UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

RICHARD MESSIER, et al. :

v. : No. 3:94-CV-1706 (EBB)

SOUTHBURY TRAINING SCHOOL, et al. :

RULING ON MOTION TO INTERVENE

Seven individual residents of Southbury Training School ("STS"), together with their parents and/or guardians, as well as the Home and School Association of STS and the STS Foundation, Inc. (collectively, the "proposed intervenors") move to intervene in the above-captioned matter. For the following reasons, the proposed intervenors' motion [Doc. No. 13] is denied.[1]

DISCUSSION

I. Intervention as of Right

Under Federal Rule of Civil Procedure 24(a)(2), intervention as of right is available, upon timely application, if:

> the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the

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[1] The background and procedural history of this case, as well as a discussion of the claims asserted by the plaintiffs, are set forth in this Court's February 9, 1996, Ruling on Defendants' Motion to Dismiss. Familiarity with this opinion is presumed in the following discussion.

> disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Fed. R. Civ. Proc. 24(a)(2). Precedents under Rule 24 have not, to date, clearly defined the type of interest that is required for intervention as of right. 7C Wright, Miller & Kane, Federal Practice and Procedure § 1908 (Civil 2d 1986). However, it is clear that the interest involved must be a "significantly protectable interest." Donaldson v. United States, 400 U.S. 517, 531 (1971). Once an applicant for intervention succeeds in showing the existence of such an interest, the applicant need only provide "minimal" proof that the interest may not be adequately represented by existing parties. Trbovich v. United Mine Workers of Am., 404 U.S. 528, 538 n.10 (1972).

The proposed intervenors assert three principal interests which they claim may be impaired or impeded by the instant litigation, and which they claim may not be adequately represented by the existing parties.[2] However, as is discussed below, the Court disagrees with respect to each of the asserted interests.

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[2] The proposed intervenors in fact claim that they possess six types of interests which may be adversely affected by the instant litigation. Mem. in Supp. of Mot. to Intervene, at 6-8. However, three of these alleged interests are in fact purely derivative of the other three claimed interests. Specifically, the interests asserted in ¶¶ 3, 5 & 6 on pages seven and eight of the proposed intervenors' brief are asserted by parents and by the two proposed intervenor organizations, as representatives of STS residents. Thus, these interests are wholly derivative of the residents' rights asserted in ¶¶ 1-2 on page six of the proposed intervenors' brief.

1. Interest in Keeping Southbury Training School Open

The gravamen of the proposed intervenors' motion is their asserted "right not to be forced out of an institutional setting and into community settings against their wishes and against the judgments of their parents and guardians." Mem. in Supp. of Mot. to Intervene, at 6. In support of their contention that the instant litigation threatens such a harm, the proposed intervenors repeatedly assert that the plaintiffs "espouse a philosophy, and seek injunctive relief, mandating controversial social policies designed to close residential facilities such as STS and to place all residents of those facilities in community settings." Id., at 11-12.

As an initial matter, the Court chooses not to speculate as to the parties' philosophies. Whereas the proposed intervenors may or may not be correct concerning the plaintiffs' philosophy, the only relevant consideration is what effect the instant litigation may have on the proposed intervenors' rights or interests. In this connection, the Court is cognizant that the plaintiffs' complaint could be read as seeking slowly to shut down STS, by ending all new admissions and forcing transfers to community settings. See Complaint, at 29 (seeking to "[e]njoin defendants from admitting persons to [STS] or transferring persons from STS unless such transfer is to an integrated community home . . .").

However, as discussed in this Court's recent ruling on the defendants' motion to dismiss, under prevailing precedent the

plaintiffs' complaint must be read as seeking to require STS to consider whether each resident is appropriate for community placement and to then act accordingly based upon such consideration. To the extent that plaintiffs' complaint instead sought to end all new admissions to STS, transfer all residents to community settings or otherwise shut down STS, this Court has effectively narrowed the complaint, as mandated by prevailing precedent, to exclude any such relief. See Ruling on Motion to Dismiss, February 9, 1996, at 13 (noting that "'there is no constitutional right to community placement,'" but that "a decision to keep a resident in an institutional rather than community setting is only constitutional to the extent that it is a 'rational decision based upon professional judgment'") (citation omitted).

Thus, the most that plaintiffs can accomplish is to require STS to conform with its constitutional duty to consider the appropriateness of community placement for each resident. In no way can the plaintiffs force STS to place in community settings those residents for whom community placement is inappropriate, or force the State of Connecticut to shut down STS. Therefore, the proposed intervenors' interest in keeping STS open cannot be impeded or impaired by the instant litigation.[3]

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[3] This Court concurs with the findings of Judge Wolf in his ruling on an analogous Motion to Intervene in Healy v. Weld, No. 94-11804-MLW (D. Mass. Nov. 23, 1994), a case involving the Dever State School. Judge Wolf found that:

The [intervenors'] submission expresses [their]

2. Parents' and Guardians' Right to Participate in Decisions Concerning Community Placement

The proposed intervenors also assert that the instant litigation jeopardizes parents' and guardians' "right to participate in decisions concerning community placement of their children and wards." Mem. in Supp. of Mot. to Intervene, at 7. Specifically, the proposed intervenors claim that these rights will be "usurped by 'independent' advisors whose agenda is to compel the placement of all STS residents in community settings." Id. The basis for the proposed intervenors' allegations is that portion of plaintiffs' complaint in which plaintiffs seek to "[e]njoin the defendants to make available individual and independent advocates for each plaintiff and member of the plaintiff class to assist them in securing their rights." Complaint, at 30.

This Court has no knowledge as to whom the plaintiffs seek to have assigned as "independent advocates," or precisely what type of role plaintiffs expect such advocates to play. However, this Court is unaware of any authority under which plaintiffs may seek to have any party usurp the rights and duties held by parents and legal guardians. Thus, whatever role the plaintiffs

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> intention to argue the value of a centralized institution such as Dever as opposed to community-based placements for certain individuals, and the importance of Dever remaining open . . . [However,] [t]his court does not understand that it has been asked by plaintiffs to decide this policy question and, in any event, does not intend to do so.

Healy, slip op. at 2-3.

have in mind for the proposed independent advocates, such advocates, if appointed, certainly could not infringe upon the legal rights of parents and guardians.[4]

It is conceivable that STS professionals might determine that community placement is appropriate for a resident whose parent or guardian is opposed to such placement.[5] Indeed, such a conflict could arise currently, even absent any relief awarded to the plaintiffs. If and when such a conflict arises, the parents or guardians involved have legal recourse to prevent unwanted community placement. See State of Connecticut Department of Mental Retardation, Admin. Directive No. 15 (Aug. 31, 1983) (setting forth parents' and guardians' minimum notice and hearing rights with respect to proposed transfers of their children and wards). However, even if plaintiffs' requested relief might make such conflicts more likely to occur, an increase in likelihood of conflict would not infringe on any legally protectable right or interest held by parents or guardians. Rather, parents and guardians currently have, and will continue to have, such rights and duties as the law accords them. The mere fact that the plaintiffs' litigation could force STS to fulfill its

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[4] The court notes that decision-making concerning a resident's future is not a zero-sum process. That is, adding a further source of input need not detract from the rights and duties of those persons who already have input, and indeed cannot detract from the rights of parents and guardians.

[5] Though, under the decision-making procedures proposed by the plaintiffs, parents and guardians would be integrally involved in all decisions. Complaint, at 26.

constitutional obligation accurately to assess residents' proper future course of treatment, thus potentially leading to an increase in occasions in which parents or guardians are at odds with medical professionals, in no way "impairs or impedes" parents' and guardians' ability to protect their legal rights, if and when such conflicts arise.

3. Right to Supervision, Training and Adequate Care

The proposed intervenors lastly assert that they "have long-term needs for, and constitutional rights to, close supervision, training and adequate and safe care." Mem. in Supp. of Mot. to Intervene, at 6. The proposed intervenors claim that these interests may be impaired or impeded by the instant litigation, and that the plaintiffs may not adequately represent these interests. This Court disagrees.

The proposed intervenors set forth two primary arguments as to why the plaintiffs may not adequately represent the residents' interests in remedying conditions at STS. First, the proposed intervenors argue that the plaintiff organizations in this case count among their members relatively few STS residents, as compared to the intervenor organizations. Similarly, whereas the plaintiff organizations are statewide or regional organizations, the intervenor organizations focus specifically on STS. However, the Court finds no evidence that these differences make one group of organizations more qualified than the other to raise

constitutional challenges to conditions at STS.[6]

Second, the proposed intervenors argue that the plaintiffs may not be able adequately to challenge conditions at STS because they actually seek to have STS shut down. This argument is premised upon a reading of the plaintiffs' complaint with which this Court does not concur. As discussed previously, rather than reading the plaintiffs' complaint as seeking closure of STS, this Court necessarily reads the plaintiffs' complaint as seeking equal consideration of all STS residents for community placement, regardless of their level of disability. Moreover, plaintiffs' complaint additionally and with equal force seeks improved conditions at STS, and the Court finds no evidence whatsoever that this aspect of plaintiffs' challenge is being pursued in an inadequate manner. Thus, the proposed intervenors have failed to make even a "minimal" showing of potentially inadequate representation. Trbovich, 404 U.S. at 538 n.10.

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[6] It is impossible for this Court abstractly to weigh the importance of the intervenors' specific focus on STS on the one hand with the plaintiffs' breadth of experience from cases involving other institutions on the other hand. However, in examining the actual practices followed by plaintiffs in the instant case, the Court finds no evidence of inadequate representation.

II. Permissive Intervention

Under Rule 24(b)(2), permissive intervention may be available, upon timely application, if "an applicant's claim or defense and the main action have a question of law or fact in common." Fed. R. Civ. Proc. 24(b)(2). It is discretionary with the court whether to allow such intervention. 7C Wright, Miller & Kane, Federal Practice and Procedure, § 1911 (Civil 2d 1986).

In the instant case, the defense that the proposed intervenors seek to assert against plaintiffs' actions, as well as the cross-claims that the proposed intervenors seek to bring against STS, are clearly related in both law and fact to the existing action. However, the circumstances of this case counsel against allowing permissive intervention.

First, as discussed previously, the proposed intervenors understand the instant litigation to seek closure of STS, an understanding which this Court does not share, and, indeed, believes to be impossible under the law. It would be unduly burdensome upon all parties, and, ultimately, wasteful of resources for this Court to grant the proposed intervenors' motion, only later to dismiss the proposed intervenors' defense as irrelevant given the limited scope of the questions at issue in this case.

Second, the Court finds the proposed intervenors' cross-claims to be so duplicative of the plaintiffs' claims as to counsel further against allowing intervention. Indeed, if allowed to intervene, the proposed intervenors would seek to

represent the same residents as plaintiffs seek to represent, and to bring substantially similar claims concerning conditions at STS. Whereas the proposed intervenors are free to file amicus curiae briefs with the Court, in the absence of inadequate representation by the plaintiffs the Court sees no rationale for allowing intervention.

SUMMARY

For the foregoing reasons, the proposed intervenors' motion [Doc. No. 13] is denied.

SO ORDERED.

ELLEN BREE BURNS, SENIOR JUDGE
UNITED STATES DISTRICT COURT

Dated at New Haven, Connecticut, this 6th day of March, 1996.