DAVID B. v. deVITO

United States District Court for the Northern District of Illinois Eastern Division
September 4, 1980
No. 79 C 1662

Reporter: 1980 U.S. Dist. LEXIS 14235

DAVID B., JAMES S., RICHARD D., CHRISTINE B. GERMAINE M., Through their Guardian Ad Litem, Patrick T. Murphy, on behalf of themselves and a class of individuals too numerous and transitory to mention, and IRENE NELSON, PEGGY RODGERS, CAROL ZIENTEK, Probation Officers and Advocates of the Juvenile Court of Cook County, Plaintiffs, v. DR. ROBERT deVITO, Director of the Illinois Department of Mental Health and Developmental Disabilities, RICHARD S. LAYMON, Guardianship Administrator of the Illinois Department of Children and Family Services, JOSEPH CRONIN, Superintendent, Illinois Office of Education, JOSEPH CALIFANO, Secretary, United States Department of Health, Education and Welfare, and GREGORY COLER, Director of the Illinois Department of Children and Family Services, Defendants.

Counsel: [*1] Patrick T. Murphy, 33 N. LaSalle Street, Suite 2300, Chicago, Illinois 60602 For Plaintiffs.

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Opinion by: CROWLEY

Opinion

MEMORANDUM OPINION AND ORDER

John Powers Crowley, District Judge

This class action was brought under the Civil Rights Act of 1871, *42 U.S.C. § 1983*, and the Rehabilitation Act of 1973, 29 U.S.C. § 794. [1]Jurisdiction is invoked under *28 U.S.C. §§ 1331* and 1343.

Plaintiffs are actual or potential wards of the Juvenile Court of Cook County who suffer from emotional, physical or mental disabilities. In addition, the action is brought by three probation officers of the Juvenile Court who work as liaisons [*2] between the court's advocacy services and the Illinois Department of Mental Health and Developmental Disabilities (DMHDD) and the Illinois Department of Children and Family Services (DCFS).

Defendants are Robert deVito, Director of the DMHDD; Gregory Coler, Director of the DCFS; Joseph Cronin, the Superintendent of the Illinois Office of Education (IOE); and Patricia Harris, the Secretary of the United States Department of Health and Human Services (HHS). [2]

Currently before the Court are motions to dismiss the complaint by each of [*3] these defendants, deVito's motion to strike or to compel pleading in conformance with the rules and deVito's motion to strike certain portions of Harris' motion to dismiss.

The essential allegations of the complaint are that plaintiffs are denied services provided by the defendants' agencies because of their handicap and that each of the agencies receives federal financial assistance.

A myriad of defenses have been raised by the motions to dismiss. A discussion of some of them has been obviated by the filing of the Second Amended Complaint. We now address those that remain.

Defendants argue that plaintiffs failed to properly invoke jurisdiction under *28 U.S.C. § 1331* because the complaint fails to allege the requisite amount in controversy.

To establish jurisdiction under *28 U.S.C. § 1331*, the amount in controversy must be alleged in good faith or

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[1] The Second Amended complaint also charges violations of certain provisions of the Social Security Act, 42 U.S.C. §§ 622 and 625. Plaintiffs, however, fail to pursue that claim on this motion, and it appears that they intend to proceed with their claims under *42 U.S.C. § 1983* and 29 U.S.C. § 794 only.

[2] The Second Amended Complaint names as a defendant Joseph Califano, the Secretary of the Department of Health, Education and Welfare (HEW). Patricia Harris has replaced Joseph Califano as Secretary, and HHS has replaced HEW as the federal agency involved here. Under Fed. R. Civ. P. 25(d) substitution of these parties is automatic.

Both the original and amended complaint join Richard Laymon, the former Guardianship Administrator of the DCFS, as a defendant.However, he is not named in the caption or in the body of the Second Amended Complaint. Thus, it is unclear whether plaintiffs intend to proceed against his successor or his estate.

otherwise apparent. Giancana v. Johnson, 335 F. 2d 366 (7th Cir. 1964), cert. denied, *379 U.S. 1001 (1965)*. Where plaintiffs seek declaratory and injunctive relief, "the amount in controversy is the value of the right to be protected or the extent or the injury to be prevented." United States v. City of Chicago, 549 F. [*4] 2d 415, 424 (7th Cir.), cert. denied, *434 U.S. 875 (1977)*.

In this action, plaintiffs seek access to services including treatment, care and residential placement which will assist them in overcoming their mental and emotional disabilities. Additionally, they assert their right to be free from discrimination based on their handicap.

The injury resulting from these deprivations is allegedly further deterioration of their mental or emotional condition, inability to find shelter and receive an education. These injuries cannot be found, to a legal certainty, to fall below $10,000. Brown v. Board of Education, 386 F. Supp. 110, 122 (N.D. Ill. 1974).

Defendants contend that the complaint does not state a claim for violation of 42 U.S.C. § 1982 because plaintiffs have not alleged state action or asserted a right, privilege or immunity under the Constitution or laws of the United States.

These contentions are frivolous. The action is brought against each defendant in his official capacity only.All of the allegations concern conduct of defendants as functionaries of the state. Thus, their acts, as agents of the State, allegedly cause the deprivation of plaintiffs' rights.

[*5] The complaint alleges violations of equal protection and due process. Those rights are guaranteed by the Fourteenth Amendment.

According to the defendants, the complaint fails to state a claim for violation of the equal protection clause. The argument is premised on defendant's conclusion that the rational basis test is the appropriate standard to evaluate the constitutionality of defendants activities.

The Court is not persuaded, at this stage of the litigation, that only minimum scrutiny should be applied here, for some of the claims involve more than mere dissatisfaction with Illinois social welfare programs. See Dandridge v. Williams, 397 U.S. 471 (1970).

All of the plaintiffs have been charged with minor delinquent offenses in the Juvenile Court. Although it is not clear from this record, it appears that, in some cases, these charges result in confinement in punitive institutions, and a loss of liberty.

In addition, the complaint charges that the DMHDD provides certain programs for boys while failing to provide them for girls. Somewhat greater scrutiny in applied to classifications made on the basis of sex. Frontiero v. Richardson, 411 U.S. 677 (1973); Reed v. [*6] Reed, 404 U.S. 71 (1971).

However, even if minimum scrutiny was found to be appropriate, defendants' argument must fail. That level of scrutiny requires a determination that the classification bears a rational relation to the purpose of the legislative scheme. No purpose has been articulated by any of the defendants.

The defendants concede, as they must, that a private right of action exists for violation of the Rehabilitation Act of 1973. See 29 U.S.C. § 794a. N.A.A.C.P. v. Medical Center, Inc., 599 F. 2d 1247 (3d Cir. 1979); Lloyd v. Regional Transportation Authority, 548 F. 2d 1277 (7th Cir. 1977). Nevertheless, various arguments are propounded in support of the contention that the Act does not contemplate relief for these plaintiffs.

Section 794 provides in pertinent part:

No otherwise qualified handicapped individual in the United States, as defined in section 706(7) of this title, shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance ….

Defendant Coler argues, first, that plaintiffs do not allege sufficient facts [*7] to establish that they are "handicapped individuals." Secondly, Coler, joined by deVito, argues that plaintiffs are not "otherwise qualified" to receive the services provided by DMHDD or DCFS. Thirdly, these defendants assert that the complaint fails to show that plaintiffs are excluded from services because of their handicap. Finally, defendant Cronin contends that the Act and its accompanying regulations do not impose any duty directly on him to make affirmative efforts to educate or find placement for plaintiffs.

The complaint alleges that each plaintiff suffers some degree of mental retardation or emotional disability requiring psychiatric or psychological care and treatment. In addition, it is alleged that these disorders require placement in some facility which can provide services in order to prevent further mental or emotional retardation.

Section 706(7)(B)(i) defines a handicapped individual as any person who "has a physical or mental impairment which substantially limits one or more of such person's major life activities." Included in the category of "mental impairment" are "any mental or psychological disorder, such as mental retardation, organic brain syndrome, [*8] emotional or mental illness, and specific learning

disabilities." 45 C.F.R. § 84.3(i) (1979). The allegations of the complaint clearly place plaintiffs within that definition.

By arguing that plaintiffs are not otherwise qualified to receive services defendants overlook the essence of the complaint. Plaintiffs aver that although DMHDD normally provides care for children with mental and emotional disabilities, it refuses to offer care and treatment and to find placement for these plaintiffs.

Similarly, the DCFS, the agency which assumes responsibility over physically abused, neglected or orphaned youngsters who cannot reside at home, is allegedly derelict in its duty toward plaintiffs. According to the complaint some of the plaintiffs have been physically abused; none of them can reside at home. Although the DCFS would normally find placement for youngsters experiencing equivalent familial problems, it does not find shelter for plaintiffs because they have been charged with minor delinquent offenses and are viewed as disruptive to facilities providing shelter. These allegations are sufficient to establish that plaintiffs are among a category of persons who normally qualify [*9] for the services offered by the DMHDD and the DCFS.

Defendants also assert that the allegations do not demonstrate that plaintiffs have been excluded from services because of their handicap. In so doing, they argue that not all handicapped persons have a right to receive services and that the Act only envisions remedies for deprivations of rights of handicapped individuals vis-a-vis non-handicapped persons.

Plaintiffs, however, do not assert that all handicapped persons have a right to receive services. Rather, they claim that they are deprived existing services and that, whereas those services are provided for persons with similar mental or emotional disabilities, they are not provided to plaintiffs.

The Act outlaws this type of selective enforcement. A recipient of federal financial assistance may not "[provide] different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits or services that are as effective as those provided to others." 45 C.F.R. § 84.4(b) (iv) (1979). See also 45 C.F.R. §§ 84.4(b)(i), (ii), (iii) and 84.52(a)(1979).

[*10] Cronin's argument that he owes no direct duty to plaintiffs is refuted by the regulations. The state education agency is charged with the responsibility of overseeing the education of handicapped children. 45 C.F.R. § 121a.600 (1979). The purpose of this delegation of duties is "to assure a single line of responsibility with regard to the education of handicapped children." 45 C.F.R. § 121a.600, Comment (1979). Therefore, regardless of whether or not plaintiffs have joined the Local Educational Agencies, the complaint states a claim against Cronin.

Defendants Cronin and Coler contend that the three Juvenile Court probation officers do not have standing. That contention is well-founded.

The complaint does not allege any injury suffered by these plaintiffs. Moreover, there are no averments that the rights of the adult plaintiffs are so inextricably bound with those of the minor plaintiffs, that they may pursue the claims on children's behalf. See Griswold v. Connecticut, 381 U.S. 479 (1965); Pierce v. Society of Sisters, 268 U.S. 510 (1925). Accordingly, the motions to dismiss as to plaintiffs Nelson, Rogers and Zientek are granted.

Relying on Lloyds v. Regional [*11] Transportation Authority, 548 F. 2d 1277 (7th Cir. 1977), defendants argue that plaintiffs should be required to exhaust their administrative remedy. In addition to the fact that this action also asserts equal protection violations which are not an appropriate subject for administrative review, other reasons exist for entertaining the action in this Court.

Lloyds was decided before an amendment was added to The Rehabilitation Act explicitly incorporating remedies available under Title VI, 42 U.S.C. § 2000d. 29 U.S.C. § 794a. Courts have long recognized the existence of an implied private right of action under Title VI, Cannon v. University of Chicago, 441 U.S. 677, 696 and n. 20 (1979), citing with approval, Bossier Parish School Board v. Lemon, 370 F. 2d 847 (5th Cir.), cert. denied, *388 U.S. 911 (1967)*, which does not require exhaustion of administrative remedies when, as here, declaratory and injunctive relief is sought. Cannon v. University of Chicago, 441 U.S. 677, 706 n. 41 (1979); N.A.A.C.P. v. Medical Center, Inc., 599 F. 2d 1247 (3d Cir. 1979).

The only allegations made against Patricia Harris is in the form of a request that she discontinue federal financial assistance [*12] if the practices of the state defendants persist. Apparently, plaintiff does not object to her motion to dismiss. In any case, the existence of a private right of action against a federal agency to compel termination of funds is questionable. Cannon v. University of Chicago, 441 U.S. 677 (1979); N.A.A.C.P. v. Medical Center, Inc., 599 F. 2d 1247 (3d Cir. 1979). Accordingly, Harris' motion to dismiss is granted.

In sum, the motions to dismiss of defendants deVito, Coler and Cronin are denied except as to plaintiffs Nelson, Rogers and Zientek. Defendant deVito's motions to strike or compel pleading in conformance with the rules and to strike certain portions of Harris' motion are moot. Harris' motion to dismiss is granted.