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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF UMATILLA

BRANDON NELSON (aka BRANDY HALL)
SID #16818866,

Plaintiff,

v.

TROY BOWSER, Superintendent, Two Rivers
Correctional Institution,

Respondent.

Case No. 18CV24920

FINDINGS OF FACT AND CONCLUSIONS OF
LAW AND GENERAL JUDGMENT

ORS 20.140 - State fees deferred at filing

This matter came before the Court on April 9, 2019 for an evidentiary hearing. Plaintiff, Brandy Hall (formerly Brandon Nelson), appeared via video from Two Rivers Correctional Institution. Attorney for Plaintiff, Tara Herivel, and attorney for Respondent, Assistant Attorney General Matthew Maile appeared via video from the Oregon Supreme Court Administration Office.

The Court being fully advised considered Plaintiff's Replication, Respondent's Motion to Dismiss, Plaintiff's Response to Respondent's Motion to Dismiss, the Judgment Denying in Part and Holding in Abeyance in Part, Respondent's Motion to Dismiss, Respondent's written objections, as well as the testimony and arguments presented at the April 9, 2019 evidentiary hearing. The Court made a number of findings on the record, which are included in this General Order and Judgment.

Ultimately, the Court found that Plaintiff did not sustain her burden of proving that Respondent violated Plaintiff's due process or equal protection rights under the Oregon or United States Constitutions. The Court also found that Plaintiff did not sustain her burden of proving her Eighth Amendment claim that Plaintiff acted with deliberate indifference to

1 Plaintiff's safety by denying Plaintiff's request to be housed at Coffee Creek Correctional
2 Facility.

3 The Court, however, did find Eighth Amendment deliberate indifference to Plaintiff's
4 safety by not housing Plaintiff in a single cell or with a transgender or non-cisgender cellmate.
5 The Court also ordered that Oregon Department of Corrections ("ODOC") staff shall not
6 verbally or sexually harass Plaintiff; and ODOC staff must do everything within their ability to
7 prevent other inmates from verbally or sexually harassing Plaintiff, with the understanding that it
8 may not always be possible to completely eliminate.

9 Finally, the Court previously held in abeyance Plaintiff's Eighth Amendment claim that
10 Respondent acted with deliberate indifference to her serious medical need—gender dysphoria,
11 following the hearing on Respondent's Motion to Dismiss. That claim was held in abeyance
12 until the resolution of the remaining habeas claims at the evidentiary hearing. That claim is now
13 dismissed without prejudice.

14 The Court finds as follows:

15 **FINDINGS OF FACT**

16 1. Decisions regarding the transfer of Transgender inmates are complicated issues
17 requiring the consideration of the wellbeing of the inmate as well as the safety of other inmates.

18 2. The Oregon Department of Corrections ("ODOC") has a process and committee,
19 the Transgender and Intersex Committee ("TAIC"), through which decisions of appropriate
20 housing for transgender inmates are reviewed and considered.

21 3. TAIC reviewed and considered Plaintiff's requests to transfer to Coffee Creek
22 Correctional Facility ("CCCF"), therefore Respondent is not deliberately indifferent to Plaintiff's
23 housing request to be transferred to the women's prison, CCCF.

24 4. An inmate's criminal history— in this case, Plaintiff's convictions for Rape II,
25 Sodomy II, and Sex Abuse II committed against underage female victims—is an appropriate
26 factor for TAIC to consider in determining where an inmate can appropriately be housed.

1 5. The settlement agreement reached between ODOC and Michelle Wright did not
2 provide a written and incorporated basis for requiring Respondent to transfer Plaintiff to CCCF.

3 6. Respondent allows Plaintiff to express her gender identity, although Plaintiff's
4 ability to do so is limited by the nature of being incarcerated. She is provided with feminine
5 products and clothing.

6 7. Based on the testimony of Superintendent Troy Bowser, who testified prisoners
7 cannot be seen from the shower, the Court finds Plaintiff is not a credible witness regarding her
8 claim that she is in full view of other inmates and ODOC staff when she showers.

9 8. The showers at TRCI are individual stalls that allow an inmate to be seen from the
10 shoulders up and the knees down.

11 9. Respondent has provided Plaintiff with a number of considerations such as
12 approving Plaintiff's request to be strip searched only by female corrections staff, and female
13 corrections staff are trained and in place to do so.

14 10. Therefore, on this record, there is no basis to require Respondent to transfer
15 Plaintiff to a women's prison.

16 11. The Court does find that Respondent is deliberately indifferent with regards to
17 Plaintiff's cell placement.

18 12. Therefore, the Court finds that, so long as Plaintiff is held at a male prison, she
19 requires placement in an individual cell or requires placement with either a transgender or non-
20 cisgender cellmate.

21 13. Plaintiff is not precluded from requesting transfer to CCCF through TAIC in the
22 future.

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CONCLUSION OF LAW

24 Based on the Court's findings, the Court concludes:

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1 14. Plaintiff has not met her burden of proving, by a preponderance of the evidence,
2 that Respondent has violated Plaintiff’s due process or equal protection rights under either the
3 Oregon or United States Constitutions.

4 15. Plaintiff has not met her burden of proving, by a preponderance of the evidence,
5 that Respondent violated Plaintiff’s rights to be free from cruel and unusual punishment, under
6 Article I, § 16 of the Oregon Constitution and the Eighth Amendment of the United States
7 Constitution, by not transferring Plaintiff to a women’s prison.

8 16. Plaintiff has not met her burden of proving, by a preponderance of the evidence,
9 that Respondent violated Plaintiff’s rights to be free from cruel and unusual punishment, under
10 Article I, § 16 of the Oregon Constitution and the Eighth Amendment of the United States
11 Constitution, in disciplining Plaintiff.

12 17. Respondent, however, is deliberately indifferent to Plaintiff’s safety, in violation
13 of the Eighth Amendment of the United States Constitution, by not housing Plaintiff, while in a
14 male prison, in a single cell or with a transgender or non-cisgender cellmate.

JUDGMENT

15 Based on the FINDINGS OF FACT and CONCLUSIONS OF LAW set forth above, as
16 well as the prior orders of this Court, it is hereby ADJUDGED that:
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18 Judgment is entered in favor of Respondent on plaintiff’s claim for habeas corpus relief
19 regarding Respondent’s alleged Eighth Amendment deliberate indifference to Plaintiff’s serious
20 medical need—gender dysphoria, which was previously held in abeyance following the hearing
21 on Respondent’s Motion to Dismiss. That claim is hereby DENIED WITHOUT PREJUDICE.

22 Judgment is entered in favor of Respondent on Plaintiff’s due process and equal
23 protection claims, under the Oregon and United States Constitutions. Therefore, those claims are
24 DENIED WITH PREJUDICE.
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1 Judgment is entered in favor of Respondent on Plaintiff's Eighth Amendment claim
2 regarding Plaintiff's request to be transferred to a women's prison. Therefore, this claim is
3 DENIED WITH PREJUDICE.

4 Judgment is entered in favor of Plaintiff's Eighth Amendment claims on the following
5 terms: (1) so long as Plaintiff is housed at a male prison she must be placed in a single cell or
6 with a transgender or non-cisgender cellmate; (2) ODOC may not use Disciplinary Segregation
7 Unit or Administrative Segregation cells to single cell Plaintiff for the purposes of complying
8 with the terms of this judgment; (3) ODOC staff shall not verbally or sexually harass Plaintiff;
9 and (4) ODOC staff must do everything within their ability to prevent other inmates from
10 verbally or sexually harassing Plaintiff, with the understanding that that may not always be
11 possible to completely eliminate it. Furthermore, this Court shall retain jurisdiction over this
12 matter to ensure compliance with the terms so stated in this paragraph.

13 No costs or fees are awarded to either party.

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Signed: 5/28/2019 03:26 PM



Senior Judge J Burdette Pratt

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Submitted by: Matthew A. Maile
Assistant Attorney General
Attorneys for Respondent

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1 **CERTIFICATE OF SERVICE**

2 I certify that on May 20, 2019, I served the foregoing FINDINGS OF FACT AND
3 CONCLUSIONS OF LAW AND GENERAL JUDGMENT upon the parties hereto by the
4 method indicated below, and addressed to the following:

5 Tara Herivel
6 811 S.W. Naito Parkway, Suite 420
7 Portland, OR 97204
8 Attorney for Plaintiff

9 HAND DELIVERY
10 MAIL DELIVERY
11 OVERNIGHT MAIL
12 SERVED BY E-FILING

13 s/ Matthew A. Maile
14 MATTHEW A. MAILE #181761
15 Assistant Attorney General
16 Trial Attorney
17 Tel (503) 947-4700
18 Fax (503) 947-4791
19 matthew.maile@doj.state.or.us
20 Of Attorneys for Defendant
21
22
23
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1 **CERTIFICATE OF READINESS**

2 This proposed FINDINGS OF FACT AND CONCLUSIONS OF LAW AND
3 GENERAL JUDGMENT is ready for judicial signature because:

4 1. [] Each party affected by this order or judgment has stipulated to the order or
5 judgment, as shown by each opposing party's signature on the document being submitted.

6 2. [X] Each party affected by this order or judgment has approved the order or judgment,
7 as shown by each party's signature on the document being submitted or by written confirmation
8 of approval sent to me.

9 3. [] I have served a copy of this order or judgment on each party entitled to service:

10 a. [] No objection has been served on me.

11 b. [] I received objections that I could not resolve with a party despite
12 reasonable efforts to do so. I have filed a copy of the objections I received and indicated which
13 objections remain unresolved.

14 c. [] After conferring about objections, [role and name of objecting party]
15 agreed to independently file any remaining objection.

16 4. [] Service is not required pursuant to subsection (3) of this rule, or by statute, rule,
17 or otherwise.

18 5. [] This is a proposed judgment that includes an award of punitive damages and
19 notice has been served on the Director of the Crime Victims' Assistance Section as required by
20 subsection (5) of this rule.

21 DATED this 20 day of May, 2019.

22
23 s/ Matthew A. Maile
24 MATTHEW A. MAILE #181761
25 Assistant Attorney General
26 Trial Attorney
Tel (503) 947-4700
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