1994 WL 22714
United States District Court,
E.D. Pennsylvania.

Helen L., et al.
v.
Albert DIDARIO, et al.

No. CIV. A. 92-6054.
|
Jan. 27, 1994.

MEMORANDUM

O'NEILL.

I. Background

***1** Plaintiff Helen L. is a 67–year old woman with a traumatic brain injury who was institutionalized at Norristown State Hospital, an institution for persons with mental illness ("Norristown"). Plaintiffs Beverly D. and Eileen F. are women with disabilities who reside at a nursing home in Philadelphia.

Defendant Albert DiDario is the Superintendent of Norristown. Defendant Karen Snider is Secretary of the Pennsylvania Department of Public Welfare ("DPW"), which is responsible for administering the State's Attendant Care Services Act. *See* 62 Pa.Cons.Stat.Ann. § 3051 et. seq.

Plaintiffs Beverly D. and Eileen F. have filed a motion for a preliminary injunction[1] requesting that the Court order defendant Snider to provide them with community-based attendant care services.[2] Both plaintiffs receive Medical Assistance from defendants which pays for their nursing home care and treatment.

Plaintiffs assert that defendant's refusal to provide them with community-based attendant care services violates their rights under the Americans With Disabilities Act ("ADA"), 42 U.S.C. § 12101. *See* Count One, Plaintiffs' amended complaint. On June 25, 1993, the parties agreed to a stipulation of facts in order to allow the Court to rule on plaintiffs' motion for summary judgment, which was filed the same day. Defendants filed a cross-motion for summary judgment. Thereafter, I issued an Order staying discovery pending ruling on the motions for summary judgment.

On June 28, 1993, plaintiff Helen L. was discharged from Norristown to an apartment in the area. Nevertheless, she continues to assert her constitutional claim that defendant DiDario violated her substantive due process rights as a result of her confinement at the Hospital from 1952 until 1993.[3] *See* Count II, Plaintiffs' amended complaint.

For the following reasons, I will grant defendants' motion for summary judgment as to Count One of plaintiffs' amended complaint and deny defendants' motion as to Count Two. If appropriate, defendants may renew their motion for summary judgment as to Count Two at the close of discovery.

II. Discussion

A. Plaintiffs' ADA Claim

1. Summary Judgment Standard

Under Fed.R.Civ.P. Rule 56(c), summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *See Hines v. Conrail,* 926 F.2d 262, 267 (3d Cir.1991).

Under Rule 56, summary judgment will be granted "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett,* 477 U.S. 317, 322 (1986). The party moving for summary judgment bears the initial responsibility of informing the court of the basis for its motion and identifying those portions of "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if

any," which it believes demonstrate the absence of a genuine issue of material fact. *Id.* at 322–323. The moving party is not required to support its motion with affidavits or other similar materials negating the opponent's claim. *Id.*

***2** If the moving party sustains this burden, the nonmoving party must set forth facts demonstrating the existence of a genuine issue for trial. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 255 (1986). Rule 56(e) provides that when a properly supported motion for summary judgment is made, "an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. An issue of material fact is genuine if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson,* 477 U.S. at 255; *Brenner v. United Brotherhood of Carpenters & Joiners,* 927 F.2d 1283, 1287–88 (3d Cir.1991).

In addition, "the existence of disputed issues of material fact should be ascertained by resolving 'all inferences, doubts and issues of credibility against the moving party.' " *Ely v. Hall's Motor Transit Co.,* 590 F.2d 62, 66 (3rd Cir.1978), quoting *Smith v. Pittsburgh Gage & Supply Co.,* 464 F.2d 870, 874 (3rd Cir.1972).

2. Factual Background

This summary of relevant facts is based on the stipulation submitted by the parties.

Beverly D., a 46–year old woman, has resided at a nursing home in Philadelphia since September 29, 1988. She is the mother of two daughters and a student at Philadelphia Community College. Before she was admitted to the nursing home, Beverly D. injured herself escaping from a fire in her home. As a result, she has no vision in her right eye and uses a wheelchair. Because of her physical handicaps, Beverly D. requires and receives at the nursing home assistance with daily living activities, such as bathing, preparing meals, doing laundry and shopping. However, she does not require nursing supervision or care.

DPW pays for these services under its Medical Assistance Program. Beverly D. wants to live outside the nursing home and in the community. On January 13, 1993, Homemaker Service of the Metropolitan Area, Inc. ("Homemaker"), determined that she is eligible for attendant care services in the community.[4] Homemaker also informed Beverly D. that "funding limitations" prevent it from providing such services to her.[5] Eileen F., a 46–year old woman, resides at the same nursing home. She was admitted in 1991 after suffering a stroke which requires her to use a wheelchair.[6] She has family in Philadelphia and, like Beverly D., wants to live in the community. Similarly, although she requires assistance with daily living activities, Eileen F. would not require nursing home care if she received attendant care services. On January 13, 1993, Homemaker informed her that she is eligible for attendant care services in the community but that it lacks funds to provide the services.

At the nursing home, plaintiffs live only with other persons who have disabilities. They do not live with their families and friends and "are not visited by non-disabled persons." *See* Stipulation of Facts at ¶¶ .38–39. Defendants concede that the "setting for the provision of attendant care services appropriate to the needs of Beverly D. and Eileen F. is in the community" and that a "nursing home is not the setting in which plaintiffs could be provided attendant care services and have maximum contact with nondisabled persons." *See* Stipulation of Facts at ¶¶ .43, 44. Plaintiffs therefore "must remain in a nursing home in order to receive the attendant care services which they require." *Id.* at ¶ .45.

***3** The parties agree that the average cost to DPW of nursing home care is $45,000 a year, of which 56 percent is derived from federal reimbursement and 44 percent from state funds. The average cost to DPW of attendant care in the community is $10,500, for which it receives federal reimbursement. Defendant DPW has not requested that the federal funds be used to pay for attendant care services for the women in the community.

3. Discussion

Congress passed the ADA to provide protection for persons with disabilities against discrimination. The Act specifically prohibits discrimination in employment (Title I), in public services (Title II), in public accommodations (Title III) and in telecommunications (Title IV). *See Kinney v. Yerusalim,* 812 F.Supp. 547, 548 (E.D.Pa.1993), *aff'd,* 1993 U.S.App. LEXIS 30167 (3d Cir.1993).

Title II of the ADA prohibits state and local governments from discriminating on the basis of disability. Title 42 U.S.C. § 12132 provides:

> Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any such entity.

42 U.S.C.A § 12132 (Supp.1993).[7]

Prior to the ADA, the prohibition against discrimination covered only those programs and services of government entities that received financial assistance. *See* 29 U.S.C. § 794.
The ADA's Findings and purposes state:

> * * * *
>
> (2) historically, society has tended to isolate and segregate individuals with disabilities, and despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;
>
> (3) discrimination against individuals with disabilities persists in such critical areas as employment, housing public accommodations education, transportation, communication, recreation, institutionalization, health services, voting and access to public services;
>
> * * * *
>
> (5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;
>
> * * * *
>
> (8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals;....

42 U.S.C.A. 12101 (Supp.1993).

This case turns on the interpretation of what plaintiffs call the "integration mandate" of the ADA. Plaintiffs focus on the setting in which they receive services; they allege that even though defendants provide services under two different programs defendants are required to furnish those services in the setting that best integrates plaintiffs into their community.

***4** Plaintiffs insist that defendant's refusal to provide attendant care services violates the integration mandate, which they derive from Titles II[8] and III[9] of the ADA. In their memorandum, Plaintiffs review the regulations detailing and implementing the Act's integration mandate. *See, e.g.,* 28 C.F.R. § 35.130(d) (regulation intended to effectuate Title II of the ADA stating that a "public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities").

Plaintiffs also assert that cases construing section 504 of the Rehabilitation Act, 29 U.S.C. § 794, are instructive in determining the meaning of the ADA but that the ADA does more than extend the Rehabilitation Act. *See, e.g.,* 28 C.F.R. § 35.103(a) ("Except as otherwise provided in this part, this part shall not be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973.").

Defendants respond that they are in compliance with the law so long as plaintiffs receive services for which they are eligible and that the Court cannot otherwise dictate how defendants provide those services. Stated another way, defendants maintain that they are required only to ensure that plaintiffs are not discriminated against in comparison with other individuals who are chosen to receive attendant care services.

I conclude that defendants' position is legally correct. My ruling is guided by the reasoning of the Massachusetts Supreme Court in *Williams v. Secretary of the Executive Office of Human Services,* 414 Mass. 551, 609 N.E.2d 447 (1993).

In *Williams,* plaintiffs, a group of homeless and mentally ill individuals, sued the State's Department of Mental Health with respect to the methods by which it served patients. Plaintiffs pursued a number of statutory and constitutional claims, including a claim that the Department did not provide "a sufficient amount of

integrated supported housing to satisfy the requirements of the ADA." *Id.* at 556.

In a unanimous decision, the Court rejected plaintiffs' ADA claim. The Court held that the ADA does not require a state to provide services in an integrated setting. The Court explained:

> nothing in the ADA requires that a specific proportion of housing placements provided by a public mental health service be in 'integrated' housing. Nor does anything in the ADA or its 'integration regulations' address the absence of sufficient integrated residential placements to satisfy the entire demand for such services.

Id. at 556–557. The Court continued:

> [t]he focus of Federal disability discrimination statutes is to address discrimination in relation to nondisabled persons, rather than to eliminate all differences in levels or proportions of resources allocated and services provided to individuals with differing types of disabilities.... Courts do not determine whether an agency's allocation of resources or provision of services is efficient or in proportion to the obvious and pressing need of the disabled within the Commonwealth.

***5** *Id.* at 559–560.[10]

The record developed by the parties establishes that plaintiffs are denied attendant care services because of lack of funds. It does not demonstrate that they have been denied funding for attendant care services because they are disabled. Plaintiffs' failure to show that they have been excluded from the attendant care services program on the basis of their disability is fatal to their claim. *Cf. Martin v. Voinovich,* 1993 U.S.Dist. LEXIS 18468 at *44 (E.D.Ohio Dec. 14, 1993).

Even though defendant Snider concedes that it is more expensive and less salutary for plaintiffs to remain in a nursing home rather than receive attendant care services, this admission does not authorize the Court to adjust the Department's allocation of resources or provision of services. Plaintiffs assert that the fact that they would be served better by attendant care services distinguishes their case from *Williams.* Given the separation of powers reasoning in *Williams* that requires courts to avoid involving themselves in administrative agency policy decisions, I am unable to agree.[11]

Plaintiffs also contend that a judgment in favor of defendants will render the "integration mandate" of 28 C.F.R. § 35.130(d) meaningless. However, this integration mandate may not be invoked unless there is first a finding of discrimination. *See, e.g., Williams* at 558. *See also Pinnock v. International House of Pancakes,* 1993 U.S. Dist. LEXIS 16399 at *18–20 (S.D.Cal. Nov. 8, 1993) (discussing "most integrated setting" language of regulations implementing Title III of the ADA).[12]

I will deny plaintiffs' request for a preliminary injunction and enter judgment in favor of defendants on Count One.

B. Helen L.'s Constitutional Claim

1. Factual Background

Helen L. was admitted to Philadelphia Hospital sometime in the early 1950s and remained there until 1971, when she was taken to Norristown. She was admitted to Norristown as an involuntary patient pursuant to a court order for interim commitment, which noted that she was "Mentally Ill." *See* Attachment 2 to Defendant's Motion for Summary Judgment, dated July 22, 1993.

According to her verified complaint, Helen L. is not and never was mentally ill.[13] Defendant admits that her "organic brain injury ... is not a mental illness." *See* Defendant's Answer to Amended Complaint at ¶ .22, filed December 23, 1992.[14]

Plaintiff alleges and DiDario[15] admits that at the time Helen L. was admitted to Norristown the hospital staff recommended "the starting of discharge planning

probably to a better supervised, all female, boarding home." *See* Defendant's Answer to Amended Complaint at ¶ .23.

In February 1977, Helen L. apparently signed a form consenting to receive inpatient treatment at Norristown. *See* Attachment 3 to Defendant's Motion for Summary Judgment. She also apparently checked a box on the form stating that she could leave the hospital upon written request with up to 72 hours notice. *Id.*[16] Despite defendant's efforts to discharge plaintiff over the years, she did not leave Norristown until June 1993.

***6** In her verified complaint, plaintiff states that she received Mellaril, a psychotropic medicine, while at the hospital. In addition, Helen L. has submitted an affidavit stating:

> 1. Since I moved to Norristown State Hospital, I believed I was not permitted to leave, but had to stay there.
>
> 2. For many years I lived in a locked ward with many other women. I could not leave the ward without permission of the staff.... Often, other women at Norristown State Hospital would bother me but I could not leave the locked ward to get away from them.
>
> 3. Frequently over the years, I was denied permission to leave the ward. I do not know why I had to live in this locked ward or why I was not permitted to leave it.
>
> * * * *
>
> 5. I do not remember signing any papers about staying at Norristown State Hospital. No one ever explained my rights or why I was there. I have always believed that I could not leave Norristown State Hospital and had no option about leaving and no option about living somewhere else. No staff at Norristown State Hospital ever told me I could leave if and whenever I wanted.
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> 6. I did not ask to be placed at Norristown State Hospital and did not stay there on my own.
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> 7. I told the staff over and over that I wanted to live in Northeast Philadelphia near my sisters but they never told me how I could do this.
>
> 8. The staff made me take medicine and have shock treatment even though I did not want it, and my memory is worse.

See Affidavit of Helen L., dated August 3, 1993.

2. Discussion

Plaintiff asserts that defendant DiDario violated her substantive due process rights under the Fourteenth Amendment by failing to place her in an appropriate community setting and unnecessarily maintaining her in an institution. Because she has been discharged from Norristown, she now has only a claim for damages against defendant for his alleged violation of her constitutional rights.

Defendant responds that plaintiff's claim should fail because his conduct did not violate the Constitution. Alternatively, he maintains that the Eleventh Amendment and the doctrine of qualified immunity prevent plaintiff from collecting damages for any constitutional violation that may have occurred. Defendant also contends that because Helen L. voluntarily committed herself to Norristown in 1977 he is not liable for any injury she may have suffered while she was there. *See generally DeShaney v. Winnebago County Department of Social Services,* 489 U.S. 189 (1989) (establishing limits of State's affirmative duty to protect individuals).

I am unable to agree with defendant that the record developed by the parties thus far demonstrates that defendant is entitled to judgment as a matter of law. Because plaintiff may not have been voluntarily committed to Norristown even after 1977, she may have a claim under *Youngberg v. Romeo,* 457 U.S. 307 (1982) (involuntarily committed person has constitutional right to safe conditions, to freedom from bodily restraint and to training). *See also* DeShaney at 199–201 (discussing *Youngberg*); *Clark v. Cohen,* 794 F.2d 79, 87 (3d Cir.), *cert. denied,* 479 U.S. 962 (1986) (upholding trial court findings that plaintiff's "substantive liberty right to appropriate treatment under *Romeo* was violated"). There is also a factual question whether she was free to leave the institution. The Order accompanying this Memorandum will lift my July Order staying discovery in the case. If appropriate, defendant may renew his motion for summary judgment after discovery has concluded.

***7** The Eleventh Amendment does not bar Helen L. from suing defendant DiDario in his individual capacity as Superintendent of Norristown State Hospital. *See Hafer v. Melo,* 112 S.Ct. 358 (1991). In my view the present record is not sufficient to enable me to rule on defendant's defense of qualified immunity. Defendant may renew this defense by motion after the close of discovery. room of a restaurant or to refuse to allow a person with a disability

to full use of a health spa because of stereotypes about the person's ability to participate." *Pinnock* at *19.

ORDER

AND NOW, this day of January, 1994, upon consideration of plaintiffs' motion for a preliminary injunction, the parties' cross-motions for summary judgment as to Count One, defendant's motion for summary judgment as to Count Two and the supporting and opposing memoranda and correspondence thereto, it is hereby ORDERED that:

1. Plaintiffs' motions for a preliminary injunction and for summary judgement as to Count One are DENIED.

2. Defendants' motion for summary judgment as to Count One is GRANTED. Judgment is entered in favor of defendants and against plaintiffs on Count One of plaintiffs' amended complaint.

3. Defendant's motion for summary judgment as to Count Two is DENIED without prejudice to its renewal at the conclusion of discovery. This Order vacates the stay of discovery previously ordered by the Court.

All Citations

Not Reported in F.Supp., 1994 WL 22714, 62 USLW 2479, 2 A.D. Cases 1751, 4 A.D.D. 55, 4 NDLR P 366

Footnotes

1 Plaintiff Florence H. is not a party to the pending motion. Plaintiff Disabled In Action of Pennsylvania ("DIA") is a Pennsylvania nonprofit corporation whose members are persons with disabilities and also is not a party to the pending motion. Defendants do not challenge this plaintiff's standing.

2 For a description of the attendant care program, see *Easley v. Snider,* 1993 U.S. Dist. LEXIS 18021 (E.D.Pa. Dec. 20, 1993) (Brody, J.).

3 As a result of her discharge from Norristown State Hospital, Helen L. is relinquishing her claim under the ADA. *See* Letter of Plaintiffs' Counsel, dated June 25, 1993.

4 Homemaker is a subcontractor of DPW that has been chosen to provide attendant care services for eligible persons.

5 *See* Letter from Homemaker Service of the Metropolitan Area, Inc., to Beverly D., dated January 13, 1993, attached to Stipulation of Facts.

6 "Eileen F, has no use of her left upper extremity, a mild vision and hearing deficit and some difficulty with speech." *See* Stipulation of Facts at ¶ .26, dated June 25, 1993.

7 The term public entity is defined in § 12131 and includes "any State or local government." *Id.* at § (1)(A).

8 *See* 42 U.S.C.A. 12134(a), which authorizes 28 C.F.R. § 35.101 et seq.

9 *See* 42 U.S.C.A. 12182(b)(1)(B), which states: "Goods, services, facilities, privileges, advantages, and accommodations shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual."

10 The Court's decision addressed claims under Title II and Title III of the ADA.

11 In a letter to the Court dated January 13, 1994, counsel for plaintiffs provided the following information about a pending case in Pennsylvania Commonwealth Court that is relevant to this dispute. The letter explains that *Williams v. Snider,* No. 0013 M.D.1993 (Commw. Ct.) "is a mandamus action that seeks to require DPW to apply for available federal funding for personal assistance care services for disabled people. As a result of the *Williams* litigation, DPW has commissioned a study to determine the feasibility of receipt of federal funds by successfully applying for a waiver under the Medicaid Program for a Personal Assistance Services

Program for persons with physical disabilities modeled after Pennsylvania's Act 150 Attendant Care Program.... DPW is still in the process of making a decision whether or not to apply for those federal funds." Even if DPW decided to apply for federal funds, the Federal Health Care Financing Administration must approve the application. The letter concludes that the Commonwealth Court has stayed proceedings in Williams pending the agencies' decision-making process. *See* Letter of Stephen F. Gold, plaintiffs' counsel, dated January 13, 1994.

12 In *Pinnock,* the court noted that the "preamble to the [T]itle III regulation provides two pages of examples and explanations illustrating the meaning of this provision. One example provides that it would be a violation of this provision to require persons with mental disabilities to eat in the back

13 Plaintiff suffered traumatic brain trauma when she was hit by a trolley car at the age of three. She is able to read and write. *See* Plaintiffs' Amended Complaint at ¶¶ .17, 18.

14 Defendant DiDario maintains that "Helen L's diagnosis at Norristown State Hospital most typically was organic brain syndrome with mild mental retardation, sometimes with psychosis, sometimes without." *See* Affidavit of Albert DiDario at ¶ .11, dated July 20, 1993.

15 In her memorandum of law, plaintiff states that she does not seek damages against defendant Snider. *See* Plaintiff's Memorandum of Law at 32, filed August 5, 1993. My discussion of her constitutional claim therefore only concerns defendant DiDario.

16 The form included another box stating that she could leave "at any time" she expressed her "desire to leave in writing." *See* Attachment 3 to Defendant's Motion for Summary Judgment, dated July 22, 1993.

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