1988 WL 126875
Only the Westlaw citation is currently available.
United States District Court, S.D. New York.

JANE B., by her next friend Vendetta MARTIN, and Maria A., by her next friend Carol Braund, individually and on behalf of all others similarly situated, Plaintiffs,
Bea J., by her next friend Bonnie Rabin, individually and on behalf of all others similarly situated, Plaintiff–Intervenor,
v.
The NEW YORK CITY DEPARTMENT OF SOCIAL SERVICES, et al., Defendants.

No. 87 CIV. 2470 (PKL). | Sept. 19, 1988.

Attorneys and Law Firms

Lenore Gittis, The Legal Aid Society, Juvenile Rights Division, New York City (Henry S. Weintraub, Kay G. McNally, of counsel), for plaintiffs and plaintiff intervenor.

Peter L. Zimroth, Corporation Counsel of City of New York (Antonia A. Levine, Elaine Rothenberg, of counsel), for defendants.

Opinion

MEMORANDUM DECISION AND ORDER

LEISURE, District Judge.

***1** This is a civil rights action brought by two juveniles, on behalf of themselves and others similarly situated, challenging the conditions at the Ashford Diagnostic Reception Center ("Ashford") and the Hegeman Diagnostic Reception Center ("Hegeman") as unconstitutionally substandard. The Court granted certification of the action as a class action by Opinion and Order dated October 2, 1987. 117 F.R.D. 64 (S.D.N.Y.1987). Thereafter, named plaintiff Jane B. indicated her desire to withdraw from the litigation and the Court granted Bea J.'s motion to intervene as a named plaintiff and class representative from Hegeman by Memorandum Decision and Order dated April 28, 1988. Familiarity with the previous opinions in the case and the facts recited therein is presumed.

The action is now before the Court on defendants' motion to dismiss certain claims from the action pursuant to rules 12(b)(6) and 12(c) of the Federal Rules of Civil Procedure. Defendants contend that the named plaintiffs, Maria A. and Bea J., "were not injured by the practices they challenge and do not have standing to raise those claims." Defendants' Memorandum of Law in Support of Defendants' Motion to Dismiss Certain Claims From the Action at 2.

Plaintiffs' Claim for Relief alleges that defendants have failed "to provide plaintiffs and members of their class with safe and sanitary conditions of confinement, adequate supervision and protection from harm, conditions that are not overcrowded and adequate diagnostic evaluations, medical, psychological, psychiatric, and counseling services, education, and recreation and exercise." Complaint ¶ 76. The original and intervenor complaints (hereinafter "C" and "IC" respectively) substantiate these allegations with additional allegations based upon incidents involving the named plaintiffs and involving other members of the class, all of which effectively portray living conditions at Hegeman and Ashford.

Defendants argue that plaintiffs lack standing to assert these additional allegations involving other members of the class. The specific claims raised in defendants' motion to dismiss are 1) improper medical treatment, 2) improper dispensation of medication, 3) inadequate screening and training of security guards, 4) insufficient recreation and exercise and 5) inadequate special education for the handicapped. Plaintiffs argue that their complaint does not raise "separate legal 'claims' against the city defendants as to some of the practices in dispute, namely, the screening and training of security staff, the administration and dispensation of medication and the provision of special education under duties imposed by state law." Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion to Dismiss Certain Claims From the Action at 3. Rather, "they have made numerous allegations throughout the complaints which, when read together, assert personal harm or the threat of harm to themselves in each of the categories in question, as well as to other members of the class." *Id.*

***2** Plaintiffs' class consists of all present and future residents at Ashford and Hegeman. The ultimate issue in this case is whether named plaintiffs have been denied any of the rights they claim to have, due to defendants' alleged conduct. The issue now before the Court is whether plaintiffs have satisfied the standing requirements for each allegation and can represent the class.

To satisfy standing requirements a plaintiff must show "that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant." *Gladstone, Realtors v. Village of Bellwood,* 441 U.S. 91, 99 (1979). In class action suits, named

plaintiffs "must allege and show that they personally have been injured, not that injury has been suffered by other, unidentified members of the class to which they belong and which they purport to represent." *Warth v. Seldin,* 422 U.S. 490, 502 (1975). *See also O'Shea v. Littleton,* 414 U.S. 488 (1974); *National Super Spuds, Inc. v. New York Mercantile Exchange,* 660 F.2d 9 (2d Cir.1981); *Gesicki v. Oswald,* 336 F.Supp. 371 (S.D.N.Y.1971), *aff'd mem.,* 406 U.S. 913 (1972). In addition, "it is not enough that the conduct of which plaintiff complains will injure *someone.* The complaining party must also show that he is within the class of persons who will be concretely affected. Nor does a plaintiff who has been subject to injurious conduct of one kind possess by virtue of that injury the necessary stake in litigating conduct of another kind, although similar, to which he has not been subject." *Blum v. Yaretsky,* 457 U.S. 991, 999 (1982) (emphasis in original).

This matter is before the Court on defendants' motion to dismiss for failure to state a claim upon which relief can be granted, or, in the alternative, for judgment on the pleadings. The standard on both motions is essentially the same, namely, that set forth by the Supreme Court in *Conley v. Gibson,* 355 U.S. 41 (1957). *See Bloor v. Carro, Spanbock, Londin, Rodman and Fass,* 754 F.2d 57, 61 (2d Cir.1985) ("In considering a Rule 12(c) motion, the court must accept as true all of the well pleaded facts alleged in the complaint...."); *Goldman v. Belden,* 754 F.2d 1059, 1065 (2d Cir.1985) (A motion to dismiss pursuant to Rule 12(b)(6) should be denied "unless it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.' " (quoting *Conley v. Gibson, supra,* 355 at 45–46)). Thus, "[t]he function of a motion to dismiss 'is merely to assess the legal feasibility of the complaint, not to assay the weight of the evidence which might be offered in support thereof.' " *Ryder Energy Distribution Corp. v. Merrill Lynch Commodities Inc.,* 748 F.2d 774, 779 (2d Cir.1984) (quoting *Geisler v. Petrocelli,* 616 F.2d 636, 639 (2d Cir.1980)).

Medical Treatment

Plaintiffs have standing to allege that defendants fail to offer adequate medical treatment to the class. Bea J. received a blow on her nose causing a cut and substantial swelling, and fearing that it was broken, Bea J. wanted to go to the hospital. The senior house parent at Hegeman allegedly refused to take her to the hospital for an x-ray and treatment. Bea J. later sought treatment on her own. Because Bea J. has alleged that she suffered injury due to the failure to provide medical treatment at Hegeman, she has sufficient standing to allege that defendants fail to provide adequate medical treatment to the class.

***3** *Dispensation of Medication*

Plaintiffs lack standing to allege that defendants improperly dispense medication. Plaintiffs' complaint refers to incidents in which class members suffered injuries as a result of not receiving appropriate medication from the staff at Hegeman. C ¶ 39. The Court reads the complaint to allege that medical treatment in general is lacking, not that Ashford and Hegeman continually fail to dispense appropriate medication to the class. The Court agrees with defendants that plaintiffs do not have standing to allege that defendants fail to dispense medication properly.

Screening and Training of Security Guards

Plaintiffs claim that screening and training of security guards is grossly inadequate. C ¶ 36. This claim resembles plaintiffs' broader claim that defendants fail to provide adequate supervision and protection from harm, and for that claim the Court finds that plaintiffs do have standing. Plaintiffs support this claim with allegations based upon both personal experience and allegations of incidents involving other class members. Both plaintiffs allege that they and other residents at Hegeman and Ashford can come and go as they please, and that they have been harassed repeatedly by groups of males who loiter about the buildings and who go into the buildings without difficulty. C ¶ 63, IC ¶ 27.

It is undisputed that Ashford and Hegeman are located in neighborhoods that have "drug dens" and relatively high crime rates. It is also undisputed that at Hegeman some residents "elude detection and bring drugs and alcohol into the facility." Answer to Intervenor Complaint at ¶ 26. Maria A. also alleges that she was deliberately locked out of Ashford one night, and that she was chased upstairs by a male who had entered the building. Both named plaintiffs have had personal property stolen and have been involved in fights with other residents. Both have witnessed many fights among the residents and between residents and staff members and guards. C ¶ 62, IC ¶¶ 22, 23, 34. Based on the alleged environment, and allegations made by the named plaintiffs of what they have witnessed and personally experienced at Hegeman and Ashford, Maria A. and Bea J. clearly have standing to allege inadequate supervision and protection from harm. Insofar as the claim of inadequate supervision and protection from harm is based upon inadequate training and supervision of security guards, plaintiffs have standing to assert that they are harmed by inadequate training of security guards.

Insufficient Recreation and Exercise

Regarding defendants' fourth claim, the Court finds that Maria A. and Bea J. have standing to allege that defendants provide insufficient recreation and exercise. Whether, as defendants contend, Maria A. and Bea J. exercised prior to being placed at Hegeman and Ashford

is irrelevant. Plaintiffs' complaints allege that "there are few opportunities for organized recreation and exercise, either indoors or outdoors," C ¶ 41 and that plaintiffs are injured because, "residents are required to endure substantial periods of idleness, which often lead to fights." C ¶ 44. This clearly states a claim sufficient to withstand a motion to dismiss for lack of standing.

***4** *Special Education*

Plaintiffs allege that the education provided for the class is inadequate. C ¶ 74. In support of that allegation, plaintiffs contend that defendants provide inadequate special education for the handicapped. C ¶ 43. Defendants argue that plaintiffs lack standing to allege that there is inadequate special education for the handicapped because neither named plaintiff is handicapped. The Court, however, reads the complaint as alleging that education in general at Hegeman and Ashford is inadequate. Plaintiffs refer to more than the handicapped class members needs; they also claim that "instructional materials are in very short supply. Many girls spend the time crocheting or coloring pictures," C ¶ 42, and Bea J. alleged that "girls would bring pillows and blankets to class and sleep through the day." IC ¶ 31. While it is clear that plaintiffs do not have standing to allege that defendants provide inadequate special education for the handicapped, it is evident that plaintiffs do have standing to allege that the education in general is inadequate.

CONCLUSION

Plaintiffs have standing to assert claims of improper medical treatment, improper screening and training of security guards, and insufficient recreation and exercise. Plaintiffs lack standing to assert claims of improper dispensation of medication and inadequate special education. Accordingly, defendants' motion to dismiss is granted as to the latter two claims and denied in all other respects.

Counsel for the parties are ordered to appear at a pre-trial conference on October 14, 1988 at 3:00 in Courtroom 36.

SO ORDERED