

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

IN THE MARION CO. SUPERIOR COURT
CIVIL DIVISION, ROOM NO.
CAUSE NO.

990018901 CP0097

LINDBERG COE, JAMES W. JONES,)
JOHN J. ABRAMS, and)
DAVID HENDLEY,)
On behalf of themselves and)
all others similarly)
situated,)

Plaintiffs,)

v.)

CENTER TOWNSHIP OF MARION)
COUNTY, INDIANA, and)
WILLIAM R. SMITH, in his)
official capacity as Center)
Township Trustee,)

Defendants.)

FILED

JAN 25 1989

Faye L Mowery
CLERK

CLASS ACTION COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff Lindberg Coe ("Coe"), James W. Jones ("Jones"), John T. Abrams ("Abrams") and David Hendley ("Hendley"), on behalf of themselves and all others similarly situated, request declaratory and injunctive relief against the policy and practice of the Center Township Trustee ("Trustee") of not providing adequate poor relief assistance for the emergency shelter and housing needs of the homeless poor in Center Township, Marion County, Indiana. This action is brought pursuant to Indiana statutory law, the Indiana and United States Constitutions, and 42 United States Code §1983. In support of this complaint, plaintiffs state:

I.

Parties

1. Plaintiffs Coe, Jones, Abrams, Hendley, and the class are poor, homeless adult residents of Center Township, Marion County, Indiana, with no permanent addresses.

2. Plaintiffs Coe, Jones, Abrams, Hendley, and the class are in need of immediate assistance from the Trustee to meet their basic need for emergency shelter and housing.

3. Plaintiffs Coe, Jones, Abrams, Hendley, and the class are and will be eligible for emergency shelter and housing assistance from the Trustee.

4. Plaintiffs Coe, Jones, Abrams, Hendley, and the class bring this action on behalf of themselves and on behalf of all those similarly situated to redress the Trustee's denial of adequate emergency shelter and housing assistance to the homeless poor in Center Township.

5. Plaintiffs and the class bring this action for declaratory and injunctive relief pursuant to Trial Rule 23 (a) and (b)(2) of the Indiana Rules of Trial Procedure on behalf of themselves and of all other persons who are or will be eligible for township trustee poor relief emergency shelter and housing assistance from the Center Township Trustee.

6. The members of the class are so numerous that joinder is impractical. The exact number of the class is unknown, but is estimated by experts and studies of the homeless problem in Center Township to be over two thousand homeless persons.

7. There are questions of law and fact common to the class. These are whether the Trustee's provision of emergency assistance for shelter and housing is inadequate under law to meet the shelter needs of the homeless poor in Center Township.

8. The claims of the Plaintiffs are typical of the claims of the class.

9. The plaintiffs will fairly and adequately protect the interest of the class and are represented by counsel experienced in class action litigation.

10. The Trustee has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

11. The Plaintiffs and the class are suffering grievous and irreparable harm for which they have no adequate remedy at law, thereby making appropriate and necessary preliminary and permanent injunctive relief.

12. Defendant William R. Smith, Sr., is the duly elected Township Trustee of Center Township, Marion County, Indiana, and is obligated by law to oversee the needs of the poor within Center Township pursuant to Indiana Code 12-2-1-1 et seq. Specifically, pursuant to I.C. 12-2-1-10 (b) and 20 (a), the Trustee is responsible for providing the poor with emergency shelter and housing assistance.

II.

FACTUAL ALLEGATIONS

Lindberg Coe

13. Lindberg Coe ("Coe") is a 52 year old black male and a resident of Center Township, Marion County, Indiana.

14. Coe is seriously underemployed. Despite repeated efforts to find employment, he has only been able to secure a job at minimum wage as a busperson at a restaurant on an "as needed" basis.

15. In December, 1988, Coe worked a total of four shifts at the restaurant. In January, 1989, Coe worked five nights.

16. Coe does not have an apartment or house of his own. For the last several weeks he has been staying in the one room efficiency apartment of his nephew.

17. Coe is homeless.

18. Coe faces imminent eviction from his current shelter because his nephew is three months behind in his rent and because the lease restricts the number of people that can stay in the apartment.

19. On several nights, Coe has been forced to sleep in his car for shelter.

20. Coe was in need of emergency shelter on the nights between January 18 and 23, 1989, and is still in need of emergency assistance.

21. Coe went to the office of the Center Township Trustee on January 18, 1989, and requested emergency shelter assistance.

Coe was told that it is the policy of the Center Township Trustee not to offer shelter assistance until the applicant is able to find a landlord willing to take a "voucher" for rent assistance from the Center Township Trustee.

22. When Coe told the Trustee employee that he needed shelter that night, the employee suggested that he go to the Wheeler Mission or the Salvation Army Harbor Light Center.

23. Coe did not wish to seek shelter at a private mission because he works evening on an on-call basis and must be available to work if he is notified. The private missions generally have a check-in time of 4:30 p.m. and do not allow the homeless to leave the shelter once they have been admitted.

24. Because of the Trustee's failure to provide Coe with emergency shelter or referral to long-term housing, Coe was forced on the nights of January 18 and 19, 1989, to sleep on the floor of his nephew's one-room apartment in violation of the occupancy restrictions in the lease.

25. When Coe asked the Trustee what landlords accept the Trustee's vouchers, the Trustee said that Coe must find such landlords on his own. The Trustee employee did, however, provide Coe with the name of one such landlord, the Lionel F. Artis Center at 410 N. Meridian.

26. At the Trustee's direction, on January 19, 1989, Coe went to the Lionel F. Artis Center, at 410 N. Meridian to seek long-term housing.

27. The manager at the Center told Coe that the Center was not accepting any applications for renters until June of 1989.

28. Despite repeated attempts to locate an apartment, Coe has been unable to find a landlord who is willing to accept the Trustee's vouchers, and hence has been unable to receive Trustee assistance.

29. Coe is in dire need of the assistance of the Trustee in locating emergency shelters which do not place unreasonable restrictions on residents and landlords willing to accept the Trustee's vouchers for rent.

James W. Jones

30. James W. Jones ("Jones") is an adult black male and a resident of Center Township, Marion County, Indiana.

31. Jones is unemployed and has been unable to secure employment despite repeated efforts.

32. Jones is homeless.

33. Jones was in need of food and shelter assistance on Sunday, December 4, 1988 at 12:55 p.m. Since this time of need was outside the hours of 8:00 a.m. to 3:00 p.m., Monday through Friday, the Trustee's office was not receiving applications. The Trustee's office was closed and the "emergency" number of 633-3610 was not answered. Jones was therefore unable to receive needed food and shelter assistance.

34. On December 6, 1988, Jones was unable to find room at the private shelters in Indianapolis and was unable to pay for a place to stay. The Trustee's Office had stopped accepting applications for assistance at 3:00 p.m. that afternoon. Since there was no available shelter and it was too cold to sleep outside, James W. Jones was forced to spend the night sitting in a downtown fast food restaurant.

35. Because of exposure to the elements and lack of nutrition and sleep, Jones was ill by the end of the week of December 6.

36. Jones is in dire need of the Trustee's assistance in finding emergency and long-term shelter.

John T. Abrams

37. John T. Abrams ("Abrams") is an adult white male and a resident of Center Township, Marion County, Indiana.

38. Abrams is currently unemployed and has been unable to secure employment despite repeated efforts.

39. Abrams is homeless.

40. Because he has no money, Abrams is staying at the Harbor Light Center Shelter.

41. The Harbor Light Center's policy is that the homeless can only stay six nights without payment.

42. After he uses up his six free nights, Abrams will be unable to stay at the Harbor Light Center Shelter.

43. While Abrams does not mind attending religious services once or twice per week, Abrams objects to the policy of many of the private shelter's requiring attendance at nightly religious services.

44. On January 20, 1989, Abrams went to Trustee's office to seek assistance in obtaining shelter. An employee of the Trustee, a Ms. Holland ("Holland"), told Abrams that he would qualify for Trustee assistance.

45. Holland told Abrams that the Trustee's policy was to provide shelter assistance to qualified individuals, but that first a landlord must be found with a vacancy and a willingness to accept the Trustee's vouchers.

46. Holland told Abrams that it was up to him to find a landlord with a vacancy and the willingness to accept the Trustee's vouchers.

47. When Abrams asked Holland whether the Trustee's office could provide him with a list of such landlords, she said no such list existed and that it was up to him to find such housing.

48. On January 20 and 23, 1989, Abrams went to numerous apartment buildings in Center Township seeking vacancies and a landlord willing to accept the Trustee's vouchers. He was unsuccessful in his search.

49. Abrams is in dire need of the Trustee's assistance in locating suitable emergency shelter and housing.

David Hendley

50. David Hendley ("Hendley") is a 51 year old white male and a resident of Center Township, Marion County, Indiana, who has lived in Indianapolis for the past seven years.

51. Hendley does not have an apartment or house of his own. Hendley has been sleeping either at the Wheeler Rescue Mission or on the streets for the past three months.

52. Hendley is homeless.

53. Hendley is an alcoholic.

54. Hendley has been afflicted with a severe cold for several months. He has been unable to recover from the cold because of his constant exposure to the elements.

55. Hendley was unable to find shelter on the evening of January 17, 1989 and spent the night in a 24-hour convenience store.

56. Hendley was in Center Township and in need of emergency shelter on January 18, 1989 at 10:00 p.m.

57. On the evening of January 18, 1989 Hendley went to the Indianapolis Police Department Headquarters at 50 N. Alabama Street in an attempt to get arrested and thereby be allowed to sleep in the Marion County Jail. Despite Hendley's repeated requests to a police officer that he be arrested, Hendley's efforts were unsuccessful.

58. Hendley then went to the Wheeler Rescue Mission, located at 245 North Delaware Street, in search of shelter for the night. Hendley was refused admittance to the Wheeler Rescue Mission because he was intoxicated, because he had missed the 4:30 p.m. deadline for requesting shelter, because he was serving a 30-day "penalty" ban from Wheeler Rescue Mission because he had in the past failed to stay at the Mission on a night for which he had requested shelter, and because the mission was at capacity.

59. Hendley called the Center Township Trustee's Office at its listing under "emergency" at (317) 633-3610 at 10:03 p.m. on January 18, 1989 in order to request emergency shelter assistance. The telephone rang 25 times and was not answered.

60. Hendley through no fault of his own was not able to receive emergency shelter assistance from the Center Township Trustee's Office at 10:03 p.m. on January 18, 1989. The Center

Township Trustee's Office had in fact stopped accepting applicants for relief at 3:00 p.m. on January 18, 1989.

61. Hendley is in dire need of the Trustee's assistance in securing emergency shelter and housing.

THE CLASS

62. The Trustee in fact only accepts applications for shelter assistance from 8:00 a.m. to 3:00 p.m., Monday through Friday at their office at 863 Massachusetts Avenue.

63. Because the Trustee does not respond to emergency requests for shelter assistance, poor homeless people have generally stopped requesting such assistance.

64. The Trustee does provide shelter assistance to qualified applicants who, at the time of application, have an established residence that is declared "fit," and which are owned by landlords willing to take Trustee vouchers in lieu of rent payment.

65. The Trustee does provide long-term shelter assistance to approximately 270 people who reside at the Marion County Healthcare Center, formerly known as the Marion County Home.

66. The Trustee partially discharges his duty to provide emergency shelter to the homeless poor in Center Township by reimbursing private shelter operators under certain conditions for expenses in sheltering overnight the homeless poor.

67. The Trustee does not locate, for homeless persons, emergency shelters or residential units which can accept homeless persons for short or long-term occupancy, or which accept the Trustee's vouchers for rent.

68. The majority of the homeless class members are unable to locate landlords willing to accept the Trustee's vouchers for rent.

69. The homeless class are in dire need of the Trustee's assistance in locating suitable housing.

70. There is inadequate space available in private shelters to shelter the homeless poor in Center Township. According to

reliable and conservative studies, there are literally hundreds of poor, homeless individuals who are unable to secure shelter on any given night.

71. In a 1987 study done at the request of Indianapolis Mayor William Hudnut, the Community Service Council's Homeless Task Force concluded that an estimated 1,546 people are homeless in Indianapolis on any given night and that 30,000 individuals are homeless in Indianapolis annually. The survey showed that 631 beds were available at local private shelters and that 278 people were "on the streets" on an average night. The study concluded that the number of private shelter beds was grossly inadequate to meet the needs of Indianapolis homeless.

72. The Homeless Network of Indianapolis Incorporated, a private, not for profit corporation consisting of service providers, homeless advocates and homeless people, estimates that as of December 1, 1988, there are an estimated 2,000 to 2,200 homeless people in Indianapolis. The number of private shelter beds has increased since the 1987 Community Service Council survey, but is still grossly inadequate to meet the demand for emergency shelter.

73. Because of a lack of adequate space and other restrictions, there are many poor, homeless individuals who are denied admittance to these private shelters, especially in the winter months when the demand is high.

74. The shelters that turn away the highest proportion of applicants are the private shelters that accept homeless families. According to reliable studies, families with children comprise the largest growing segment of the homeless population.

75. The vast majority of the people who are on the streets and/or turned away from private shelters in Marion County are located in Center Township.

76. The insufficient supply of safe, sanitary, and decent emergency shelter space in Center Township forces the homeless poor to live in unhealthy and dilapidated abandoned houses and

cars, on park benches out of doors, in boxes and doorways, and on heating grates.

77. Representatives of Center Township's homeless have attempted unsuccessfully to meet with the Trustee to discuss their shelter needs.

78. Under Indiana law, upon a complaint made to him that any person within his township is sick or in distress and likely to suffer, the Trustee has mandatory duty "to examine into the case of said person and grant such temporary relief, [including shelter and housing] as may be required." I.C. 12-2-1-20(a) and 10(b). State ex rel. Van Buskirk v. Wayne Township (1981) Ind. App., 418 N.E.2d 234; Nidor v. Center Township Trustee, No. S285-632 Marion Supr. Ct. No. 2, (Dec. 19, 1988).

79. The Trustee has no program to discharge his statutory and constitutional obligation to provide for the emergency shelter needs of the literally hundreds of homeless poor who are forced by circumstances to go without shelter.

80. The Trustee has a statutory and constitutional duty to provide daytime shelter assistance to the homeless poor and has no program to discharge this duty.

81. The Trustee has a statutory constitutional duty to inquire into the needs of the homeless and provide them such relief as is necessary in assisting them in locating emergency shelter and housing assistance. The Trustee has no program to discharge this obligation.

82. Most of the private shelters allow residents to remain in their shelter only during the evening hours and exclude the homeless from the shelters during the day.

83. Indianapolis Municipal Code 22-15 prohibits sleeping in public parks, and therefore homeless people literally have no public property in which to adequately rest. The Indianapolis Day Center, a daytime shelter, is located at 1625 E. Washington Street, which is several miles away from many of the private shelters, is only open from Monday through Friday, and has a limited capacity.

84. The homeless poor people of Center Township have an urgent and dire need for emergency daytime and night-time shelter assistance and long-term housing which the Trustee is not providing.

85. As a result of the Trustee's policy and practice of not providing adequate emergency shelter assistance, hundreds of members of the plaintiff class are unable to obtain overnight and daytime shelter or long-term housing and are forced to stay outside in the cold.

86. The failure of the Trustee to discharge his statutory and constitution duties to provide emergency shelter and housing to the homeless poor places the plaintiffs and the class in grave risk of physical and emotional harm, such as:

- (a) a loss of self-worth and self-respect; *not all persons*
- (b) increased alienation and social isolation; *no idea*
- (c) greater susceptibility to physical ailments, *yes, if cold*
infirmities and life-threatening weather conditions;
- (d) greater risk of physical assault by others, (over one- *no idea*
third of the homeless have been victims of physical
assault while homeless);
- (e) increased difficulty in obtaining employment; *thinks so, no*
- (f) increased difficulty in obtaining governmental *documentation*
benefits; - *NO*
- (g) increased difficulty in obtaining an education; *? no idea*
- (h) increased difficulty in obtaining mental health and
other counseling; and, *?*
- (i) increased difficulty in receiving mail and other
communications. *definitely*

87. All of the Trustee's actions complained of above were and are taken under color of state law.

III.

Causes of Action

Indiana Code

88. The Trustee's denial of emergency shelter and housing assistance to plaintiffs and the class is unlawful because it violates Indiana Code 12-2-1-10 (b) and 20 (a), in that it does not provide for the basic shelter needs of those homeless poor eligible for Township Trustee Poor Relief.

Due Process

89. The Trustee's failure to follow the Indiana statutory law entitling plaintiffs to emergency shelter assistance deprives the plaintiffs of state-created liberty and property interests in an arbitrary and capricious manner and hence denies the plaintiffs due process of law as guaranteed to them by Art. I, Sec. 12 of the Indiana Constitution and the fourteenth amendment to the United States Constitution.

Equal Protection

90. The Trustee's system of providing for the emergency shelter needs of only some of the homeless poor by reimbursing private shelter operators, by maintaining the Marion County Healthcare Center, and by providing rental assistance to only those individuals able to find landlords willing to accept the Trustee's vouchers, denies the equal protection of the law to those homeless poor who are unable to obtain admission into a private shelter or the Marion County Healthcare Center because of a lack of space or other restrictions, or who are unable to locate such landlords willing to accept the Trustees vouchers. This violates the equal protection of the laws guidelines contained in Art. I, Sec. 23, of the Indiana Constitution and the fourteenth amendment to the United States Constitution.

Aid To/Establishment of Religion/Free Exercise of Religion

91. The Center Township Trustee's system of providing for the emergency shelter needs of some of the homeless poor by reimbursing private shelter operators violates the first amendment to the U.S. Constitution and Art. I., Sections 2,3,4 and 6 of the Indiana Constitution, where those shelters impose religious practices requirements as a condition of providing shelter.

IV.

Prayer for Relief

WHEREFORE, Plaintiffs request that this Court:

A. Assume jurisdiction of this action.

B. Order, pursuant to Trial Rule 23 (c)(1) of the Indiana Rules of Trial Procedure, that this action may be maintained as a class action.

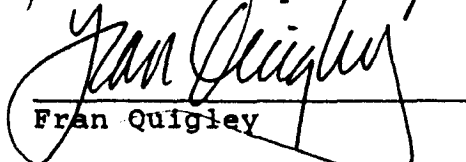
C. Enter a preliminary injunction, to be made permanent later, requiring the Center Township Trustee, his successors in office, agents, employees, and all other persons in active concert with him, to implement a program of assistance that meets the emergency shelter and housing needs of the homeless poor in Center Township, and to provide the individual plaintiffs with sufficient assistance to meet their shelter needs.

D. Enter a final judgment, pursuant to Trial Rule 57 of the Indiana Rules of Trial Procedure, declaring that the policies and practices of the Defendants are contrary to Indiana Code 12-2-1-10 (b) and 20 (a), the 1st and 14th Amendments to the United States Constitution, and Art. I, Sections 2, 3, 4, 6, 12 and 23 of the Constitution of the State of Indiana.

G. Grant plaintiffs attorney's fees pursuant to 42 United States Codes §1988 and the Indiana common law on private attorneys general.

H. Grant plaintiffs the costs of this action and all further relief which is just, proper and equitable.

Respectfully submitted,


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