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88 N.Y.2d 907, 669 N.E.2d 819, 646 N.Y.S.2d 661

Kenneth Mixon et al., on Behalf of Themselves and All Others Similarly Situated, et al., Respondents, and Wayne Phillips et al., on Behalf of Themselves and All Others Similarly Situated, Intervenors-Respondents,
v.
William Grinker, as Commissioner of the New York City Human Resources Administration, et al., Appellants.

Court of Appeals of New York
123
Argued April 23, 1996;
Decided June 11, 1996

CITE TITLE AS: Mixon v Grinker

SUMMARY

Appeal, by permission of the Appellate Division of the Supreme Court in the First Judicial Department, from an order ***908** of that Court, entered June 8, 1995, which modified, on the law and the facts, and, as modified, affirmed a judgment of the Supreme Court (Edward H. Lehner, J.; opn 157 Misc 2d 68), entered in New York County, (1) adjudging that plaintiffs, homeless persons who suffer from HIV-related illness as defined by the AIDS Institute of the State Department of Health, are not entitled to the same shelter and other benefits New York City provides to persons who have AIDS as defined by the Federal Centers for Disease Control; (2) adjudging that the City may not place more than four persons in any room in which persons with HIV-related diseases are living, that the beds in each room where persons with an HIV-related disease are living should never be less than eight feet apart, that the ventilation in each such room be adequate for the medical needs of its residents with the adequacy to be certified by the City Commissioner of Health, employing recognized standards appropriate to the illnesses of its residents, and that persons with HIV-related diseases who are housed in the Comprehensive Care Program should have the option to eat and have bathroom facilities separate from the general population of the facility; and (3) otherwise denying the declarations and relief sought by the plaintiffs in their complaint and dismissing those claims. The modification consisted of vacating the directives contained in the penultimate paragraph of the judgment (clause "2" above) and remanding the matter for further proceedings in accordance with the Court's opinion. The following question was certified by the Appellate Division: "Was the order of this Court, which modified the order of the Supreme Court, properly made?"

Mixon v Grinker, 212 AD2d 183, reversed.

HEADNOTES

Social Services
Public Assistance

Special Housing for Homeless People Who Suffer from HIV-Related Illness

(1) The complaint in an action commenced on behalf of homeless persons who suffer from HIV-related illness as defined by the AIDS Institute of the New York State Department of Health, seeking, among other things, a judgment declaring that plaintiffs were entitled by Constitution or statute to the same shelter benefits from the City and State of New York as persons diagnosed with AIDS as defined by the Federal Centers for Disease Control and an injunction requiring the City to provide them with medically appropriate housing, is dismissed where the lower courts concluded that defendants' program for assisting plaintiffs was inadequate, since the lower courts' reliance on *McCain v Koch* (70 NY2d 109), which delineated the courts' equitable powers to craft standards of minimal habitability for the homeless, was misplaced. In *McCain* the Court of Appeals was careful to differentiate between Supreme Court's equitable authority to craft standards of minimal liability, ***909** which is an extraordinary judicial task reserved for a situation when no departmental guidelines exist, and its authority to ensure compliance with the governing standards, which would always be proper. In this case, by contrast to *McCain,* the City has implemented a comprehensive program, formulated with input from public health experts

including the director of the AIDS Institute, for housing HIV-ill and other medically frail individuals. Under these circumstances, *McCain* does not confer upon plaintiffs the right to plenary judicial review of the merits of this special medical needs housing program embodied in departmental guidelines.

APPEARANCES OF COUNSEL

Paul A. Crotty, Corporation Counsel of New York City *(Timothy J. O'Shaughnessy* and *Kristin M. Helmers* of counsel), for William Grinker, appellant.
Dennis C. Vacco, Attorney-General, New York City *(Judith T. Kramer, Barbara G. Billet* and *Victoria A. Graffeo* of counsel), for Cesar A. Perales, appellant.
Kornstein Veisz & Wexler, L. L. P., New York City *(Lawrence C. Fox* and *Virginia Shubert* of counsel), for respondents and intervenors-respondents.

OPINION OF THE COURT

Memorandum.

The order of the Appellate Division should be reversed, without costs, the complaint dismissed and the certified question answered in the negative.

Plaintiffs commenced this action on behalf of homeless persons who suffer from HIV-related illness as defined by the AIDS Institute of the New York State Department of Health. Plaintiffs sought, among other things, a judgment declaring that they were entitled by Constitution or statute to the same shelter benefits from the City and State of New York as persons diagnosed with AIDS as defined by the Federal Centers for Disease Control (CDC) and an injunction requiring the City to provide them with medically appropriate housing.[1]

The focus of the bench trial was the adequacy of the City's program, developed after the institution of this lawsuit, to provide shelter housing for homeless persons with HIV-illness. This program includes the Comprehensive Care Plan (CCP), ***910** developed by the City Human Resources Administration in consultation with, among other entities, the State Department of Social Services (DSS), the City Department of Health and the AIDS Institute of the State Department of Health as a special housing plan that provides a variety of services to the medically frail homeless population, including those individuals with HIV-illness who are able to conduct their activities of daily living.

Before the implementation of the CCP, homeless individuals with HIV-related illness were housed in barracks-style shelters among the general homeless population. Under the CCP, by contrast, segregated spaces in municipal shelters are used to house up to 12 individuals with HIV-illness or other medically frail individuals in a dormitory-style room. Those housed in the CCP space share common eating and bathroom facilities with other shelter residents, but are provided enhanced nutrition and special social services. The plan calls for each CCP to have daily on-site medical coverage and TB screening and control mechanisms, by a team of physicians, registered nurses, nurse practitioners, and physician's assistants.

Although Supreme Court concluded that plaintiffs are not constitutionally or statutorily entitled to the same shelter and benefits the City provides to persons with CDC-defined AIDS, it ruled that the CCP constituted unsuitable housing insofar as it permitted the housing of up to 12 persons in a room (*see, Mixon v Grinker,* 157 Misc 2d 68, 74). The Appellate Division agreed with Supreme Court that plaintiffs have no constitutional or statutory right to the same benefits provided to persons with AIDS[2] and concluded, with one Justice dissenting, that the CCP "does not meet 'minimum standards of sanitation, safety and decency' ... for housing the plaintiff class as it fails to sufficiently protect them against the dangers of tuberculosis" (*Mixon v Grinker,* 212 AD2d 183, 192-193, quoting *McCain v Koch,* 70 NY2d 109, 113-114). The Appellate Division remanded the case to Supreme Court to fashion a judgment that provided plaintiffs with "minimally habitable" housing (*id.,* at 193). This appeal is before us on the certified question, "Was the order of this Court, which modified the order of the Supreme Court, properly made?"

The lower courts' reliance on *McCain v Koch* (70 NY2d 109, *supra*) as authority for their judicial scrutiny of the CCP wasmisplaced.***911** In *McCain,* this Court ruled that in the "absence of any departmental regulation" (*id.,* at 120), Supreme Court had the equitable power to issue a preliminary injunction requiring the City, once it undertook to provide housing to the homeless, to furnish housing that "satisfies minimum standards of sanitation, safety and decency" (*id.,* at 113-114). In explaining its holding, the Court was careful to differentiate between

Supreme Court's equitable authority to craft standards of minimal habitability, which is an extraordinary judicial task reserved for a situation when no departmental guidelines exist, and Supreme Court's authority to ensure compliance with the governing standards, which would always be proper. The Court emphasized that "[i]t was because of the absence of any departmental regulation that it was necessary for the court to establish its own minimum standards" (*id.,* at 120). Moreover, the Court in *McCain* explained that once DSS adopted regulations establishing standards of minimal habitability, "so long as the regulations are in effect, no question can exist concerning the minimum standards for the accommodations to be provided" (*id.,* at 118). Thus, there was no issue "as to the minimum quality of the accommodations presently required by prevailing standards; what remains are questions of compliance and enforcement" (*id.,* at 120).

In this case, by contrast to *McCain,* the City has implemented a comprehensive program, formulated with input from public health experts including the director of the AIDS Institute, for housing HIV-ill and other medically frail individuals. Under these circumstances, *McCain* does not confer upon plaintiffs the right to plenary judicial review of the merits of this special medical needs housing program embodied in departmental guidelines (*cf., Matter of New York State Socy. of Surgeons v Axelrod,* 77 NY2d 677).

Chief Judge Kaye and Judges Simons, Titone, Bellacosa, Smith, Levine and Ciparick concur in memorandum.

Order reversed, etc.

Footnotes

[1] Effective January 1, 1993, pulmonary tuberculosis (TB) and a lymphocyte count of less than 200, among other things, were added to the CDC's list of conditions constituting AIDS. Although accurate statistics are not available, the parties agree that the amended definition has resulted in a significant decrease in the number of individuals who are classified as HIV-ill.

[2] Plaintiffs do not challenge this conclusion on appeal. We note that the rent subsidy provided pursuant to 18 NYCRR 397.11 is granted to both persons with AIDS and persons with HIV-related illness.