STATE OF WISCONSIN **CIRCUIT COURT** **MILWAUKEE COUNTY**

Branch 9

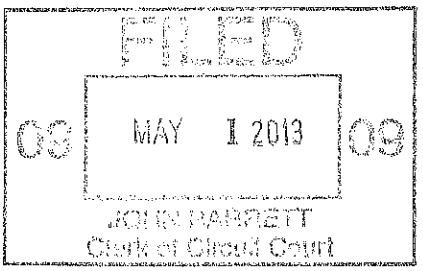
DAVID A. CLARKE, JR.,
SHERIFF OF MILWAUKEE COUNTY

Plaintiff,

v.

MILWAUKEE COUNTY,

Defendant.



Case No. 12-CV-13388

DECISION AND ORDER

BACKGROUND

This lawsuit was filed by Milwaukee County Sheriff David A. Clarke, Jr. [hereinafter Clarke] in response to the 2013 County Budget in which the County transferred control of the County Correctional Facility South (CCF-S), formerly named the Milwaukee County House of Corrections, [hereinafter referred to as the CCF-S] from the Office of the Sheriff to the Executive Branch of the County Government, under the control of a Superintendent. Prior to 2009 the CCF-S was overseen by a Superintendent and managed by the County Board as its own County Department. This was the system utilized from the time the CCF-S was established in 1855, until control was transferred to the Office of the Sheriff in the 2009 County Budget.

Clarke argues that the CCF-S is a county jail and that he has the Constitutional right and duty as Sheriff to take care and custody of the Milwaukee County jail facilities and to control the inmates within such facilities. He argues that he cannot be compelled to relinquish such duties and therefore requests a declaratory judgment that he has exclusive control over staffing, medical and mental health services at the County Jail facilities, including CCF-S. Clarke's second claim for relief seeks a declaratory judgment that Clarke has exclusive authority to determine which inmates of the County Jail facilities, including CCF-S, may be placed on home monitoring programs or GPS tracking. Third, Clarke's complaint seeks a judgment enjoining the County from taking any action to transfer the care and custody of CCF-S from the Office of the Sheriff to the Executive Branch of the County Government. The County responded to the lawsuit by arguing that the CCF-S is not and never was a jail facility, but has always been a statutory HOC. Therefore it argues that care and custody of such facility has never been the right or duty of the Sheriff and the County may transfer the CCF-S back to the control of a Superintendent.

The County argues that CCF-S was established in 1855 as a statutory House of Corrections (HOC), pursuant to Wis. Stat. § 303.16, and it has therefore always remained a HOC. Additionally, it argues that essentially since its inception until 2009 the CCF-S was called the "Milwaukee County House of Corrections" and was overseen by a Superintendent. The Sheriff of Milwaukee County never exercised any control over the CCF-S including its staffing, medical and mental health services, or home monitoring programs until 2009. Clarke argues that the County has not provided any admissible evidence that the CCF-S was ever established as an HOC, as opposed to a jail.

The CCF-S was first transferred into the Office of the Sheriff in the 2009 County Budget, following a report from the National Institute of Corrections Technical Assistance Project (NICTAP) that identified problems with many aspects of the way it was being run. At the request of then County Executive Scott Walker, the County Board transferred "management of the House of Correction" to Clarke in the 2009 County Budget. After the transfer Clarke renamed the HOC the CCF-S.

The County argues that the 2009 budget simply made Clarke the Superintendent of the HOC and did not alter the character of the facility. It should be noted that the same section of the 2009 budget where management was transferred to Clarke also includes language that stated that "the functions of the House of Correction (HOC) are defined in Chapters 302, 303, 304 and 973." Clarke argues that the CCF-S became a jail when he took over management. For his evidence that it became a jail, Clarke includes the NICTAP final report on the facility, following the transfer, which stated that the County "voted to eliminate the House of Corrections as a County Organization and consolidate that sentenced facility with the Sheriff's downtown jail creating a single county jail system ..." Clarke also relies on an affidavit from Inspector Richard Schmidt which contains the statement that "the CCF-S is a jail of Milwaukee County."

In the 2013 Adopted Budget the County transferred management of the CCF-S back to a Superintendent removing it from Clarke's control. Clarke argues that since it is a jail this action is an illegal transfer of power. He agrees that if it was a statutory HOC, then he would have no right or duty to management and control; however he maintains that he was operating it as a jail and the budget document does not properly establish or create an HOC. The County disagrees arguing it did not need to establish the CCF-S as a statutory HOC since it has always been one. Clarke further takes issue with fact that, in his opinion, the County is illegally transferring control of the facility to the Executive Branch of County government. He argues that the statutes require the County Board to manage a statutory HOC. The County again disputes the Sherriff's characterization of the transfer, arguing that they are simply allowing the County Executive to appoint a Superintendent, who is a Department Head. The Board must still approve the appointed person, and the County Executive plays no further role. Therefore, they argue they are in compliance with all statutory requirements. Now pending before this Court is the County's motion for summary judgment as to all Clarke's requests for relief. Clarke has filed an opposition to the motion.

STANDARD OF REVIEW

Summary judgment shall be granted if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Wis. Stat. § 802.08(2). Summary judgment is appropriate when "material facts are undisputed and when inferences that may be reasonably drawn from the facts are not doubtful and leave only one conclusion." *Beyak v. North Cent. Food Sys.*, 215 Wis. 2d 64, 68, 571 N.W.2d 912 (Ct. App. 1997). The party moving for summary judgment has the burden of proving that there are no genuine issues of material fact. *Morris v. Juneau Co.*, 219 Wis. 2d 544, 550, 579 N.W.2d 690 (1998). A "material fact is one that is of consequence to the merits of litigation." *Sherry v. Salvo*, 205 Wis. 2d 14, 31, 555 N.W.2d 402 (Ct. App. 1994). "Any reasonable doubt as to the existence of disputed material facts is resolved against the moving party." *Gray v. Marinette Cnty.*, 200 Wis. 2d 426, 434, 546 N.W.2d 553 (Ct. App. 1996).

ANALYSIS

I. The CCF-S is a HOC under § 303.16

Clarke's requests for relief in this lawsuit relies upon his contention that the CCF-S is in fact a jail, as opposed to a statutory HOC. As such, Clarke's requests for relief in this lawsuit hinges on his establishing that the County somehow converted what was the HOC to a jail over which Clarke has constitutional authority.

The County contends that the CCF-S was established as a statutory HOC and has remained a statutory HOC to this day. Therefore, the Court must first determine the character of the CCF-S before it can address the specific relief being sought by Clarke. While the actual determination regarding the character of the CCF-S is a legal one, Clarke believes that there are disputed issues of fact material to such a determination.

A. There is no material issue of fact surrounding the facilities initial establishment and continued use as a statutorily created HOC up until 2009

First, Clarke argues that the County has not established on the record that the facility was originally established as a HOC. Essentially he believes the County has not made a prima facie case that prior to 2009 the CCF-S was an HOC. This argument fails. Although it is true that the County has not provided the specific County documents from 1855 that initially established a statutory HOC, it has provided historical documents including a report written by a former Superintendent of the CCF-S entitled *Milwaukee County House of Correction: Background and Purpose of the Milwaukee County House of Corrections*. This document explains that the facility at issue today in Franklin, which was built in the late 1940's was intended to be a HOC and replace the original facility on Hopkins Road. See Def Exhibit 7, p.1. The document further explains that the original facility was built pursuant to the State Legislatures authorization for counties to establish a House of Refuge or as it was renamed later in the statute, an HOC, and that the County sought to establish a facility specifically for rehabilitation. *Id.* The County has

also provided a Wisconsin Statute from 1898 which allows the County to acquire land and relocate the HOC as it desires, *See* Def Exhibit13.

Additionally, the County has provided a Wisconsin Statute from 1870, Gen. Laws of 1870 Ch 332, sec.1, in which the legislature attempted to make the Milwaukee HOC the jail of Milwaukee County. While ultimately this led to a Court case revolving around the power of the Sheriff and the fact that he could not be ordered to turn over prisoners in the common jail to the Superintendent of the HOC, *see State ex rel Kennedy v. Brunst*, 26 Wis. 412, 414 (1870), this statue is significant for this case because it demonstrates that in 1870 the CCF-S was a statutorily created HOC, and not a county jail. If it was already a county jail, then there would be no need for this statute.

Finally, the County also cites a number of cases within their brief which referenced and described the facility at issue as a County HOC. For example, in *City of Milwaukee v. Milwaukee Cnty.*, 27 Wis. 2d 53, 57, 133 N.W.2d 393, 395 (1965), the Court discussed how "[t]he house of correction was established for the reformation and the employment of persons sentenced for confinement therein and includes the operation of a farm. A city prisoner in lieu of being committed to the Milwaukee county jail may under some circumstances be committed to the house of correction." *Id.* This Court finds, given all of the documentation provided, the County has made a prima facie case that this CCF-S was originally established as a statutory HOC.

The historical documents described above alone make a prima facie case about the nature of the CCF-S when it was established. However, the record before this Court provides even more. The Milwaukee County 2009 adopted budget, provided by the County as Exhibit A to their reply brief, contains a section on the HOC that states: "The functions of the House of Corrections (HOC) are defined in Chapters 302, 303, 304 and 973 of the Wisconsin Statutes." This document unequivocally identifies the CCF-S, at that time named the House of Corrections, as a facility established under the statutory authority in Wisconsin Statutes Chapter 302. When the 2009 budget was created, the CCF-S was identified as a statutory HOC. This makes clear that immediately prior to when Clarke took it over, it was indeed a statutory HOC.

Since the County has made a prima facie case that prior to transfer to Clarke the CCF-S was a statutory HOC, the burden shifts to Clarke to point to any issues of fact. Clarke has not provided this Court with any evidentiary facts that indicate that prior to the 2009 transfer of power, the CCF-S was not a statutory HOC. When Clarke's counsel was asked at oral argument what the facility was prior to 2009, if not a HOC, counsel was unable to provide a credible or meaningful response. Therefore, this Court finds that it is an undisputed fact that prior to the transfer of supervision to Clarke in 2009, the facility at issue was a statutory HOC.

B. The 2009 transfer to Clarke did not change the character of the CCF-S from an HOC to a jail

Clarke next argues that even if the CCF-S was a statutory HOC, when the County transferred control of the facility to Clarke in 2009 the HOC was terminated as the entity and became a jail. The County disputes this and argues that in 2009 it simply transferred management of the HOC to Clarke, as opposed to eliminating it as an entity or turning it into a jail. The 2009 Adopted Budget which effectuated the transfer stated: "In 2009 the Sheriff assumes the management of the House of Correction (HOC) and all associated facilities." Additionally, in that same section of the Budget (Section 4300) the language states: "The functions of the House of Corrections (HOC) are defined in Chapters 302, 303, 304 and 973." This language used by the County indicates that Clarke is to take over management of the statutory HOC. Although Clarke has pointed this Court to Wis. Stat. § 302.18(2) for the proposition that a County *may* discontinue a statutory HOC, there is nothing in the language of the 2009 budget which indicates that the intent of the County was to discontinue the statutory HOC. The document must be interpreted by the language on its face and that language unambiguously continues the current statutory HOC.

Interestingly, Clarke has also opined in this lawsuit that if the County had properly established a statutory HOC in the 2013 budget he would readily agree that he has no authority to manage that facility since it would no longer be a jail facility. However, he does not believe that the 2013 Adopted Budget actually properly established the CCF-S as a statutory HOC. The 2013 budget states in the "Office of the Sheriff" section: "Operation of CCFS is transferred to a Superintendent, appointed by the County Executive as of April 1, 2013." However, in a new section on the CCF-S it also states, in the departmental description that: " The County Correctional Facility-South, formerly the House of Correction, houses sentenced prisoners in Milwaukee County . . . as authorized in Chapters 302, 303, 304 and 973." At oral argument counsel for Clarke indicated that he believes that to properly establish the CCF-S as a statutory HOC, the language would need to have identified the facility by location and state that it was to be a statutory HOC, among other things.

First, in looking at the language it does quite clearly establish that the CCF-S is described as a statutory HOC, operating pursuant to the Wisconsin Chapters specifically named. It in fact does achieve what Clarke's counsel has opined it needed to do. Second, this language directly contradicts Clarke's argument that the 2009 budget terminated the HOC and established a jail. The language in the 2009 budget stated: "In 2009 the Sheriff **assumes the management of the House of Correction (HOC)** and all associated facilities." (Emphasis Supplied) By Clarke's own argument, in order to terminate the HOC and establish a jail, among other things, the budget language would have needed to identify the CCF-S by location and indicate that it was no longer to function as a statutory HOC. The 2009 budget did not contain such language, rather it continued to identify the facility as a statutory HOC functioning pursuant to Chapters 302, 303, 304 and 973. Therefore, under Clarke's own argument the 2009 budget did not terminate the HOC and establish a jail.

In order to attempt to create an issue of fact Clarke has submitted some materials to the Court. The materials contain an affidavit by Inspector Richard Schmidt from the Sheriff's

Department. In that affidavit Inspector Schmidt states that "The County Correctional Facility-South is a jail of Milwaukee County." Schmidt Aff ¶ 9. However, this is a legal conclusion and does not create an issue of fact. Clarke additionally points to another part of Schmidt's affidavit where he states that currently at the CCF-S are pretrial detainees, convicted criminals sentenced by circuit courts of Milwaukee County, prisoners in the custody of the Department of Corrections and prisoners in the custody of the United States Marshalls." Schmidt Aff ¶ 11. At oral argument, counsel for Clarke argued that since these inmates are of the type held in the County jail that this creates an issue of fact as to the character of the CCF-S. However, as the County points out, Wis. Stat. § 302.315 provides: "A county house of correction may be used for the detention of any person detained in the county jail ..." Therefore, the fact that certain types of inmates are currently housed in CCF-S does not raise an issue of fact as the character of the facility. Finally, Schmidt states that the CCF-S "[is] managed and operated as [a] jail[] of Milwaukee County under the Sheriff's statutory and constitutional authority . . ." Schmidt Aff ¶ 11. Again this is a legal conclusion that does not create an issue of fact.

Wisconsin law is clear that affidavits which contain assertions of "ultimate fact" or conclusions of law must be disregarded. Bilda v. Milwaukee County, 295 Wis.2d 673, 706, 722 N.W.2d 116 (Ct. App. 2006), *citing,* Physicians Plus Ins. Corp. v. Midwest Mut. Ins. Co., 246 Wis.2d 933, 632 N.W.2d 59. The portions of Schmidt's affidavit relied on by Clarke are nothing more than assertions of "ultimate fact" or conclusions of law which must be disregarded. This Court further notes that Schmidt's affidavit does nothing to establish any foundation or modicum of expertise for the opinions stated therein by Schmidt and relied on by Clarke. Schmidt's affidavit offers nothing in terms of relevant evidence upon which this Court may rely in deciding the important issues now before it.

Clarke's materials also contain a Report by the NICTAP, completed in December 2009, following up with the CCF-S after the transfer. At page 4 of the report it is stated, "Sheriff David A. Clarke, Jr. assumed responsibility for the deeply troubled Milwaukee HoC on January 1, 2009." The very Report Clarke relies on for the relief he seeks unambiguously states that Clarke assumed responsibility of the HOC in 2009. Clarke seemingly offers this report for its statement that " in November 2008 the Milwaukee County Board of Supervisors voted to eliminate the House of Corrections as a County Organization and consolidate that sentenced facility with the Sheriff's downtown jail, creating a single county jail system ..." Final Report at 4. While this is the only document in this record where there is any mention of "eliminating" the HOC, there is no support for this statement by the author of the Report. He lays no foundation and offers no evidence to support this statement. The author himself states in the "Caveats and Limitations" section of his report: "[t]his report presents the opinions of the consultant and author, Jeffrey A. Schwartz. This report does not necessarily reflect views or positions of the National Institute of Corrections or of the Milwaukee County Sheriff's Office." Further, when asked about this at oral argument, Counsel for Clarke admitted there is no evidence in the record before the Court that the County eliminated the HOC in 2009.

Clarke's reliance on this Report as proof that the County converted the HOC to a jail in 2009 is as flawed and misplaced as his reliance on the Affidavit of Inspector Schmidt. Clearly, the author of the report did not intend that the Report be used as is being attempted by Clarke; to establish that in 2009 the HOC became a jail. Clarke again fails to provide a proper foundation for this Court to rely on this Report to reach such a conclusion. Without any competent evidence by which to find the HOC was converted to a jail in 2009, the Court must find that Clarke has failed on this record to meet his burden of proof on this issue.

Given the language in the 2009 budget, as well as the lack of any evidence presented to this Court to create an issue of fact as to whether the County terminated the HOC in 2009, this Court finds that the facility at issue was an HOC since it was created, was again identified as an HOC in 2008, and remained an HOC, even after management was transferred to Clarke in the 2009 budget.

II. Since the CCF-S is a Statutory HOC, Clarke Does Not Have the Exclusive Right to Control Staffing, Medical and Mental Health Decisions, or Home Electronic Monitoring Programs.

In Clarke's prayer for relief he asks this Court for a judgment declaring that he as the exclusive authority over the care and custody of the County jail facilities, including staffing, medical and mental health. He also asks for a judgment declaring that he has the exclusive authority to determine which person's confined in the County jail facilities may be placed in a home-monitoring and/or a global positioning tracking system. That prayer for relief also defines the County jail facilities as to include the County Correctional Facility-Central and County Correctional Facility-South.

In his brief Clarke is quite clear that his position is that CCF-S is a jail and that the County did not properly establish a statutory HOC in the 2013 Budget. Therefore, he argues that he has the exclusive authority and duty to manage and control that facility because it is a County jail. He makes no argument that he has any right to manage or control a statutory HOC. In fact in his brief he states: "Sheriff's are constitutionally and statutorily duty-bound to take care and control of jails, not alternative correctional facilities for reformation and employment." Def Brief, p. 15. Later he again emphasizes this when referring to statutory HOC's: "Such a facility is to be under the control and responsibility of the county board. County boards run statutory houses of correction. Sheriffs run jails." *Id.* p. 16.

Given the clear position of Clarke that he has no right to control and manage a statutory HOC, and the determination made above by this Court that the CCF-S is a statutory HOC, this Court cannot find that Clarke has a right to the relief he has requested. Therefore, this Court GRANTS the County's motion for Summary Judgment as to the first two prayers for relief and they are hereby dismissed.

III. Given that the CCF-S Has Been Determined to be a Statutory HOC, Clarke Lacks Standing to Seek an Injunction Prohibiting the County from Transferring Management of the HOC Back to the County, and Additionally He Does Not State a Claim upon which Relief may be Granted.

In the Complaint Clarke has also asked this Court for a judgment enjoining the County from taking any action to transfer the care and custody of the CCF-S to the executive branch of the County under a Superintendent appointed by the County Executive. Essentially Clarke argues that the County Board is statutorily required to manage an HOC and may not relinquish that duty to the Executive Branch of the County Government.

A. Standing

First, this Court notes that given the determination made above that the CCF-S is in fact a statutory HOC, and Clarke's admittance that he has no duty or right to control or manage a statutory HOC, it does not appear that Clarke has any standing to bring this lawsuit asking this Court to enjoin the County from transferring power of the CCF-S to a Superintendent, appointed by the County Executive. In Wisconsin:

> the essence of the determination of standing is: (1) whether the party whose standing is challenged has a personal interest in the controversy (sometimes referred to in the case law as a "personal stake" in the controversy); (2) whether the interest of the party whose standing is challenged will be injured, that is, adversely affected; and (3) whether judicial policy calls for protecting the interest of the party whose standing has been challenged.

Foley-Ciccantelli v. Bishop's Grove Condo. Ass'n, Inc., 2011 WI 36, ¶ 5, 333 Wis. 2d 402, 797 N.W.2d 789. Clarke's argument relies solely on the fact that the CCF-S is a jail. However, nothing in his Complaint sets forth any "personal stake" Clarke has in the County's operation of a statutory HOC, or any injury he will suffer if the 2013 budget takes effect and transfers power of the statutory HOC to a Superintendent, appointed by the County Executive. The entire Complaint is premised upon his legal conclusion that CCF-S is a jail and the Complaint only alleges injury to Clarke if the CCF-S is a jail; for example, he states that "transferring operation of the County Correctional Facility-South would remove from Sheriff Clarke the duties that the people elected Sheriff Clarke to perform." Complaint ¶ 27. Clarke has never claimed any duty or right to control a statutory HOC, and does not do so in the Complaint. Therefore, there is nothing before this Court that demonstrates that Clarke has any interest in this lawsuit that would confer standing to challenge the County's transfer of the CCF-S, a statutory HOC, to a Superintendent, who is appointed by the County Executive.

B. Stating a Claim for Injunctive Relief

Even if the Clarke did in fact have standing to bring a request for injunctive relief, which is what his third claim for relief asks for, his Complaint fails to state a claim upon which such relief can be granted. In order for a Court to grant permanent injunctive relief the Plaintiff must show

"a sufficient probability that future conduct of the defendant will violate a right of will and injure the plaintiff." *Pure Milk Products Co-op. v. Nat'l Farmers Org.*, 90 Wis. 2d 781, 800, 280 N.W.2d 691, 700 (1979). Additionally, the plaintiff must "establish that the injury is irreparable, I. e. not adequately compensable in damages." *Id.* "Finally, injunctive relief is addressed to the sound discretion of the trial court; competing interests must be reconciled and the plaintiff must satisfy the trial court that on balance equity favors issuing the injunction." *Id.*

Here Clarke's Complaint does not allege facts sufficient state a claim for this injunctive relief being sought. Again, Clarke's contention that the CCF-S is a jail is a legal conclusion and the Court is not required to take that as true for the purposes of assessing the sufficiency of the Complaint. *See Scarpaci v. Milwaukee County*, 96 Wis. 2d 663, 670, 292 N.W.2d 816 (1980) ("All facts pleaded and reasonable inferences drawn from those facts are accepted as true for the purpose of testing the complaint's legal sufficiency; however, legal conclusions and unreasonable inferences need not be accepted."). Furthermore, this Court has already determined in this lawsuit that the CCF-S is a statutory HOC. All of the injuries alleged in the Complaint involve the idea that transfer of the management of a county jail from Clarke to the County would prevent him from exercising his Constitutional duty to run the jail. However, if the CCF-S is a statutory HOC then the Complaint alleges no injury to Clarke since it alleges no duty on the part of the Sheriff in regard to a statutory HOC. Therefore, it does not appear that the Complaint alleges any future injury to Clarke as result of the transfer of the statutory HOC to the County, or that any injury suffered is irreparable. The Complaint therefore is insufficient to state a claim for the injunctive relief requested.

C. Merits

Finally, this Court notes that even if Clarke had standing to bring this action for injunctive relief, and even if the Complaint sufficiently pled the cause of action, this cause of action would still likely be dismissed because the actions of the County are not illegal. Clarke argues that the County is impermissibly attempting to transfer control of the HOC to the Executive Branch of the County government when the statutes require the County Board to manage the HOC. The County argues that in fact it is not transferring control to the Executive Branch; rather it is simply asking the County Executive to appoint a superintendent, to be approved by the County Board.

It has been well established in this lawsuit that under Wis. Stat. §§ 303.16 and 303.17, the County Board may establish an HOC and control the management of such facility. The statute states: "The county board of supervisors shall control the management of a house of corrections under s. 303.16, pursuant to such regulations and under the direct supervision and control of such officers as the county board of supervisors prescribes." § 303.17(1). Therefore, it appears that the County Board controls management of the CCF-S through officers, such as a superintendent, that it prescribes and through regulations that it prescribes.

Clarke takes issue with the fact that the 2013 County Budget indicates that the County Executive will appoint a Superintendent. However, the Budget clearly indicates that anyone

appointed by the County Executive is subject to County Board confirmation. Therefore, this Court finds that the County Board is ultimately still in control of the decision as to who will be superintendent; it is simply designating to the County Executive the task of producing a candidate. The County notes that the County Executive's sole task is to find and appoint a nominee to the position. This does not appear to conflict with any of the duties of the County Board delineated in the statute.

Additionally, Clarke takes issue with the fact that in the Budget the language states that the CCF-S is being transitioned into the Executive Branch of County Government. He argues that the County Board, not the County Executive must manage and control the HOC. The County disputes this and argues that the position of Superintendent is that of a County Department Head, which a position within the executive branch. Therefore, any reference to the term executive branch is merely noting that such a position is within the Executive Branch of County Government. However, it does not mean that the County Board has given up management and control of the HOC to the County Executive; rather it has approved an officer, the Superintendent, to direct and control the CCF-S, as it is directed to do by the statute. The budgetary language supports the position of the County as nothing in the budget indicates any other role for the County Executive, other than to nominate a person for the position of Superintendent, who must be then approved by the County. Clarke offers nothing to dispute this. Therefore, this Court finds, in looking at the statute, none of the actions taken by the County contravene any mandates in the statute.

In light of the foregoing, this Court GRANTS the County's motion for summary judgment as to the third prayer for relief in Clarke's Complaint and same is hereby dismissed.

CONCLUSION

Given the record now before this Court, the Court finds that prior to January, 2009 the Franklin facility, what is referred to as CCFS, was a HOC under Chapter 303.16. The record establishes and Wisconsin law unambiguously provides that it is the County Board that manages a HOC under Secs. 303.17 and 59.17 Wis. Stats. At page 16 of his Brief, Clarke admits:

> County Boards are authorized by legislature to establish and maintain within their county a house of correction. Wis. Stat. Sec. 303.16(1). "A county board of supervisors shall control the management of a house of correction" it establishes under Wis. Stat. Sec. 303.16(1). The legislature further authorized a county board to place the management of the house of correction under control of a county department of human services with the county board having "policy forming duties. Wis. Stat. Secs. 303.17(1) and 46.21(2).

While Clarke argues the HOC changed from a HOC to a jail in January, 2009 when supervision was transferred to him, the record before this court provides no support for this argument. The

2009 budget of then County Executive Walker and the County Board unambiguously states that the Sheriff "assumes management of the House of Correction (HOC)." The same budget includes language that what Clarke assumed management of remained a Chapter 303 HOC. The budget states nothing about closing the HOC and converting it to a jail. Clarke himself admits at page 16 of his Brief, "[c]ounty boards run statutory houses of correction. Sheriffs run jails." Clarke has no legal authority to close a HOC nor to create a jail. When Clarke assumed management of the HOC he renamed it, not as a jail, but as the CCFS. Clarke knew or should known what he was given to manage was a HOC; not a jail.

The County argues the doctrine of "unclean hands" prohibits this Court from granting the relief sought by Clarke in this lawsuit. The County points to a newspaper report in which Clarke states, in reference to the CCF-S, "[i] don't own it so I'm not going to fight for it." The County also highlights Clarke's testimony to the County Finance, Personnel and Audit Committee wherein he stated in reference to management of the CCF-S, "[i] suppose we could give that responsibility to someone else if you so choose." Clarke also offers his own reference to newspaper editorials and other media reports in support of his arguments. While the Court has considered the County's argument and Clarke's response on the issue of "unclean hands" as a basis for denial of equitable relief, it is deemed moot given the decision of the Court on the other issues addressed heretofore.

Based upon a thorough review of the record and arguments of the parties as set forth in their briefs and oral arguments, the court finds the arguments of the County to be more persuasive on the issues now before it. In light of this and the applicable standard of review, the court grants Defendant Milwaukee County's motion for Summary Judgment and the lawsuit filed by Clarke is hereby dismissed in its entirety with prejudice and without costs to any party.

Dated this 1st day of May 2013, in Milwaukee, Wisconsin.

BY THE COURT:

CIRCUIT COURT MILWAUKEE CO. WISCONSIN SEAL

The Honorable Paul R. Van Grunsven
Milwaukee County Circuit Court, Branch 9

THIS IS A FINAL ORDER OF THE COURT FOR THE PURPOSES OF APPEAL