1998 WL 111705
United States District Court, N.D. Illinois.

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, Plaintiffs,
v.
Jess McDONALD, Director of the Illinois Department of Children and Family Services, et al., Defendants.

No. 79 C 1662. | March 12, 1998.

Opinion

MEMORANDUM OPINION AND ORDER

ASPEN, J.

***1** Presently before us is the plaintiffs' Rule 59(e) motion for reconsideration of this court's order dated December 2, 1997. That order vacated a consent decree that had bound the parties since October 2, 1981. In light of developments since the entry of our order, we believe that reconsideration is warranted.

I. Eleventh Amendment

As discussed in our earlier opinion, the Eleventh Amendment bars the plaintiffs' claims unless they qualify for the narrow exception carved out by *Ex Parte Young,* which permits suits that seek only prospective injunctive relief to prevent a state from continuing to violate federal law. *Young* has its limits, however. If a state brings itself into conformity with federal law, a federal court may not continue to intrude into the operations of state government. *See David B. v. McDonald,* 116 F.3d 1146, 1148 (7th Cir.1997). This deferential approach is mandated not only by the Eleventh Amendment, but by the very structure of our federal system, under which state sovereignty cannot lightly be disregarded. Accordingly, states are entitled to the benefit of the doubt: when a state provides a federal court with good reason to believe that it will desist from conduct that violates federal law, it should be given the chance to do so free from interference by federal courts.

On October 10, 1986, Illinois gave us good reason to believe that it would provide the plaintiffs with the services to which they claimed they were entitled under federal law by passing a statute that permitted the relevant state agencies to provide those services. *See* 20 ILCS 505/17a–11. The plaintiffs are undoubtedly correct when they observe that this statute does not absolutely *guarantee* that the services will be provided: it is merely an enabling statute, and it indicates that provision of the services is contingent on the availability of funds. *See id.*[1] But as the plaintiffs also acknowledge, an absolute guarantee is practically impossible since state legislators and directors of state agencies have little power to bind their successors, and every legislatively authorized endeavor is (at least implicitly) contingent on the availability of funds. *See* Pls.' Br. at 5–6. Given this reality, the passage of 20 ILCS 505/17a–11 was the clearest possible indication that Illinois intended to provide services to the plaintiffs in the future. Thus, as we held in our earlier opinion, as of October 10, 1986, Illinois was entitled to the benefit of the doubt that it would thereafter provide those services, and the consent decree should have been lifted on that date.

Almost as soon as our opinion to this effect was issued, however, DCFS made it quite clear that Illinois did not deserve or desire the benefit of the doubt. Rather, DCFS forthrightly indicated that it has no intention of continuing to provide the services formerly required by the consent decree. *See* Defs.' Resp. Br. Ex. A (letter dated December 19, 1997, from Cheryl Cesario, DCFS' General Counsel, indicating that in light of our order GYSI would not accept any future referrals, though the participating state agencies would continue to provide funding for adolescents already placed by GYSI). DCFS insists that federal law does not require it to provide those services, *see id.* at 4–7, and that the consent decree was the only reason it ever did so, *see id.* at 2.

***2** With this development, the rationale for vacating the consent decree articulated in our earlier opinion has disappeared. A deferential posture is inappropriate when a state has expressed its intent to engage in conduct that may conflict with federal law. Hence, we will withdraw our earlier order vacating the consent decree, and turn to the question of whether DCFS' refusal to provide services to the plaintiffs deprives them of their rights under federal law.

II. Substantial Federal Question

As indicated in its preamble, the original Consent Decree between the parties rested on two kinds of claims: (1) Rehabilitation Act claims under 29 U.S.C. § 794, and (2) constitutional claims presented via 42 U.S.C. § 1983.[2] The Court of Appeals has asked us to determine if either of these claims remain "substantial" enough—in light of developments in the law since 1981—to justify the continued existence of the Decree. *See David B.,* 116 F.3d at 1150. To determine if a substantial claim remains, we must decide whether "the statutory or decisional law has changed to make legal what the decree was designed to prevent." *Rufo v. Inmates of Suffolk County Jail,* 502 U.S. 367, 388, 112 S.Ct. 748, 116 L.Ed.2d 867 (1992). The Decree was designed to prevent the defendants from denying appropriate services to the plaintiffs "because of" their handicaps. Decree at 2, 4–5.

A. Rehabilitation Act

To understand the nature of the plaintiffs' claims under the Rehabilitation Act it is first necessary to understand their distinctive characteristics. The plaintiff class consists of:

> All children residing or found in Cook County, Illinois who:
>
> A. Are seventeen years of age or less, or, if the person is a ward of the Juvenile Court, twenty years of age or less; and
>
> B. Are referred to Juvenile Court; and
>
> C. Are alleged to have engaged in conduct or whose parents are alleged to have engaged in conduct in violation of the Illinois Juvenile Court Act; and
>
> D. Are in need of specialized services including but not limited to child welfare, mental health and education; and
>
> E. Have been denied appropriate services by one or more of the defendants, their agents and employees, after having made the necessary applications for such services.

Consent Decree at 4. Thus, in simplest terms, the class consists of mentally or emotionally disabled children who have (at least allegedly) engaged in delinquent behavior. Their claim is that the defendant agencies discriminated against them "because of their disablement in direct violation of 29 U.S.C. § 794." Second Am. Compl. ¶ 32. That provision states that "[n]o otherwise qualified individual with a disability ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance...." 29 U.S.C. § 794(a).

In 1980, the defendants moved to dismiss the Rehabilitation Act claims on several different theories, one of which was that the plaintiffs were not excluded from services "because of" their disabilities but rather because of their delinquent behavior. Neither the Second Amended Complaint nor the Consent Decree asserts that the plaintiffs' delinquent behavior is "caused" by their disabilities. Judge Crowley rejected the defendants' argument with little discussion, stating: "[The plaintiffs] claim that they are deprived [of] existing services and that, whereas those services are provided for persons with similar mental or emotional disabilities, they are not provided to the plaintiffs. The Act outlaws this type of selective enforcement." *David B. v. DeVito,* No. 79 C 1662 (N.D.Ill., Sept. 4, 1980) (unpublished order granting in part and denying in part defendants' motion to dismiss). Thus, Judge Crowley believed that the plaintiffs had stated a claim merely by asserting that they were disabled and had been denied services; he did not consider whether the denial was "solely" by reason of disability.

***3** This issue resurfaced in 1996, when the Illinois legislature directed the defendants to cease taking custody of children over the age of the 13 who had been adjudicated delinquent. *See* 20 ILCS 505/5(/). In order to permit compliance with this new state law, the defendants requested that this court either modify the Consent Decree or vacate it entirely. As part of this request, the defendants suggested that the plaintiffs had no substantial claim under the Rehabilitation Act because they were not deprived of services “solely by reason” of their disability. *See* Def.s’ Br. at 16–19. They directed our attention to a number of opinions issued since 1980 emphasizing that to establish a violation of the Rehabilitation Act plaintiffs must show that their disabilities are the “sole” cause of their inability to obtain services. *See, e.g ., Traynor v. Turnage,* 485 U.S. 535, 549–50, 108 S.Ct. 1372, 99 L.Ed.2d 618 (1988); *Maddox v. University of Tennessee,* 62 F.3d 843, 846–47 (6th Cir.1995); *Johnson v. Thompson,* 971 F.2d 1487, 1493 (10th Cir.1992). We addressed this issue in our opinion, but did not offer a definitive opinion on it. Instead we ruled that although it was “far from conclusive” whether the plaintiffs were discriminated against “solely” by reason of their disability, the uncertainty was enough to justify the continuing operation of the Consent Decree because it implied that the plaintiffs’ claim was substantial, even if it was not meritorious. *David B.,* 950 F.Supp. 841, 848 (N.D.Ill.1996).

On appeal, the Seventh Circuit resolved the causation question. It emphasized that the language of the Rehabilitation Act prohibits the denial of services to a disabled person only if the denial is “ ‘solely’ “ by reason of his or her disability. *See David B.,* 116 F.3d at 1149 (quoting 29 U.S.C. § 794(a)). The court then reasoned:

> [C]ertain youths now are excluded from certain services provided by the DCFS, not by reason of disability (as might have been true before 1981) but by reason of criminal conviction....
>
> Plaintiffs do not contend that the crimes of those class members who have been adjudicated delinquent can be attributed to their disabilities. For example, attention deficit hyperactivity disorder, which some class members display, may cause difficulties in learning and social interactions, but it does not “cause” murder or sexual assault—not in the legal sense, anyway, even if those with the disorder are statistically more likely to commit crimes. Nothing in the Rehabilitation Act requires states to disregard a person’s criminal activity when deciding what social welfare services to provide, and through which agency—even if a particular condition of eligibility happens to bear more heavily on those who have disabilities.

Id. (citations omitted). It follows that children whose delinquency is the reason (or one of several reasons) that they were denied services have no substantial claim under the Rehabilitation Act—they were not denied services “solely” because of their disabilities.[3]

***4** Although the Seventh Circuit’s opinion considered the requirements of the Rehabilitation Act only with respect to a particular sub-group of the plaintiff class, namely children over the age of 13 who have been adjudicated delinquent, *see David B.,* 116 F.3d at 1146, 1148–49, the reasoning is applicable to the class as a whole. If the state chooses to deny services to a child because of his or her delinquent behavior—even if such behavior is only alleged rather than proven—then the denial cannot be said to have occurred “solely” by reason of his or her disabilities, and therefore does not violate the Rehabilitation Act.[4]

B. Substantive Due Process

The plaintiffs’ second claim is based on the Due Process Clause of the Fourteenth Amendment.[5] The plaintiffs argue that Illinois violated this provision by assuming a special relationship with them and then denying them adequate care. *See* Second Am. Compl. ¶ 34; Pl.’s Mem. in Opp’n to Def.’s Mot. to Vacate or Modify at 45. This theory derives from language in *DeShaney v. Winnebago County Dep’t of Soc. Servs.,* 489 U.S. 189, 109 S.Ct. 998, 103 L.Ed.2d 249 (1989), which provides:

> [W]hen the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being. The rationale for this principle is simple enough: when the State by the affirmative exercise of its power so restrains an individual’s liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs—e.g., food, clothing, shelter, medical care, and reasonable safety—it transgresses the substantive limits on state action set by the Eighth Amendment and the Due Process Clause. The affirmative duty to protect arises not from the State’s knowledge of the individual’s predicament or from its expressions of intent to help him, but from the limitation which it has imposed on his

freedom to act on his own behalf. In the substantive due process analysis, it is the State's affirmative act of restraining the individual's freedom to act on his own behalf—through incarceration, institutionalization, or other similar restraint of personal liberty—which is the "deprivation of liberty" triggering the protections of the Due Process Clause, not its failure to act to protect his liberty interests against harms inflicted by other means.

Id. at 199–200 (citations omitted). Absent some initial "deprivation of liberty," however, the general rule is that the " 'State is under no constitutional duty to provide substantive services for those within its border.' " *Id.* at 196 (quoting *Youngberg v. Romeo,* 457 U.S. 307, 317, 102 S.Ct. 2452, 73 L.Ed.2d 28 (1982)).

Thus, the threshold question is whether the plaintiffs in this case suffered a deprivation of liberty sufficient to impose affirmative duties on the defendant state agencies. The plaintiffs point out that Illinois has affirmatively acted to restrain their liberty by declaring them to be wards of the Juvenile Court, *see* Consent Decree at 4,[6] a status which renders them "subject to the dispositional powers of the court," 705 ILCS 405/1–3(16). When a delinquent minor becomes a ward of the court, the court assumes enormous control over his or her life: to pick a few examples, the court may appoint a new guardian or custodian, order the minor committed to the Department of Corrections or DCFS (depending on his or her age), declare the minor to be emancipated, or place the minor on probation. *See* 705 ILCS 405/5–23. In a sense, the court becomes a "super-guardian" with the power to select (and, when necessary, to change) the minor's actual guardians and custodians, and once the court assumes this power it may retain it until the child attains the age of 19 years, see 705 ILCS 405/5–34; *In re W.C.,* 167 Ill.2d 307, 212 Ill.Dec. 563, 657 N.E.2d 908, 918 (Ill.1995).[7]

***5** We believe that the dispositional power exercised by the Juvenile Court over its wards is sufficient to entitle those wards to the protections of the Due Process Clause. Even citizens who are not literally in the "custody" of the state may nevertheless have a right to Due Process Clause protection if they are in a "special relationship" with the state such as guardian-ward. *See Stevens v.. Umsted,* 131 F.3d 697, 702–04 (7th Cir.1997); *Camp v. Gregory,* 67 F.3d 1286, 1292 (7th Cir.1995). In *Camp,* the court considered a substantive due process claim against DCFS, which the Juvenile Court had appointed as guardian of 16–year–old Anthony Young. DCFS declined to remove Anthony from the custody of his grandmother even after she informed DCFS that she was unable to provide the boy with suitable care and supervision because of her own poor health. *See id.* at 1288. Anthony was subsequently killed outside of his grandmother's home, apparently in a gang-related episode, and his grandmother sued on behalf of his estate. DCFS argued that the due process claim was barred by *DeShaney,* since the state had no affirmative duty to protect children from dangers that it played no role in creating. *See id.* at 1292. The Seventh Circuit disagreed, stating:

> [T]he fact that the DCFS had been made Anthony's guardian represents a key point of distinction from *DeShaney....* With the agreement of both Camp and the state ... the court made the DCFS Anthony's guardian. At that juncture, whether the DCFS had a duty to intervene on Anthony's behalf was moot; it had already assumed a role that made it constitutionally liable (at least to some extent) for Anthony's well-being.

See id. at 1292; *see also id.* at 1295 (emphasizing that an "affirmative duty to intervene on Anthony's behalf ... sprang from the DCFS being made his guardian"). The same reasoning applies to our case: once the plaintiffs became wards of the Juvenile Court, the state "assumed a role that made it constitutionally liable" for their well-being.

Concluding that the plaintiffs are entitled to the protections of the Due Process Clause only gets them part of the way to their goal, however. It remains to be considered whether the state would violate their rights under that Clause if it denies them the services they demand. As indicated in *DeShaney,* a person whose liberty has been restrained has a right to have the state satisfy his or her "basic human needs—e.g., food, clothing, shelter, medical care, and reasonable safety." *DeShaney,* 489 U.S. at 200. Neither the Second Amended Complaint nor the Consent Decree purports to enumerate all the services the plaintiffs demand, but it is obvious that they are at least demanding that the state provide them with shelter. *See* Second Am.Compl. ¶ 13 (stating that all of the plaintiffs "require placement outside the home. Eventually some could live at home but only with adequate back-up services."); *id* . ¶ 33 ("Plaintiffs are homeless and dependent with no family to care for them."). Since the substantive Due Process Clause clearly confers a right to adequate shelter, this aspect of the plaintiffs' claims is viable.

***6** It is less certain whether the plaintiffs can state a valid constitutional claim for "appropriate care and treatment" of their mental and emotional disabilities. The defendants correctly observe that the obligations imposed by the substantive Due Process Clause "are limited to the provision of 'basic human needs.' " Def.'s Reply Mem. in Support of Mot. to Vacate or Modify at 18 (quoting *DeShaney,* 489 U.S. at 200). But some kinds of psychiatric or therapeutic services undoubtedly fall within the category of basic human needs: for instance, the due process right to "reasonable safety" requires the state to provide appropriate counseling or therapy to those members of the plaintiff class who, as a result of their mental or emotional disabilities, pose a danger to themselves. *See Youngberg v. Romeo,* 457 U.S. 307, 318–19, 102 S.Ct. 2452, 73 L.Ed.2d 28

(1982) (finding that the state had a constitutional duty "to provide minimally adequate or reasonable training to ensure safety"). Also, the due process right to adequate "medical care" would seem to encompass certain kinds of psychiatric treatment, especially since "emotional well being" is an interest protected by the Due Process Clause, *see White v. Rochford,* 592 F.2d 381, 385 (7th Cir.1979); *B.H. v. Johnson,* 715 F.Supp. 1387, 1394–95 (N.D.Ill.1989). One court has even endorsed the broad proposition that mentally ill or mentally disabled persons in state custody have a " 'constitutional right to receive such individual treatment as will give [them] a reasonable opportunity to be cured or to improve [their] mental condition.' " *D.W. v. Rogers,* 113 F.3d 1214, 1217 (11th Cir.1997) (quoting *Donaldson v. O'Connor,* 493 F.2d 507, 520 (5th Cir.1974), *vacated on other grounds,* 422 U.S. 563, 95 S.Ct. 2486, 45 L.Ed.2d 396 (1975)). On the other hand, the Supreme Court has expressly declined to take a position on whether mentally ill or disabled persons in state custody possess a "general constitutional right" to training or treatment unrelated to their physical safety. *See Youngberg,* 457 U.S. at 318.

In the end, however, it is immaterial whether the plaintiffs have a constitutional right to the full scope of "appropriate care and treatment" to which the Consent Decree entitles them. So long as the Decree is designed to cure a constitutional violation, we may enforce an agreement between the parties that provides for more relief than the Constitution itself requires. As the Supreme Court explained:

> [W]e have no doubt that, to "save themselves the time, expense, and inevitable risk of litigation," petitioners could settle the dispute over the proper remedy for the constitutional violations that had been found by undertaking to do more than the Constitution itself requires (almost any affirmative decree beyond a directive to obey the Constitution necessarily does that), but also more than what a court would have ordered absent the settlement.

Rufo, 502 U.S. at 389 (citation omitted). Since the Consent Decree in this case is rationally "related to the conditions found to offend the Constitution," *id.,* we decline to vacate it.

III. Modification of the Decree

***7** Even though the Consent Decree survives the defendants' motion to vacate, it must nevertheless be modified in two ways. The first is that we shall henceforth construe the decree "to permit Illinois to reallocate tasks among its agencies and to reduce the services to persons adjudicated delinquent." *David B.,* 116 F.3d at 1149. In other words, the defendants are free to comply with the state law provisions that forbid DCFS from taking custody of any delinquent minors over the age of 13. This modification does not relieve the state from its constitutional duty to provide the plaintiffs with shelter, but if the Illinois legislature wishes to shift the burden of sheltering delinquent teenagers from DCFS to other agencies we see no reason why it should not be able to do so.

We do not believe that the amendments adopted in Public Act 89–21 bar DCFS from providing services to the plaintiffs aside from taking them into custody. The parties briefs responding to our order of June 17, 1996, contain lengthy arguments on this issue, but in the end we find most persuasive the fact that the plain text of the affected statutes does not indicate any such prohibition. The pertinent part of 20 ILCS 505/5(/) merely states that "[a] minor charged with a criminal offense ... or adjudicated delinquent shall not be placed in the custody of or committed to [DCFS] by any court...." Similarly, the amended section 705 ILCS 405/5–23(1)(a) of the Juvenile Court Act indicates that "a minor found to be a delinquent under section 5–3 may be ... (4) committed to [DCFS], but only if the delinquent minor is under 13 years of age." These provisions say nothing about services, and we do not think that they impliedly repeal other provisions of Illinois law that permit DCFS to assist delinquent teens. *See, e.g .,* 20 ILCS 505/17a–10, 17a–11; *see also* ILL.ADMIN CODE. tit. 89, § 310.12 (1997). Obviously DCFS may continue to differ with us on the proper interpretation of these statutes, and if it can convince its fellow defendants that its interpretation is correct, perhaps those agencies will agree to shoulder DCFS's share of the burden of providing the plaintiffs with appropriate services. But as far as we can tell DCFS is permitted under state law to continue to participate in the provision of services to the plaintiffs (except that it cannot take them into its custody), so we decline to modify the Decree to relieve it of this responsibility.[8]

Our second modification is that henceforth the Decree shall only apply to minors who have been declared wards of the state, whose guardians are state agencies, or who are in the physical custody of the state. This limitation is necessary because the only federal claim underlying the Decree is the substantive due process claim, and this is only viable if the plaintiffs are in the custody of, or in a special relationship with, the state.

II. Conclusion

For the foregoing reasons, the plaintiffs' motion for reconsideration is granted. The Consent Decree entered into by the parties on October 2, 1981, shall remain in effect, with modifications as indicated in this opinion. It is so ordered.

Parallel Citations

12 NDLR P 190

Footnotes

1 The statute provides in pertinent part:

> In cooperation with the Department of Corrections, the Department of Mental Health and Developmental Disabilities and [the] Illinois State Board of Education, the Department of Children and Family Services shall establish the Governor's Youth Service Initiative. This program shall offer assistance to multi-problem youth whose difficulties are not the clear responsibility of any one state agency, and who are referred to the program by the juvenile court. The decision to establish and to maintain an initiative program shall be based upon the availability of program funds and the overall needs of the service area.

20 ILCS 505/17a–11.

2 The Plaintiffs' Second Amended Complaint also purported to state claims under 42 U.S.C. §§ 622, 625, but these statutes were not mentioned in the Consent Decree, nor did the plaintiffs refer to them in their Memorandum in Opposition to Defendants' Motion to Vacate or Modify Consent Decree. Thus, we need not consider whether claims under these statutes support the Decree.

3 In attempting to show that they have a substantial Rehabilitation Act claim, the plaintiffs rely on a line of cases epitomized by *Wagner v. Fair Acres Geriatric Ctr.,* 49 F.3d 1002 (3d Cir.1995). In *Wagner,* the plaintiff was denied admission to a nursing home because she "experience[d] episodes of combativeness, agitation and assaultiveness on a daily basis." *Id* . at 1006. It was undisputed that this conduct was caused by Alzheimer's disease. *See id.* at 1015 & n. 13. Wagner argued her disability was "the behavioral aspects of her dementia," not merely the dementia itself. *See id.* at 1006. The Third Circuit held that Wagner had stated a viable Rehabilitation Act claim because the nursing home was discriminating between groups of disabled persons based on "behavioral aspects" of their disabilities. *See id.* at 1015.

Our case is distinguishable. As Judge Easterbrook observed, the delinquent behavior of the plaintiffs is not "caused" by their disabilities. Hence, a decision to deny services to the plaintiffs on the basis of their delinquency cannot be viewed as a decision made on the basis of disability as it was in *Wagner.*

4 The plaintiffs would undoubtedly have a stronger claim under the Americans with Disabilities Act (ADA), than they do under the Rehabilitation Act, if for no other reason than the difference in causation standards. Whereas the Rehabilitation Act requires that plaintiffs' disabilities be the "sole reason" for their adverse treatment, the ADA provides a remedy so long as disability was a "motivating factor." *See Foster v. Arthur Andersen L.L.P.,* No. 96 C 5961, 1997 WL 802106, at *4–7 & n. 6 (N.D.Ill.Dec.29, 1997). But "arguments based on the ADA are new claims, which must be made and proved; they do not breathe life into a decree entered under a different legal regime. Relief under a statute enacted in 1990 cannot be justified on the basis of the agencies' consent in 1981." *David B.,* 116 F.3d at 1150.

5 The Plaintiffs' Second Amended Complaint also asserts that the plaintiffs have claims under the Equal Protection Clause. In their briefs to this court, however, the plaintiffs make only the most cursory possible reference to this theory in a one-sentence footnote. *See* Pl.'s Mem. in Opp'n to Def.s' Mot. to Vacate or Modify at 48 n. 24. It is not the role of the court to construct constitutional arguments on behalf of parties; the equal protection theory has been waived. Even were it not, however, we think it has little merit. *Cf. In re A.A.,* Nos. 81711, 81800, 1998 WL 21708 (Ill. Jan 23, 1998) (rejecting an equal protection challenge to the Illinois statutes that prohibit DCFS from taking custody of delinquent teens).

6 The plaintiff class is not limited to wards of the Juvenile Court: the class also includes children who have merely been "referred" to the Juvenile Court, which may or may not result in an adjudication of wardship. *See* Consent Decree at 2–3. The court has jurisdiction to declare wardship if it finds that a minor is "delinquent," meaning that the court has found that the minor violated or attempted to violate federal, state, or municipal law. *See* 705 ILCS 405/5–1, 5–3. If the jurisdictional requirement is met, the court may enter a declaration of wardship if it finds that doing so would be "in the best interests of the minor and the public." 705 ILCS 405/5–22(1). As discussed *infra* in Part III, we will modify the class covered by the Decree so that only wards of the state (or others in a similar special relationship with the state) will be covered by it.

7 Moreover, although we lack precise information on this point, it seems clear that a large majority of the plaintiffs have DCFS or another state agency appointed as their guardian by the Juvenile Court. A smaller subset of the class is actually placed in the custody of the state.

8 At one point in its opinion, the Seventh Circuit suggested that the Decree suffers from a "lack of specificity" since it merely requires the provision of "appropriate" care and treatment, leaving it to GYSI to determine what that might mean in each particular case. *See David B.,* 116 F.3d at 1148. Although the Decree is phrased in general terms, its history shows that this is unlikely to be a problem. For 15 years the parties lived under the Decree and determined the scope of "appropriate" care and treatment by themselves; not once did they require the assistance of this court to determine what services were required. Given the variety of services needed by the plaintiffs, it seems expedient to give the defendants the flexibility to formulate treatment plans on a case-by-case basis rather than to try and articulate general rules about who is entitled to what.