1994 WL 502352
Only the Westlaw citation is currently available.
United States District Court, E.D. Pennsylvania.

UNITED STATES of America, et al.
v.
PENNSYLVANIA, et al.
Harry NELSON, et al.
v.
Karen F. SNIDER, et al.

Civ. A. No. 93–2094. | Sept. 12, 1994.

Attorneys and Law Firms

James P. Turner, Dept. of Justice, Civ. Rights Div., Housing & Civ. Enforcement Section, Washington, DC, Debra Leanne Wrobel Cohn, MIchael J. Rotko, U.S. Attorney's Office, Philadelphia, PA, Janet Reno, U.S. Atty. Gen.; Mellie H. Nelson, Philip A. Guzman, Special Litigation Section–U.S. Dept. of Justice; Pamela K. Chen and Mark Masling, Sp. Litigation Section, Civ. Rights Div., U.S. Dept. of Justice, Washington, DC, for plaintiff.

Thomas B. York, Eckert Seamans Cherin & Mellott, Harrisburg, PA, for defendants.

Edmond A. Tiryak, Philadelphia, PA, for intervenor-plaintiff.

Opinion

MEMORANDUM

NEWCOMER, District Judge.

***1** Presently before the Court is plaintiff United States of America's Motion to Apply the Doctrine of Issue Preclusion to Certain Factual Findings Made in *Halderman v. Pennhurst,* and the defendants' response thereto.[1] For the reasons that follow, plaintiff's motion will be granted.

I. ***Background***

The Embreeville Center ("Embreeville") is a state institution for the mentally retarded. These consolidated actions seek injunctive relief against the Commonwealth of Pennsylvania and several of its officials to redress allegedly unconstitutional conditions at Embreeville. The suits were brought by the United States of America (and, as intervenor, People Interested in Embreeville Residents, a group comprised mainly of relatives of persons residing at Embreeville), a class of residents of Embreeville and those at risk of placement at Embreeville, and Pennsylvania Protection and Advocacy, Inc. and The Arc–Pennsylvania (two non-profit advocacy corporations).

The allegations of the instant case are similar in many respects to those in *Halderman v. Pennhurst,* No. 74–cv–1345 (E.D.Pa.), a case which concerned the conditions of confinement at Pennhurst State Hospital and Training School, a state institution for persons with mental retardation. The *Pennhurst* litigation has had a long and tortured history. In 1977, it was tried over thirty-two days, after which Judge Broderick granted injunctive relief in favor of the plaintiffs. The case was appealed to the Third Circuit, affirmed, and then argued to the United States Supreme Court. The Supreme Court remanded, and the Third Circuit affirmed on different grounds. The case was argued twice more in the Supreme Court, and again remanded.[2] After eleven years of litigation, and while the case was pending before the Third Circuit on its second remand from the Supreme Court, the parties entered into a final settlement agreement which Judge Broderick approved and entered as a consent decree and order (the "consent decree") on April 5, 1985.

In November, 1987 a contempt motion was filed alleging that the *Pennhurst* defendants were in violation of the terms of the consent decree. Efforts to resolve the dispute failed, and in December, 1993 Judge Broderick held a lengthy contempt hearing. On March 28, 1994 Judge Broderick issued extensive findings of fact and conclusions of law holding the defendants in contempt of the consent decree.

Plaintiffs now ask this Court to apply the doctrine of issue preclusion to prevent relitigation of factual findings made by Judge Broderick after the *Pennhurst* contempt hearing.

II. ***Issue Preclusion***

The doctrine of issue preclusion, formerly known as collateral estoppel, is used to prevent relitigation of issues that have been previously decided. It may be invoked where: 1) the identical issue has been decided in a prior adjudication, 2) there was a final judgment on the merits, 3) the party against whom the doctrine is applied was a party to the prior litigation, and 4) the party against whom the bar is applied had a full and fair opportunity to litigate the issue. *Board of Trustees of Trucking Employees v. Centra, Inc.,* 983 F.2d 495, 505 (3d Cir.1992). Also required is that the issue decided in the prior litigation was essential to the judgment. *Drum v. Nasuti,* 648 F.2d

888, 898 (E.D.Pa.1986). The doctrine of issue preclusion may be applied in institutional reform litigation. *See Williams v. Bennett,* 689 F.2d 1370, 1381–83 (11th Cir.1982), *cert. denied,* 464 U.S. 932 (1983) (doctrine applied in case challenging conditions of confinement in Alabama prison).

III. ***Issues Sought to be Precluded***

***2** Plaintiffs seek to have four findings of Judge Broderick precluded from relitigation in the instant suit. They are: 1) psychotropic medication practices at Embreeville are deficient; 2) the residents of Embreeville are unnecessarily segregated from the community and denied minimally adequate habilitation; 3) institutionalization has deleterious effects on the mentally retarded and community placement benefits such persons; and 4) services provided to mentally retarded persons living in Philadelphia County are inadequate.

IV. ***Discussion***

A judgment of contempt is a final, appealable order. *United States v. O'Rourke,* 943 F.2d 180, 186 (2d Cir.1991). It satisfies, therefore, the requirement that a final judgment be had on the merits prior to the doctrine of issue preclusion being invoked. Defendants in the case at bar were party to the proceeding before Judge Broderick, and they had a full and fair opportunity to litigate the issues in the contempt hearing. Thus, three of the five requisites for issue preclusion cannot reasonably be said to be in dispute. *See Centra,* 983 F.2d at 505 (three predicates for application of issue preclusion are a final judgment on the merits, party against whom bar is asserted present in prior proceeding, party against whom bar is invoked had full and fair opportunity to litigate issues).

The focus here must be on the final two requirements, that the issues precluded be identical to those in the prior adjudication and that the issues be essential to the first judgment. Defendants' first argue that the issues sought to be precluded from litigation in this suit are not identical to those decided by Judge Broderick because the contempt proceeding dealt with enforcement of a consent decree while this case seeks to establish violations of the constitutional rights of Embreeville residents. Defendants posit that the consent decree in *Pennhurst* may have provided the plaintiffs there with rights greater than those established by the Constitution. Therefore, application of issue preclusion here would unjustifiably extend the *Pennhurst* consent decree to the residents of Embreeville rather than merely guarantee that the conditions at Embreeville are above the constitutional floor.

This argument is flawed in one principal respect. The findings of Judge Broderick at issue here are factual findings. He made these findings of fact and then concluded that the defendants in *Pennhurst* were in violation of the consent decree. All of his factual findings were essential to his ultimate conclusion that the consent decree was being violated. Acceptance of Judge Broderick's factual findings in this case, however, would only be the first part of this Court's required analysis. This Court will be required to draw conclusions of law from the findings of this case. Such conclusions will be made at the close of evidence and after hearing argument from the parties on the legal effect of any evidence taken. It is possible that the findings of fact made by Judge Broderick would not be found, as a matter of law, to establish any constitutional violations. This does not, however, render his findings of fact unreliable or irrelevant. The fact that Judge Broderick's findings were made in the context of a consent decree does not bar the application of issue preclusion.

An extension of this reasoning defeats the defendants' second raised argument, that they did not have a full and fair opportunity to litigate these issues before Judge Broderick because the question of what constitutional rights are possessed by the *Pennhurst* plaintiffs was not before him. Defendants' description of the legal issue in the *Pennhurst* hearing is correct; the conclusion drawn from it is not. The legal issue of what rights are possessed by those institutionalized by the state will be decided by this Court. To this legal standard will be applied the factual findings of Judge Broderick, as well as this Court's own findings, and from this the Court's decision on the merits will arise.

Defendants' note that some of Judge Broderick's findings applied only to seventeen Embreeville residents who were members of the *Pennhurst* class. Defendants assert that these limited findings cannot bar relitigation of those issues as to all Embreeville residents. The fact that some findings apply only to *Pennhurst* class members does not prevent the use of issue preclusion. It does, however, mandate that Judge Broderick's findings be limited to these seventeen persons and not viewed as applicable to all Embreeville residents absent proof that all Embreeville residents are subjected to identical conditions.

Defendants' final argument is that conditions at Embreeville have changed considerably in the months since the December, 1993 contempt hearing in *Pennhurst,* making Judge Broderick's findings to a large degree moot. Defendants offer no description of how the conditions might have changed. So as not to unduly prejudice defendants, however, this Court will permit testimony at trial on the issues precluded by this Memorandum and Order so long as such testimony is limited to detailing the specific changes made at Embreeville since December of 1993 and how these changes conflict with the findings of Judge Broderick.

V. *Conclusion*

For the reasons detailed above, plaintiff United States of America's motion to apply the doctrine of issue preclusion will be granted.

An appropriate Order follows.

ORDER

AND NOW, this 12th day of September, 1994, upon consideration of the plaintiffs' Motion to Apply the Doctrine of Issue Preclusion to Certain Factual Findings Made in *Halderman v. Pennhurst,* and the response of defendants thereto, and consistent with the foregoing memorandum, it is hereby ORDERED that said motion is GRANTED.

Defendants are bound by the findings made by Judge Broderick in his March 28, 1994 Memorandum and Order in *Halderman v. Pennhurst,* 74–cv–1345 (E. D.Pa.1994) that are attached to this Order as Appendix A.

AND IT IS SO ORDERED.

APPENDIX A

Psychotropic medication practices at Embreeville and Woodhaven institutions do not comport with accepted standards of medical practice. Ten of seventeen (58%) class members living at the Embreeville facility are being medicated; nine of eleven (81%) class members living at Woodhaven are medicated. The percentage of people medicated at Embreeville and Woodhaven far exceeds the national average of 20% or less for those people living in institutions. Furthermore, medical personnel at these facilities have not performed the appropriate medical and psychological testing necessary to determine whether medication is appropriate. In addition, Woodhaven and Embreeville personnel do not systematically monitor class members for side effects of these medications. Accordingly, learning has become more difficult for many of these class members and-or they have regressed in skills already learned. As a result of this over-sedation, class members are at risk of harm.

Pennhurst Contempt Opinion at pp. 26–27.

> The class members residing at Embreeville are being unnecessarily segregated from the community and denied minimally adequate habilitation.... The Deputy Secretary of the Commonwealth's Office of Mental Retardation, Nancy Thaler, previously has notified the County of Philadelphia that class members residing at Embreeville Center are at risk for neglect and that the institution should be closed and its residents moved into the community.

Pennhurst Contempt Opinion at p. 16.

> [the] Commonwealth [has] left a large group of class members to languish in situations where they are subject to abuse, neglect and over-medication. The dangers of institutionalization of the mentally retarded are well known to the defendants; experts testified at trial in this matter over a decade ago that the vast majority of mentally retarded do not receive adequate habilitation in these types of environments and that they actually tend to lose life skills in institutions. It was because of these dangers that community living arrangements became the focal point of [this case].

***3** *Pennhurst* Contempt Opinion at p. 29.

> many of the Pennhurst residents who were transferred to community living arrangements have progressed to the extent that they enjoy a fuller life and in many instances have become self-supporting members of the community ... residents of Pennhurst have made significant behavioral strides while in the community.

Pennhurst Contempt Opinion at 7.

Defendants are precluded from relitigating Judge Broderick's findings that movement to the community results in increased life skills, sharply reduced challenging behaviors, increased personal satisfaction and family satisfaction, and enhanced quality of life. *Pennhurst*

Contempt Opinion at 8–9.

Defendants are precluded from relitigating Judge Broderick's findings concerning defendants' actions and inactions with toward former institutional residents who returned to Philadelphia pursuant to the Court's orders in *Halderman v. Pennhurst* that:

> 1. The defendants failed to provide *Pennhurst* class members with IHPs (Finding of Fact 16).
>
> 2. The defendants failed to assure implementation of *Pennhurst* class members' IHPs (Finding of Fact 17).
>
> 3. The defendants have failed to develop IHPs that are in accordance with accepted professional standards of practice (Finding of Fact 17, 18).
>
> 4. The defendants have failed to provide *Pennhurst* class members with such services as occupational, physical, speech and behavior therapies, nutrition services, and adaptive equipment such as wheelchairs and eyeglasses (Finding of Fact 17).
>
> 5. The defendants have denied class members the opportunity to engage in productive employment. They have unnecessarily segregated *Pennhurst* class members in sheltered workshops, where they are harmed because they are not given the opportunity to develop life skills and instead may be losing skills or learning to engage in counterproductive behavior (Finding of Fact 17).
>
> 6. The defendants failed to review and update IHPs (Finding of Fact 18).
>
> 7. The defendants failed to provide case managers to all *Pennhurst* class members (Finding of Fact 20).
>
> 8. The defendants failed to provide case management visits to *Pennhurst* class members with assigned case managers (Finding of Fact 22).
>
> 9. Caseloads for county case managers exceed the requirement of a maximum of 25 *Pennhurst* class members per case manager (Finding of Fact 23).
>
> 10. The defendants knowingly and deliberately failed to monitor *Pennhurst* class members. (Findings of Fact 25–30).
>
> 11. The defendants allowed care providers to investigate incidents of abuse, neglect, death, serious injury and other unusual incidents among *Pennhurst* class members, an arrangement that is "akin to putting the fox in charge of the hen house" (Finding of Fact 30).
>
> 12. There is insufficient follow up or monitoring by the County and Commonwealth of incidents of abuse, neglect, injury and death of *Pennhurst* class members (Finding of Fact 31).
>
> 13. Philadelphia does not have a system to ensure that staff members of care providers who abuse or neglect persons at one site are not re-employed at another site (Finding of Fact 32).
>
> 14. Some *Pennhurst* class members were inappropriately medicated with psychotropic drugs rather than being treated with a behavioral program (Finding of Fact 33).
>
> 15. Psychotropic medication practices at Embreeville Center do not comport with accepted standards of practice (Finding of Fact 34).
>
> 16. Care providers in Philadelphia inadequately monitor anti-seizure medication given to *Pennhurst* class members (Finding of Fact 35).
>
> 17. The defendants have failed to monitor psychotropic or anti-seizure prescriptions despite a history of overuse of these types of medications (Finding of Fact 36).
>
> 18. The defendants have failed to take adequate action to ensure that *Pennhurst* class members have access to adequate dental services (Finding of Fact 37).
>
> 19. The defendants have failed to take corrective action to ensure that *Pennhurst* class members have access to adequate medical care (Finding of Fact 38).
>
> 20. The Commonwealth has failed to allocate funds to the County to comply with the *Pennhurst* Court Decree, despite the Commonwealth's knowledge that the County did not have the necessary funding. The Commonwealth allocates funding for *Pennhurst* class members only when threatened with a contempt action (Finding of Fact 39).
>
> 21. The Commonwealth's non-compliance with court orders in *Halderman v. Pennhurst* was knowing and deliberate (Findings of Fact 11, 14, 16, 18, 20, 25).

Footnotes

1 Also before the Court is the Memorandum of Law of the Nelson plaintiffs in support of the motion of the United States.

[2] Throughout the lengthy appellate history of *Pennhurst,* the factual findings made by Judge Broderick after the trial of the case were never questioned by either the Third Circuit or the Supreme Court.