

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

TARA ELYSSIA ZYST,)	Case No. 19CV19556
)	
Plaintiff,)	GENERAL JUDGMENT
)	
vs.)	HABEAS CORPUS
)	
JAMIE MILLER, Superintendent,)	
Snake River Correctional Institution,)	
)	
Defendant.)	

This matter came before the court for trial on October 10-12, 2023. Plaintiff Tara Zyst appeared by video from the Snake River Correctional Institution in Ontario, Oregon. Plaintiff's counsel, Tara Herivel, appeared by video, as did defendant's counsel, Beth Andrews and Allie Boyd.

Seven witnesses testified at trial. Plaintiff's live witnesses included medical expert psychiatrist Dr. Caroline Fisher and Plaintiff. Psychologists Dr. Megan McNeal and Shelley Norton also testified by declaration for Plaintiff. Captain Bill King, Krystal Lentz, Dr. Warren Roberts, Christy Hutson and Greg Jones appeared for defendant.

Upon conclusion of trial on October 12, 2023, this court made several orders from the bench, memorialized in the Court's Opinion and Order entered on December 11, 2023, incorporated herein by this reference.

1 On November, 17, 2023, Plaintiff filed a motion for emergency noncompliance
2 hearing regarding Defendant's noncompliance with most of the court's orders. On
3 December 6, 2023, the Court heard Plaintiff's reports of noncompliance the parties'
4 arguments on Plaintiff's motion. This court also produced the Opinion and Order on the
5 same day. Following the hearing, the Court revised its orders to address Defendant's
6 noncompliance, which follow.

8 In both the trial and noncompliance hearing, this court heard the testimony of the
9 witnesses, received exhibits, and heard argument of counsel.

10 NOW, THEREFORE, IT IS HEREBY ADJUDGED:

- 11 **1. First Claim** – Withdrawn by Plaintiff.
- 12 **2. Second Claim - DENIED** (Cruel and Unusual Punishment and Unnecessary
13 Rigor Defendant's failure to protect plaintiff, a transgender woman, from harm in
14 a particularly dangerous male prison);
- 15 **3. Third Claim - GRANTED** (Cruel and Unusual Punishment and Unnecessary
16 Rigor by Defendant's failure to provide medically necessary gender-affirming care
17 and treatment);
- 18 **4. Fourth Claim – DENIED** (Cruel and Unusual Punishment and Unnecessary
19 Rigor by defendant's inappropriate discipline based upon Plaintiff's serious
20 medical conditions);
- 21 **5. Fifth Claim – GRANTED** (Cruel and Unusual Punishment and Unnecessary
22 Rigor by Defendant's failure to provide adequate conditions in segregation).

26 2 –GENERAL JUDGMENT-HABEAS CORPUS

1 The court's analysis is based upon the applicable legal standards, factual analysis and
2 reasoning set forth in the Opinion and Order issued December 6, 2023

3 Plaintiff is granted relief in in the form of the Orders made orally from the Court on
4
5 October 12, 2023, as memorialized in the Court's Opinion and Order entered December 11,
6 2023, revised pursuant to the noncompliance hearing on December 6, 2023:

7 **ORDERS**

- 8 1) Plaintiff's counsel is to select a gender-affirming care provider and submit the
9 selection to Defendant for scheduling of an appointment for Plaintiff,
10 appointment to occur within thirty (30) days of receipt of the selection.
11
- 12 2) Plaintiff's counsel is to select a psychiatrist to provide a psychological
13 evaluation for Plaintiff, and submit the selection to Defendant for scheduling of
14 an appointment for Plaintiff, appointment to occur within thirty (30) days of
15 receipt of the selection.
16
- 17 3) Defendant is to identify an appropriate cell mate for Plaintiff without
18 unnecessary delay, and that proposed cell mate is to be offered to Plaintiff for
19 her approval and ratified by Plaintiff's counsel. Defendant has a deadline of two
20 weeks from the date of the hearing, December 6, 2023, in which to identify a
21 cell mate or report to the court if it cannot do so.
22
- 23 4) Defendant must file a report to the Court by Friday, December 15, 2023
24 regarding its efforts to identify a community provider of permanent facial hair
25 removal that is available for Plaintiff. Defendant is to further schedule the first
26

1 appointment to be within thirty (30) to sixty (60) days, if possible. The report is
2 to identify when an appointment is available if the appointment is to be made
3 outside of that timeframe.

4
5 5) Defendant is to also inquire with community providers of permanent facial hair
6 removal as to whether they also offer hair transplantation.

7 6) Defendant is not required to provide silicone hip and buttock padding, or a wig
8 to Plaintiff.

9 7) Plaintiff's Second Claim is DENIED.

10 8) Plaintiff's Third Claim is GRANTED. Plaintiff shall receive the following
11 gender-affirming care:

12
13 a) Permanent hair removal by electrolysis or laser hair removal within 60 days
14 of conclusion of the trial. This order was made from the bench on October
15 13, 2023. At the December 6th noncompliance hearing, Defendant informed
16 the court it had no immediate plans to fulfill this order. The court thus
17 ordered Defendant to file a report to the court by no later than December
18 15, 2023 setting forth the plan for fulfillment of the order.

19
20 b) Immediate provision of feminizing undergarments, including but not
21 limited to undergarments with silicone and a wig (the latter two items
22 subject to whether they pose a founded security risk)¹. Other gender-
23 affirming care and treatments may include genital reconstruction surgery,
24

25
26 ¹ Order made from the bench on October, 13, 2023.

1 breast, hip and/or bottom augmentation, hair transplant, facial
2 feminization surgery, and/or vocal feminization surgery.

- 3 c) Plaintiff's counsel provide Defendant with contact information for a gender
4 specialist to provide a gender-affirming care consultation with Plaintiff and
5 community letter for treatments, as needed. Defendant shall schedule a
6 telehealth appointment with the gender specialist and Plaintiff to occur
7 within 30 days of receipt of the contact information. Plaintiff and the
8 gender specialist shall discuss gender-affirming care treatment and
9 community options². The gender specialist will produce a community letter
10 with treatment requested in a prioritized list. All appointments for
11 treatment shall be scheduled within 30 days of the gender specialist's
12 production of the community letter. The scheduling of services shall occur
13 based on the availability of providers, with a preference for readily available
14 providers over providers who have long (over 6 month) waiting lists. The
15 gender-affirming care referred shall not be subject to the approval or denial
16 of the prison's internal administrative committees (e.g., Gender-
17 Nonconforming Committee-Therapeutic Level of Care Committee – "GNC-
18 TLC"). All gender-affirming care and treatment at defendant's cost.
19
20
21
22
23 d) Plaintiff's counsel shall select a psychiatrist to perform a psychiatric
24 evaluation to determine Plaintiff's specific diagnoses, and to make
25

26 ² Provision modified from Opinion and Order pursuant to the December 6, 2023 noncompliance hearing.

1 recommendations for use as the basis of a psychiatric treatment plan, to
2 include appropriate medication management and therapy³. This evaluation
3 is to be scheduled with an outside provider, either in person or through
4 remote contact, and to occur with ninety days of the conclusion of trial.
5 Defendant is to provide care according to the recommendations made by
6 the psychiatric evaluator, without delay. The treatment recommendations
7 shall not be subject to further approval or denial by Defendant's GNC-TLC
8 committee.
9

10 e) Within two weeks from the date of this Judgment, Defendant shall identify
11 and present to Plaintiff an appropriate cellmate. The proposed cellmate
12 shall be contingent upon Plaintiff's approval, and ratified by Plaintiff's
13 counsel⁴.
14

15 3. Plaintiff's Fourth Claim is DENIED.
16

17 4. Plaintiff's Fifth Claim is GRANTED. Defendant shall move Plaintiff out of the
18 Intensive Management Unit within 10 days of the conclusion of trial.⁵ Defendant
19 shall ensure she receives treatment for her medical needs and shall not expose her
20 to any further risk of harassment or assault, or to segregation excluded by
21 Defendant's own rules regarding segregation limitations for seriously mentally ill
22 prisoners.
23

24 _____

25 ³ Provision modified from Opinion and Order pursuant to the December 6, 2023 noncompliance hearing.

26 ⁴ Provision modified from Opinion and Order pursuant to the December 6, 2023 noncompliance hearing.

⁵ Order made from the bench on October, 13, 2023.

- 1 5. If deadlines set forth herein are not met, Defendant shall report its explanation to
2 the court and Plaintiff's counsel prior to expiration of the deadline.
3
4 6. Defendant shall pay plaintiff's filing fee of \$281 and statutory prevailing party fee of
5 \$100 by no later than 30 days from the date of the effectuated Judgment.
6
7 7. This court shall retain jurisdiction to ensure compliance with the terms of this
8 Judgment. The first compliance hearing is set for January 16, 2024.

9 **IT IS SO ORDERED.**

10
11 12/15/2023 9:12:51 AM

12 

13
14 **Circuit Court Senior Judge, Jenefer S. Grant**

15 Submitted by:
16 Tara Herivel, OSB# 070418
17 Attorney for Plaintiff Tara Elyssia Zyst
18
19
20
21
22
23
24
25
26

7 -GENERAL JUDGMENT-HABEAS CORPUS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CERTIFICATE OF READINESS

This proposed GENERAL JUDGMENT is ready for judicial signature because:

Each opposing party affected by this order has been provided the order for review.

Defendant requested revisions to the proposed Judgment, some which were accepted, some not by Plaintiff. Defendant’s proposed Judgment with its revisions is attached herein for the court’s review.

DATED 14 December 2023

/s/ Tara Herivel
Tara Herivel, OSB #070418
Attorney for Plaintiff Tara Elyssia Zyst

1
2
3
4 IN THE CIRCUIT COURT FOR THE STATE OF OREGON
5 FOR THE COUNTY OF MALHEUR

6 TARA ELYSSIA ZYST,) Case No. 19CV19556
7 Plaintiff,) GENERAL JUDGMENT
8 vs.) HABEAS CORPUS
9 JAMIE MILLER, Superintendent,)
10 Snake River Correctional Institution,)
11 Defendant.)

12
13 This matter came before the court for trial on October 10-12, 2023. Plaintiff Tara
14 Zyst appeared by video from the Snake River Correctional Institution in Ontario,
15 Oregon. Plaintiff's counsel, Tara Herivel, appeared by video, as did defendant's counsel,
16 Beth Andrews and Allie Boyd.
17

18 Seven witnesses testified at trial. Plaintiff's live witnesses included medical expert
19 psychiatrist Dr. Caroline Fisher and Plaintiff. Psychologists Dr. Megan McNeal and Shelley
20 Norton also testified by declaration for Plaintiff. Captain Bill King, ~~Krystal~~ Lentz, Dr.
21 Warren Roberts, Christy Hutson and Greg Jones appeared for defendant.
22

23 Upon conclusion of trial on October 12, 2023, this court made several orders from the
24 bench, memorialized in the Court's Opinion and Order entered on December 11, 2023,
25 incorporated herein by this reference.
26

1 -GENERAL JUDGMENT-HABEAS CORPUS

Law Firm of Tara Herivel, LLC
333 S.W. Taylor Street, Suite 300
Portland, Oregon 97204
Phone: (503) 893-5525
Tara@heriveldefense.com

Deleted: Kristel

Commented [AMB1]: It appears the opinion and order was finally signed and entered on 12/11. I think it may be clearer to incorporate those orders by reference to the written opinion and order rather than restate them in the judgment.

Commented [AMB2]: I recall that the court specifically did not make any findings on the specific claims on the day of trial.

Deleted: , including finding in favor of Plaintiff on Claims 3 & 5

1 ~~On~~ November, 17, 2023, Plaintiff filed a motion for emergency noncompliance

Deleted: By

2 hearing. On December 6, 2023, the Court heard ~~the parties' arguments on Plaintiffs~~

Deleted: regarding Defendant's noncompliance with most of the court's orders

3 ~~motion.~~ Following ~~the~~ hearing, the Court revised its orders, which follow.

Deleted: Plaintiff's reports of noncompliance

4 In both the trial and noncompliance hearing, this court heard the testimony of the

Deleted: This court also produced the Opinion and Order on the same day.

5 witnesses, received exhibits, and heard argument of counsel.

Deleted: to address Defendant's noncompliance

6 **NOW, THEREFORE, IT IS HEREBY ADJUDGED:**

Deleted: and concludes:

7 **1. First Claim – Withdrawn by Plaintiff and therefore DENIED.**

Commented [AMB3]: This is my suggestion for clarification of the judgment entry, with the court's 12/6 orders incorporated thereunder.

8 **2. Second Claim - DENIED** (Cruel and Unusual Punishment and Unnecessary

Formatted: Indent: First line: 0.38"

9 Rigor Defendant's failure to protect plaintiff, a transgender woman, from harm in

Formatted: Font: Bold

10 a particularly dangerous male prison);

Formatted: Font: Not Bold

11 **3. Third Claim - GRANTED** (Cruel and Unusual Punishment and Unnecessary

12 Rigor by Defendant's failure to provide medically necessary gender-affirming care

13 and treatment);

14 **4. Fourth Claim – DENIED** (Cruel and Unusual Punishment and Unnecessary

15 Rigor by defendant's inappropriate discipline based upon Plaintiff's serious

16 medical conditions);

17 **5. Fifth Claim – GRANTED** (Cruel and Unusual Punishment and Unnecessary

Formatted: Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.5" + Indent at: 0.75"

18 Rigor by Defendant's failure to provide adequate conditions in segregation).

Deleted: The court's analysis is based upon the applicable legal standards, factual analysis and reasoning set forth in the Opinion and Order issued December 6, 2023

26 2 –GENERAL JUDGMENT-HABEAS CORPUS

Law Firm of Tara Herivel, LLC
333 S.W. Taylor Street, Suite 300
Portland, Oregon 97204
Phone: (503) 893-5525
Tara@heriveldefense.com

1 Plaintiff is granted relief in in the form of the Orders made orally from the Court on
2 October 12, 2023, as memorialized in the Court's Opinion and Order entered December 11,
3 2023, and incorporated herein by this reference.

4
5 Plaintiff is granted further relief in the following Orders made orally by the Court on
6 December 6, 2023:

7 1) Plaintiff's counsel is to select a gender-affirming care provider and submit the
8 selection to Defendant for scheduling of an appointment for Plaintiff.
9 appointment to occur within thirty (30) days of receipt of the selection.

10
11 2) Plaintiff's counsel is to select a psychiatrist to provide a psychological
12 evaluation for Plaintiff, and submit the selection to Defendant for scheduling of
13 an appointment for Plaintiff, appointment to occur within thirty (30) days of
14 receipt of the selection.

15
16 3) Defendant is to identify an appropriate cell mate for Plaintiff without
17 unnecessary delay, and that proposed cell mate is to be offered to Plaintiff for
18 her approval and ratified by Plaintiff's counsel. Defendant has a deadline of two
19 weeks from the date of the hearing, December 6, 2023, in which to identify a
20 cell mate or report to the court if it cannot do so.

21
22 4) Defendant must file a report to the Court by Friday, December 15, 2023
23 regarding its efforts to identify a community provider of permanent facial hair
24 removal that is available for Plaintiff. Defendant is to further schedule the first
25 appointment to be within thirty (30) to sixty (60) days, if possible. The report is

26
3 -GENERAL JUDGMENT-HABEAS CORPUS

Law Firm of Tara Herivel, LLC
333 S.W. Taylor Street, Suite 300
Portland, Oregon 97204
Phone: (503) 893-5525
Tara@heriveldefense.com

Formatted: Indent: First line: 0.38"

Commented [AMB4]: This is the list of orders from the 12/6 hearing as I understood them to be.

Deleted: ORDERS

1 to identify when an appointment is available if the appointment is to be made
2 outside of that timeframe.

3 5) Defendant is to also inquire with community providers of permanent facial hair
4 removal as to whether they also offer hair transplantation.

5 6) Defendant is not required to provide silicone hip and buttock padding, or a wig
6 to Plaintiff.

7
8
9 **IT IS SO ORDERED.**

10
11
12
13 Submitted by:
14 Tara Herivel, OSB# 070418
15 Attorney for Plaintiff Tara Elyssia Zyst
16
17
18
19
20
21
22
23
24
25
26

4 -GENERAL JUDGMENT-HABEAS CORPUS

Law Firm of Tara Herivel, LLC
333 S.W. Taylor Street, Suite 300
Portland, Oregon 97204
Phone: (503) 893-5525
Tara@heriveldefense.com

Deleted: <#>Plaintiff's Second Claim in DENIED. ¶
<#>Plaintiff's Third Claim is GRANTED. Plaintiff shall receive the following gender-affirming care: ¶
<#>Permanent hair removal by electrolysis or laser hair removal within 60 days of conclusion of the trial. This order was made from the bench on October 13, 2023. At the December 6th noncompliance hearing, Defendant informed the court it had no immediate plans to fulfill this order. The court thus ordered Defendant to file a report to the court by no later than December 15, 2023 setting forth the plan for fulfillment of the order.¶
<#> Immediate provision of feminizing undergarments, including but not limited to undergarments with silicone and a wig (the latter two items subject to whether they pose a founded security risk)¹. Other gender-affirming care and treatments may include genital reconstruction surgery, breast, hip and/or bottom augmentation, hair transplant, facial feminization surgery, and/or vocal feminization surgery.¶
<#>Plaintiff's counsel provide Defendant with contact information for a gender specialist to provide a gender-affirming care consultation with Plaintiff and community letter for treatments, as needed. Defendant shall schedule a telehealth appointment with the gender specialist and Plaintiff to occur within 30 days of receipt of the contact information. Plaintiff and the gender specialist shall discuss gender-affirming care treatment and community options². The gender specialist will produce a community letter with treatment requested in a prioritized list. All appointments for treatment shall be scheduled within 30 days of the gender specialist's production of the community letter. The scheduling of services shall occur based on the availability of providers, with a preference for readily available providers over providers who have long (over 6 month) waiting lists. The gender-affirming care referred shall not be subject to the approval or denial of the prison's internal administrative committees (e.g., Gender-Nonconforming Committee-Therapeutic Level of Care Committee - "GNC-TLC"). All gender-affirming care and treatment at defendant's cost.¶
<#>Plaintiff's counsel shall select a psychiatrist to perform a psychiatric evaluation to determine Plaintiff's specific diagnoses, and to make recommendations for use as the basis of a psychiatric treatment plan, to include appropriate medication management and therapy³. This evaluation is to be scheduled with an outside provider, either in person or through remote contact, and to occur with ninety days of the conclusion of trial. Defendant is to provide care according to the recommendations made by the psychiatric evaluator, without delay. The treatment recommendations shall not be subject to further approval or denial by Defendant's GNC-TLC committee.¶
<#>Within two weeks from the date of this judgment, Defendant shall identify and present to Plaintiff an appropriate cellmate. The proposed cellmate shall be contingent upon Plaintiff's approval, and ratified by Plaintiff's counsel⁴. ¶
<#>Plaintiff's Fourth Claim in DENIED. ¶
<#>Plaintiff's Fifth Claim is GRANTED. Defendant shall move Plaintiff out of the Intensive Management Unit within 10 days of the conclusion of trial.⁵ Defendant shall ensure she receives treatment for her medical needs and shall not expose her to any further risk of harassment or assault, or to segregation excluded by Defendant's own rules regarding segregation limitations for seriously mentally ill prisoners.¶ ... [1]

Deleted: ¶
Formatted: Font: Not Bold, Underline

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CERTIFICATE OF READINESS

This proposed GENERAL JUDGMENT is ready for judicial signature because:
Each opposing party affected by this order has been provided the order for review.

DATED 14 December 2023,

Deleted: 12 December 2023 11 December 2023

/s/ Tara Herivel
Tara Herivel, OSB #070418
Attorney for Plaintiff Tara Elyssia Zyst

5 -GENERAL JUDGMENT-HABEAS CORPUS

Law Firm of Tara Herivel, LLC
333 S.W. Taylor Street, Suite 300
Portland, Oregon 97204
Phone: (503) 893-5525
Tara@heriveldefense.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

I, Tara Herivel, hereby certify that on this date I have made service of the attached GENERAL JUDGMENT, by e-filing, e-serving and/or mailing a true copy to the party below:

Beth Andrews and Allie Boyd
Assistant Attorneys General
DOJ – Trial Division
1162 Court Street NE
Salem, Oregon 97301

DATED 14 December 2023,

Deleted: 12 December 2023 11 December 2023

/s/ Tara Herivel
Tara Herivel, OSB #070418
Attorney for Plaintiff Tara Elyssia Zyst

6 –GENERAL JUDGMENT-HABEAS CORPUS

Law Firm of Tara Herivel, LLC
333 S.W. Taylor Street, Suite 300
Portland, Oregon 97204
Phone: (503) 893-5525
Tara@heriveldefense.com



3-



1 **CERTIFICATE OF SERVICE**

2
3 I, Tara Herivel, hereby certify that on this date I have made service of the
4 attached GENERAL JUDGMENT including Attachment A [rev DOJ Proposed] General
5 Judgment by e-filing, e-serving and/or mailing a true copy to the party below:
6

7 Beth Andrews and Allie Boyd
8 Assistant Attorneys General
9 DOJ – Trial Division
10 1162 Court Street NE
11 Salem, Oregon 97301

12 DATED 14 December 2023.

13
14 */s/ Tara Herivel*
15 Tara Herivel, OSB #070418
16 Attorney for Plaintiff Tara Elyssia Zyst
17
18
19
20
21
22
23
24
25
26

9 –GENERAL JUDGMENT-HABEAS CORPUS