAMY**, Director,  
Inmate Grievance Program, **DAVID A. ROCK**,  
Superintendent, Upstate Correctional Facility,  
**UHLER**, Deputy Superintendent of Security, Upstate  
Correctional Facility, **WILLIAM PARMER**, Nurse  
Practitioner, Upstate Correctional Facility, **RENEE  
HOLMES**, Nurse, Upstate Correctional Facility, and  
**FAIRCHILD**, Nurse, Upstate Correctional Facility,

Respondents.

**X**

This is a proceeding for judgment pursuant to Article 78 of the CPLR that was originated by the Petition of Jessie J. Barnes, verified on August 25, 2011 and filed in the Franklin County Clerk's office on October 12, 2011. Petitioner, who is an inmate at the Upstate Correctional Facility, seeks an order of this Court directing respondents to transfer him from Upstate to a different state facility. Petitioner also appears to challenge the results of certain inmate grievance proceedings.

The Court issued an Order to Show Cause on October 24, 2011. The Order to Show Cause directed petitioner to effect service by mail upon each of the respondents and the office of the New York State Attorney General in Albany on or before November 10, 2011. By letter dated November 2, 2011, received in chambers on November 7, 2011, petitioner

requested an extension of time beyond November 10, 2011 to serve the respondent Fisher and the Attorney General. In his letter petitioner stated that all of the other respondents had been served by mail on November 2, 2011. Although an Amended Order to Show Cause was issued on November 14, 2011 petitioner notified the Court by letter dated November 4, 2011, received in chambers on November 14, 2011, that he had been able to timely effect service of process by mail on the respondent Fisher and the Attorney General on November 4, 2011.

The Court has received and reviewed respondents' Notice of Motion to Dismiss, supported by the Affirmation of Brian J. O'Donnell, Esq., Assistant Attorney General dated December 16, 2011. The Court has also received and reviewed petitioner's Affidavit in Opposition to Respondents' Motion to dismiss, filed in the Franklin County Clerk's office on January 6, 2012. Although it is asserted that neither the respondent Fischer nor the office of the Attorney General in Albany were served with the Amended Order to Show Cause, respondent's Motion papers do not address the issue of whether or not Commissioner Fischer and the Attorney General's office were served with the original Order to Show Cause, as claimed by petitioner. The Court, therefore, is not inclined to dismiss this proceeding based upon a lack of personal jurisdiction. The Court, however, is concerned with respondents' assertions that the petition fails to comply with the pleading requirements set forth in CPLR §§3013 and 3014.

CPLR §3013 provides, in relevant part, that "[s]tatements and a pleading shall be sufficiently particular to give the court and parties notice of the transactions, occurrences, or a series of transactions or occurrences, intended to be proved and the material elements of each cause of action..." CPLR §3014 provides, in relevant part, that "[e]very pleading shall consist of plain and concise statements . . ." Respondents take the position that the allegations set forth in the petition are neither sufficiently particular nor plain

and concise. According to respondents, “[t]he petition is loosely drawn and poorly organized. It is respectfully submitted to the Court that the petition is simply 19 pages of conclusory gibberish strung together with ‘buzz words’ such as ‘deliberate indifference’, ‘failure to protect’, ‘retaliation’, ‘racial animus’ etc. The respondents should not be required to sort through the petitioner’s papers in order to try to identify some claim against which to defend, and neither should the Court.”

The petition before the Court (denominated “Complaint”) is 19 pages in length and consists of 69 separately numbered paragraphs. By the Court’s count, the petition references by case identification number 35 separate inmate grievance proceedings. Annexed to the petition are approximately 107 pages of exhibits culled from a variety of documents. The exhibits, however, are not separately identified or tagged by letter/number. Thus, when a particular document is referenced in the petition one is left to sift through all 107 pages of exhibits in an attempt to examine a copy of such document.

In paragraph 10 of the petition the following is alleged:

“This is a mandamus to compel special proceeding pursuant to Article 7801 of the Civil Practice Law and Rules for a judgment directing: (1) the petitioner be transferred immediately to another state facility to cease on going staff abuse cycle based on retaliatory motives, racial animus, revenge, personal vendettas, intimidation and systematic mistreatment oppression from desisting [?] to exist on basis of respondents wanton and reckless callous disregard failure to protect petitioner, and; (2) retaliation denial of medical care, breach of duty of care and deliberate indifference to the petitioner’s serious medical needs in retaliation.”

As far as petitioner’s alleged abuse at the hands of Upstate Correctional Facility staff is concerned, the following is alleged in paragraph 12 of the petition:

“That by reason of astronomical degree of racial animus the all caucasian staff and administration are breeding here at Upstate Correctional Facility [respondents] David A. Rock and D. Uhler have established an institution founded on deceit and corruption promoting and encouraging on going staff mistreatment of the petitioner for over fourteen (14) consecutive months by

Sergeants Eddy, Yaddow, and Gokey, Correction Officers Keating, E. Wood, Garrison, Derouche, Dumas and many other 10-Bldg. officers.”

Petitioner goes on to allege the following in paragraph 18 of his petition:

“The petitioner have [sic] filed multiple grievances naming E. Wood, Keating, Gokey, Yaddow, Eddy and Garrison in grievances UST-45308-11, UST-46090-11, UST-46174-11, UST-45959-11, UST-45853-11, UST-45811-11, UST-45758-11, UST-45590-11, UST-45650-11, UST-45482-11, UST-45436-11, UST-46175-11, UST-46099-11, UST-45810-11, UST-45995-11, UST-46027-11, UST-45726-11, UST-45161-11, UST-45854-11, UST-45787-11 as parties for ongoing abusiveness that were decided by Inmate Grievance Program Central Office Review Committee between May 18, 2011 and August 7, 2011.”

Although other portions of the petition contain allegations of petitioner’s abuse at the hands of Upstate staff - often expressed in broad conclusory language<sup>1</sup> but sometimes in more specific fashion - none of the inmate grievance proceedings identified by case number in paragraph 18 of the petition are again referenced by case number in connection with any allegation (conclusory or specific) of staff abuse at Upstate.

As far as the alleged deliberate indifference to petitioner’s serious medical needs is concerned, the following is alleged in paragraphs 44 and 45 of the petition:

“44. That by reason of the petitioner’s engagement in constitutionally protected conduct of seeking governmental redress of grievances in both judicial and administrative forums respondents R. Holmes, Fairchild and Parmer have continuously retaliated against the petitioner with deliberate and indifference [sic] to my serious medical needs.

45. The petitioner have [sic] filed numerous grievance appeals UST-45407-11, UST-45328-11, UST-46097-11, UST-45207-11, UST-45651-11, UST-45513-11, UST-45787-11, UST-45854-11, UST-45161-11, UST-45726-11, UST-46027-11, UST-45995-11, and UST-45810-11 with respondent Bellamy in regards to R.Holmes, Fairchild and Parmer deliberate and indifference

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<sup>1</sup> In paragraph 37 of the petition, for example, the following is alleged: “The petitioner have [sic] been subjected to continuous persistent malevolence, racism and retaliation abuses by staff and administration that has festered into complex malignant conspiracy threat of immense danger to the petitioner’s life, health, safety and well being.”

to his serious medical needs in retaliation for petitioner's continuous engagement in constitutionally protected conduct."

Although other portions of the petition contain allegations of deliberate indifference to petitioner's medical needs - often expressed in broad, conclusory language<sup>2</sup> but sometimes in more specific fashion - none of the inmate grievance proceedings identified by case number in paragraph 45 of the petition are again referenced by case number in connection with any allegation (conclusory or specific) of deliberate indifference to serious medical needs.

In the "WHEREFORE" clause of the petition it is requested that this Court issue judgment as follows:

"DIRECTING: The respondents transfer the petitioner from Upstate Correctional Facility immediately cause [sic] his health, safety and well being is in immense danger by reason of on going malevolent staff and administration systematic maltreatment oppression cycle abusiveness custom;

VACATING: The CORC grievance decisions as bias and prejudice unconstitutional arbitrary and malicious defacto governmental policy that is contrary to DOCS own regulations of 701.6(e)(1)(2) . . ."

This Court, which handles numerous proceedings initiated by *pro se* inmate petitioners at various DOCCS facilities, recognizes that in the absence of the availability of assigned counsel both the Court and the Attorney General's office must, at times, endeavor to make the best of substandard pleadings. Otherwise, scarce judicial resources would be wasted in endless efforts to compel compliance with technical legal requirements by individuals who are all too often ill-equipped to comply. In the case at bar, however, the Court finds that petitioner's failure to meet the standards set forth in

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<sup>2</sup> In paragraph 47 of the petition, for example, the following is alleged: "That by reason of R. Holmes selfish, authoritarian, control freak and narcissistic attitude she has continuously in retaliation with deliberate indifference to the petitioner's serious medical needs denied him of medical care."

CPLR §§3013 and 3014 is particularly egregious and that respondents would be unduly prejudiced if required to attempt to fashion responsive pleadings.

It is, therefore, the decision of the Court and it is hereby

**ORDERED**, that respondents' motion is granted and it is further

**ADJUDGED**, that the petition is dismissed without prejudice.

**Dated:** March 26, 2012 at  
Indian Lake, New York.

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S. Peter Feldstein  
Acting Supreme Court Justice