

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LEONARD CAMPBELL, et al.,

Plaintiffs,

v.

ANDERSON McGRUDER, et al.,

Defendants.

C.A. No. 1462-71 (WBB)

FILED

JUL 11 1995

Clerk, U.S. District Court
District of Columbia

INMATES OF D.C. JAIL, et al.,

Plaintiffs,

v.

DELBERT JACKSON, et al.,

Defendants.

C.A. No. 75-1668 (WBB)

FINDINGS AND ORDER APPOINTING RECEIVER

The Court, having considered the plaintiffs' Motion for the Appointment of a Receiver, the defendants' opposition thereto, the Special Officer's Report on Defendants' Compliance with the Initial Remedial Plan and the November 9, 1993 Order ("Report"), and the record in this case, the Court finds that the appointment of a receiver to ensure the provision of medical and mental health care, and to obtain compliance with the orders of this Court, is appropriate and necessary.

Over the more than 20 year history of this litigation the Court has attempted all measures short of the appointment of a receiver to obtain the defendants' compliance with its orders. The Court finds that no other less intrusive remedial measure

Campbell v. McGruder



JC-DC-001-071

will succeed in compelling the defendants to satisfy their court-ordered obligations.

A brief history of this case reveals that the defendants have failed to take advantage of repeated opportunities to satisfy the requirements of the court's orders as far back as the 1979 mental health plan.

On August 22, 1985, the parties entered into a remedial Stipulation which required, inter alia:

Within 30 days, the Plaintiffs and the Defendants shall each respectively appoint one medical expert whose reasonable costs and fees will be paid by defendants, to review the health services delivery system at the D.C. Jail and make recommendations for improvements in a report to be submitted to the Court and the parties by Nov[ember] 1, 1985 and implemented by March 1, 1986, unless good cause is shown by either party why they should not be.

Over the next eight years the defendants were in persistent non-compliance and on April 20, 1993, the Court appointed a Special Officer to monitor and report on the District's efforts to meet its court-ordered obligations. Pursuant to the Court's Order, on September 15, 1993, the Special Officer issued the reports of her experts on medical and mental health services at the District of Columbia Jail.¹ These reports describe very serious deficiencies in the delivery of basic services that violate this Court's prior orders and the defendants' obligations under the United States Constitution.

¹ Expert Reports on Medical and Mental Health Services at the District of Columbia Jail (September 15, 1993).

In response to the reports of the Special Officer's experts, on November 9, 1993, this Court granted the plaintiffs' motion for interim relief. The interim relief was designed to address the most serious problems identified in the delivery of medical and mental health services. The defendants have failed to implement material provisions of the November 9, 1993 Order, including the provisions that address measures to prevent the spread of tuberculosis, and the identification and treatment of prisoners at risk for suicide.²

On February 2, 1994, the Special Officer issued her own report on the District's Compliance. The Special Officer found significant problems with the delivery of health care that violated material provisions of this Court's orders. These violations include core provisions of Court orders designed to improve health care at the Jail. The Special Officer concluded:

[T]he defendants have violated this Court's orders with impunity, including the Orders of March 5, 1993 and November 9, 1993 granting interim relief. Among other violations, they have failed to properly conduct sick call, failed to operate a chronic disease clinic, failed to implement a quality assurance program, failed to maintain a full-time health services administrator at the Jail, failed to properly conduct intake, failed to properly provide meaningful access to specialty services, failed to appropriately and professionally respond to life threatening emergencies, failed to properly

² In the nine months since the November 9, 1993 Order, six prisoners have committed suicide at the Jail. Based on the findings of the Special Officer's experts, many of these suicides would have been preventable had the procedures contemplated by the November 9, 1995 Order been implemented.

provide medical diets and failed to keep their own kitchen and medical clinic clean.³

In response to the Special Officer's findings, on March 16, 1994, the defendants consented to a finding of contempt and to a consent order that required them to implement a remedial plan.⁴ The defendants admitted, as they had previously, their ongoing violations of the Court's Orders and the need for significant corrective action to provide medical and mental health services which met the legal requirements of the United States Constitution and this Court's orders. The remedial plan was to be drafted by the Special Officer with input from the parties. Pursuant to the Order, the remedial plan was to contain a specific timetable to achieve compliance as well as a schedule of automatic fines for non-compliance.

³ Special Officer's Report at 124-125.

⁴ The March 16, 1994, Consent Order provided, inter alia:

ORDERED that the Special Officer shall, within 120 days of this Order submit a plan to cure the defendants' contempt and that will insure that the defendants render medical and mental health care in a manner consistent with the United States Constitution, and it is further

ORDERED that the Special Officer's remedial plan shall address all issues raised in her reports, the Expert Reports on Medical and Mental Health Services, as well as any additional issue that may come to the attention of the Special Officer or the Court that adversely impacts on the defendants' compliance with the Court's orders concerning the delivery of medical and mental health services at the Jail in a manner consistent with the United States Constitution.

On May 4, 1994, the Special Officer filed an Interim Remedial Plan that addressed the District's failure to properly isolate prisoners with infectious tuberculosis as was required by the Court's November 9, 1993 Order.⁵ The Special Officer also recommended that the District be fined up to \$10,000 per day for any future violation and \$1,000 for each future false report or failure to report.⁶

Following the Interim Plan on tuberculosis, an initial Remedial Plan⁷ addressing the range of medical and mental health issues was drafted by the Special Officer. The plan was prepared over a several month period and after lengthy discussions with the defendants about its contents and the time table for implementation. The Initial Remedial Plan was filed with the Court on October 11, 1994. According to the Special Officer, "substantial revisions were made in order to ensure that the defendants could meet the substantive requirements as well as the deadline requirements set forth [in the plan]." Remedial Plan at 6. After considering objections from the defendants, on January

The Special Officer's Interim Remedial Plan Regarding Isolation of Inmates with Suspected and Diagnosed Tuberculosis, May 4, 1994.

⁶ Id. at 13-14. As is clear from the Special Officer's Report, the defendants have ignored the requirements of the plan and their responsibilities to prisoners, the public and staff. Even the threat of significant fines has not deterred these violations.

⁷ Given the seriousness of the deficiencies in the defendants' system to deliver medical and mental health care, the Special Officer concluded that the remedial process must be undertaken in phases. [cite to initial remedial plan]

27, 1995, this Court ordered the defendants to implement the plan.

The defendants have failed to implement the Remedial Plan as ordered. They are in non-compliance with numerous material provisions of the plan and the Court finds that the defendants are in contempt of court. As are described in the Special Officer's report the defendants' non-compliance with the plan has resulted in significant harm to prisoners and places prisoners at unreasonable risk for injury.

On July 3, 1995, the Special Officer submitted a report describing the defendants' refusal to comply with the orders of this Court. The Special Officer found:

Instead of improving [since the Court ordered the implementation of the remedial plan], the medical and mental health system has deteriorated. Among other serious deficiencies, there is an absence of medical leadership; a chronic shortage of life saving supplies, medication and equipment; and a failure to provide consistent access to sick call services. The defendants have not yet implemented an effective tuberculosis control program. They have failed to conduct timely tuberculosis screening, failed to provide appropriate treatment, and failed to properly isolate inmates with suspected and/or diagnosed tuberculosis. This substantial risk to the health of staff, inmates, and the community into which inmates are released is exacerbated by defendants' failure to practice basic infection control principles and to implement even a rudimentary housekeeping and preventive maintenance program.

Report at 2.

The evidence in the Special Officer's thoroughly documented report is extensive, persuasive and unchallenged by the defendants.

Therefore, it is this ___ day of _____, 1995,

ORDERED that the plaintiffs' motion for the appointment of a receiver is granted; and it is further

ORDERED that the Court adopts the findings contained in the Special Officer's Report on Defendants' Compliance with the Initial Remedial Plan and the November 9, 1993 Order as its own; and it is further

ORDERED that a receiver will be appointed with responsibility to implement the Remedial Plan and other orders of this court relating to the delivery of medical and mental health services at the District of Columbia Jail; and it is further

ORDERED that the parties and the Special Officer shall confer regarding the selections of the receiver. If the parties cannot agree within 30 days on the person to be appointed as a receiver, the parties and the Special Officer shall submit nominations to the Court and the Court will appoint the receiver; and it is further

ORDERED that the receiver shall have the following duties and responsibilities:

1. To correct all deficiencies in the delivery of medical and mental health services at the Jail and to operate the program for the delivery of medical and mental health services in a

manner consistent with the orders of this Court and the Constitution of the United States.

2. To implement, in coordination with the Special Officer, the Remedial Plan in accordance with this Court's January 27, 1995 Order.

3. To establish procedures and systems within the Department of Corrections in order to ensure that compliance with Court orders is maintained after the receivership has been terminated.

4. To work with the Special Officer and the parties to ensure compliance with all Court ordered obligations.

5. To report periodically to the Court, the Special Officer and the parties regarding the receiver's efforts and any obstacles encountered by the receiver to performing her or his responsibilities; and it is further

ORDERED that the receiver shall have the following powers:

1. All powers currently held by the Mayor, City Administrator, Director of the Department of Corrections, Assistant Director for Health Services and Chief Medical Officer regarding the delivery of medical and mental health services at the District of Columbia Jail.

2. The power to create, modify, abolish or transfer positions; to hire, terminate, promote, transfer, evaluate and set compensation for staff to the extent necessary to obtain compliance with this Court's orders, the cost of such activity to be borne by the defendants.

3. The power to procure such supplies, equipment or services as are necessary to obtain compliance with this Court's orders, the cost of such procurement to be borne by the defendants.

4. The power to contract for such services as are necessary to obtain compliance with this Court's orders, the cost of such contracts to be borne by the defendants.

5. The power to hire such consultants, or to obtain such technical assistance as he or she deems necessary to perform her or his functions, the cost of such consultants or technical assistance to be borne by the defendants.

6. The power to petition the Court for such additional powers as are necessary to obtain compliance with this Court's orders; and it is further

ORDERED that within 30 days of the appointment of the receiver, the receiver, after consultation with the Special Officer and the parties, shall submit a plan to the Court that contains the procedures for the receiver to exercise these powers. These procedures shall ensure that the receiver shall not be unreasonably impeded in her or his work by District procedures, regulations or laws. If an agreement cannot be reached regarding the exercise of these powers, the parties shall submit suggested procedures to the Court; and it is further

ORDERED that the District shall provide the receiver with the following:

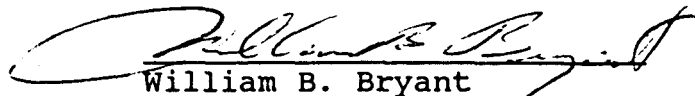
1. compensation at a rate to be determined by the Court;

2. an appropriate office, and such equipment and support staff as are deemed necessary by the receiver;

3. unrestricted access to all records of the Department of Corrections deemed necessary by the receiver to perform her or his duties; and

4. access to all areas of the Jail; and it is further ORDERED that the defendants shall instruct all personnel that they are to cooperate with and assist the receiver in the performance of her or his duties, and it is further

ORDERED that this receivership shall expire five years from the date that the receiver is appointed, unless the Court finds good cause to extend the appointment. The Court may terminate the receivership prior to the expiration of five years if the Special Officer certifies that the defendants are in compliance with all orders of this Court concerning medical and mental health services at the Jail and that management structures are in place to ensure that there is no foreseeable risk of future non-compliance.


William B. Bryant
United States District
Judge

July 11, 1995