Milburn v. Coughlin

United States District Court for the Southern District of New York
November 26, 1980, Decided ; November 28, 1980, Filed
79 Civ. 5077(RJW)

Reporter: 1980 U.S. Dist. LEXIS 17841

LOUIS MILBURN, JESUS ALVAREZ, WILLIAM HARRIS, JOSEPH MACK, THOMAS BROUGHAL, RONALD DAVIDSON, CHARLES THOMAS, JOHNNY PINKNEY, VINCENT SCIABIC A. ANTHONY BATTLE, MARCELLUS THOMAS, MEYER WEINER, and RAMON SEVILLA, on behalf of themselves and all other persons similarly situated, Plaintiffs, -against- THOMAS A. COUGHLIN III, Commissioner of the New York State Department of Correctional Services; HUGH G. CAREY, Governor of the State of New York; ARTHUR WEBB, Assistant Commissioner for Health Services of the New York State Department of Correctional Services; DAVID R. HARRIS, Superintendent of Green Heven Correctional Facility; JOSEPH KEENAN, Deputy Superintendent of Green Haven Correctional Facility; E. MICHAEL KALONICK., Health Services Administrator of Green Haven Correctional Facility; MARC FREEDMAN, Physician at Green Haven Correctional Facility; and FLORENCE GAGLIARDY, Nurse Administrator at Green Haven Correctional Facility, individually and in their official capacities, Defendants.

Disposition: [*1] Plaintiffs' motion for an order certifying this action as a class action and directing that notice of this action given to the class granted.

Counsel: WILLIAM E. HELLERSTEIN, NEW YORK, NEW YORK, for Plaintiffs.

Robert Abrams, Attorney General, for Defendants.

Judges: Robert J. Ward, U.S.D.J.

Opinion by: Robert J. Ward

Opinion

Plaintiffs move, pursuant to *Rules 23(c)(1)* and *(d)(2), Fed. R. Civ. P.*, for an order certifying this action as a class action and directing that notice of this action be given to the class. Plaintiffs are thirteen inmates presently confined at Green Haven Correctional Facility ("Green Haven"). Their action challenges the constitutionality of the medical care provided to them by defendants. The proposed class consists of all persons who are or will be inmates at Green Haven. For the reasons hereinafter stated, plaintiffs' motion is granted.

It is beyond peradventure that the four prerequisites to a class action set forth in *Rule 23(a), Fed. R. Civ. P.*, are satisfied in the present case. Defendants do not seriously contend otherwise. First, since the population of Green Haven numbers over eighteen hundred (1800) at any given time, the numerosity requirement of *Rule 23(a)(1)* [*2] is a clearly met. *Monroe v. Bombard*, 422 F. Supp. 211, 218 (S.D.N.Y. 1976). Second, the alleged constitutional deficiencies in Green Haven's health care practices affect all prisoners within the facility, satisfying the *Rule 23(a)(2)* requirement of common issues of law of fact even though the facts may vary slightly from case to case. *Tunin v. Ward*, 78 F.R.D. 59, 66 (S.D.N.Y. 1977). Third, the constitutional sufficiency of Green Haven's health care practices occupies essentially the same degree of centrality to the named plaintiff's claims as to those of the other members of the proposed class, meaning that plaintiffs' claims are "typical" within *Rule 23(a)(3)* even if they do not spring from an identical factual basis. *Lucas v. Wasser*, 73 F.R.D. 361, 362 (S.D.N.Y. 1976). Finally, plaintiffs, whose interests are not divergent from those of the class and who are represented by counsel experienced in prisoners' rights litigation, certainly will adequately protect the interests of the class as required by *Rule 23(b)(4)*. *Tunin, supra*, 78 F.R.D. at 66.

Nor do defendants make any substantial argument that the action is not [*3] maintainable as a class action under *Rule 23(b), Fed. R. Civ. P.* Being a civil rights action which seeks relief, in the form of broad institutional reform, that would clearly redound equally to the benefit of each class member, the present action is a paradigmatic *Rule 23(b)(2)* suit. *Marcera v. Chinlund*, 595 F.2d 1231, 1240 (2d Cir.), *vacated*, *442 U.S. 915 (1979)*. Defendants' alleged policies and practices similarly affect all persons confined in Green Haven, making declaratory and injunctive relief appropriate with regard to the entire plaintiff class.

Defendant contends that the Court has discretion to deny class certification even if, as here, the *Rule 23(a)* prerequisites are satisfied and the suit is maintainable as a class action under *Rule 23(b)*. The Court is urged to exercise that discretion on the ground that the relief sought by the named plaintiffs would, if granted, inevitably protect all the members of the proposed class, making class certification unnecessary. Such an exercise of discretion may indeed be appropriate where the relief

sought is *prohibitory*, as where continued enforcement of an unconstitutional statute is forbidden. [*4] *See* Galvan v. Levine, 490 F.2d 1255, 1261 (2d Cir. 1973), *cert. denied*, *417 U.S. 936, 41 L. Ed. 2d 240, 94 S. Ct. 2652 (1974)*. However, where (as here) the remedy sought is *mandatory*, requiring affirmative action on the part of the state to upgrade a constitutionally insufficient practice, the Court does not have the same confidence that class certification is an unnecessary "formality." Were *Galvan* taken to this extreme, certification pursuant to *Rule 23(b)(2)* would never be appropriate, because the very facts which would make certification possible would render it unnecessary. *See* Mendoza v. Lavine, 72 F.R.D. 520, 523 (S.D.N.Y. 1976).

Also, the Court notes the very real danger that the named plaintiffs' claim may be mooted, on account of their release from Green Haven, prior to the termination of this action. Class action status, which affords class members protection against the risk of mootness of the named plaintiffs' claim, may be essential to the continuation of this action. Thus, the present case is far from being one where a discretionary refusal to certify is appropriate. *See* Cicero v. Olgiati, 410 F. Supp. 1080, 1099 n.8 (S.D.N.Y. 1976). [*5]

This leaves only the question of notice to the class. While notice in a *Rule 23(b)(2)* class action is discretionary, *Rule 23(d)(2), Fed. R. Civ. P.*; *see* Frost v. Weinberger, 515 F.2d 57, 65 (2d Cir. 1975), *cert. denied*, *424 U.S. 958 (1976)*, some notice reasonably calculated under all the circumstances to apprise interested parties of the pendency
of the action and their rights with respect to it is the best practice in most cases. 7A C. Wright & A. Miller, Federal Practice and Procedure § 1793, at 205 (1972); *see* Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 315, 94 L. Ed. 865, 70 S. Ct. 652 (1950). In the present case, the Court finds that the proposed order, annexed to plaintiffs' moving papers as Exhibit A, would provide satisfactory notice if a copy of it is (1) posted in each common area at Green Haven, and (2) delivered to each inmate admitted to Green Haven subsequent to the date of such posting.

Accordingly, plaintiffs' motion for an order certifying this action as a class action and directing that notice of this action be given to the class is granted.

Settle order on notice.

Dated: New York, New York

[*6] November 26, 1980

Robert J. Ward

U.S.D.J.

Motion granted in accordance with memorandum decision filed herewith.

Robert J. Ward

U. S. D. J.

Dated: NOVEMBER 26, 1980