1989 WL 71795
Only the Westlaw citation is currently available.
United States District Court, D. New Jersey.

BONNIE S., et al., Plaintiffs,
v.
DREW ALTMAN, et al, Defendants.

CIV. No. 87–3709. | June 28, 1989.

Attorneys and Law Firms

Ilene W. Shane, Cherry Hill, N.J., for plaintiffs.

Christine Piatek, Deputy Attorney General, Trenton, N.J., for Defendants.

Stephen F. Gold, Philadelphia, Pa., For plaintiffs.

Opinion

OPINION

SAROKIN, District Judge.

INTRODUCTION

***1** Before the court is plaintiffs' petition for an award of attorneys' fees pursuant to the Civil Rights Attorneys' Fees Award Act of 1976, 42 U.S.C. Section 1988 (as amended).

The plaintiffs in this action have been confined in state mental retardation institutions for extended periods of time. Their confinement was initiated and continued under practices and policies which raise grave constitutional issues. In addition to challenging those practices and procedures, plaintiffs primarily sought appropriate community placement free from the degradation of institutional confinement.

As a direct result of this lawsuit, plaintiffs have now been placed in community residences and this action has been dismissed by consent. Plaintiffs now seek counsel fees as the prevailing parties. The state opposes such request on the ground that such placement would have occurred eventually in any event, and that the lack of available funds necessitated delay.

Approximately 1500 persons are similarly situated to plaintiffs. They continue to suffer in institutions, although they are entitled in most instances to community placement. The continuation of their plight cannot be justified or excused by the lack of available funds. If it were otherwise, then the failure of the state to rectify horrendous conditions in its prisons and other institutions would have to be tolerated.

That these plaintiffs or the many others who now languish in state mental institutions would someday be released and placed in the community is of little solace to those so confined. The actions of counsel here forced the state to consider and take immediate action respecting these particular plaintiffs. The fact that the state eventually would have done the same at some undefined moment in the future does not detract from the invaluable role played by counsel in this matter. They not only have served the interests of these identified plaintiffs, but they have drawn attention to the plight of those who are similarly situated. They have spoken for persons who otherwise would not have been heard, and thus they should be compensated, encouraged, and complimented.

BACKGROUND

Plaintiffs in this matter are six women who, at the time the Complaint was filed, resided in the New Jersey Developmental Center (NJDC), which is a state mental retardation institution. The Complaint in this matter was filed on September 10, 1987 and was later amended on October 19, 1987.

Defendants include the Commissioner of the New Jersey Department of Human Services and other officials charged with administering mental retardation services in New Jersey.

In the Amended Complaint, plaintiffs alleged that the state failed to develop appropriate community placements for them. Plaintiffs also contended that they were committed to the Center and appointed guardians without a hearing of any kind. Plaintiffs sought a judicial declaration that the defendants' practices and policies violated the due process and equal protection clauses of the fourteenth amendment and Title XIX of the Social Security Act. Plaintiffs also sought injunctive relief.

***2** On February 23, 1989, a consent-dismissal order was entered by this court. The action was

> 'dismissed without prejudice to either party inasmuch as the underlying matters have been resolved, to wit, defendants have agreed to place all plaintiffs in this matter. . . .'

The order was entered 'without any admission by either party, finding of liability by the court or determination as to the truthfulness of the allegations in the complaint and upon the joint motion of the parties.'

Thereafter, plaintiffs moved for an award of attorneys' fees in the amount of $40,151.00 and for costs in the amount of $889.65.

DISCUSSION

Entitlement to Fees.

As amended, 42 U.S.C. Section 1988, provides in pertinent part:

> 'In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, tile IX of Public Law 920–318, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as party of the costs.'

The United States Supreme Court, in Texas State Teachers Association et al. v. Garland Independent School District, et al., U.S. , 57 U.S.L.W. 4383 (March 28, 1989) [hereinafter 'Garland'], recently summarized the inquiry which should be made in determining whether a civil rights plaintiff is a prevailing party within the meaning of Section 1988. In Garland, the court instructed that if a plaintiff succeeds on 'any significant issue in litigation which achieve [d] some of the benefit the parties sought in bringing suit,' the plaintiff is entitled to a fee award of some kind. (slip) op., at 4386, quoting Nadeau v. Helgemoe, 581 F.2d 272, 278–79 (1st Cir. 1978)). 'At a minimum,' the Court stated, 'to be considered a prevailing party within the meaning of Section 1988 the plaintiff must be able to point to a resolution of the dispute which changes the legal relationship between itself and the defendant.' *Id.*, at 4386.

Plaintiffs argue that they are living in community residences and are receiving services that had been denied them for years. Plaintiffs contend that this constitutes not only a legal benefit, but virtually all of the relief which they originally sought.

Plaintiffs submit that this lawsuit was a material contributing factor in the state's decision to initiate and expedite their placement in the community. Plaintiffs argue that 'but for this lawsuit, they would still be confined to NJDC with little prospect of release.' (Plaintiffs' Brief, at 4). In support of this proposition, plaintiffs point to the state's waiting list for community placement. According to a class action Complaint filed on May 12, 1989 by the Public Advocate, more than 1500 persons are on waiting lists for community placement. (Plaintiffs' Brief, at 5, n. 7, citing Complaint in Peter M. et al. v. New Jersey Department of Human Services, N.J. Super. #W015459–89, attached as Appendix, at 21–62). Given the substantial waiting lists, plaintiffs characterize the placement of the plaintiffs in this case as 'miraculous, unless it is a response to the pressure of this lawsuit.'

***3** Defendants maintain that they are committed to de-institutionalizing as many eligible persons as is appropriate, within the state's financial constraints. This commitment, defendants argue, is reflected in the significant decrease in the number of persons living in the state's residential facilities for the developmentally disabled. (See Affidavit of Robert P. Stack, attached to Defendants' Brief). Defendants point to the 'unfortunate reality' that funds are limited and waiting lists are necessary. Defendants argue that the state should not be penalized for the unavailability of public funds, the shortage of community-based programs, or its policy of giving priority to those most in need.

Addressing the legal standards governing attorneys' fees under Section 1988, defendants argue that plaintiffs have not achieved a legal victory. While conceding that the plaintiffs have been placed in the community, defendants point out that this court did not rule on plaintiffs' legal claims regarding the state's policy of guardianship and involuntary commitment or the state's provision of treatment and services to the developmentally disabled.

Defendants also contend that this suit was not the proximate cause of the relief obtained. Defendants maintain that this favorable change in plaintiffs' living situation 'would have occurred in time, regardless of the institution of a civil rights lawsuit.' (Defendants' Brief, at 4).

In Institutionalized Juveniles v. Sec. of Public Welfare, 758 F.2d 897, 910–917 (3rd Cir. 1985), the Third Circuit set forth the analysis to determine whether a plaintiff should be deemed a prevailing party. The question is whether plaintiff achieved 'some of the benefit sought' by the party bringing the suit. Id., at 910, (citations omitted). It is thus necessary to identify the relief plaintiffs sought. In this case, plaintiffs sought to end their confinement in the NJDC and to obtain placement in the community. Plaintiffs have obtained this relief.

Defendants emphasize that this court never ruled on the substantive legal theories advanced by plaintiffs. However, this is not dispositive. As the Third Circuit clearly stated in Institutionalized Juveniles, 'the focus of this analysis is on the relief actually obtained rather than on the success of the legal theories.' Id. at 911. The

appellate court continued: 'a plaintiff is a prevailing party to the extent extrajudicial relief makes legal claims moot.' Id. The Third Circuit, in Ross v. Horn, 598 F.2d 1312, 1322 (1979), cert. denied, 448 U.S. 906 (1980), stated the question as follows: 'In assessing who is a prevailing party, we look to the substance of the litigation's outcome.' Thus, this court concludes that notwithstanding the absence on any dispositive ruling on plaintiffs' legal theories, plaintiffs have obtained the relief sought in this suit, namely their placement in the community.

The court must also be satisfied that the litigation 'constituted a material contributing factor in bringing about the events that resulted in the obtaining of the desired relief.' Institutionalized Juveniles, supra, at 916, (citation omitted). In determining whether causation is shown, this court is bound to apply 'the most expansive definition.' Id., (citation omitted). The litigation must simply be a catalyst. Id.

***4** Defendants contend that plaintiffs would have been placed in the community 'in time,' regardless of whether this suit had been filed. However, the affidavits and records submitted in opposition to plaintiffs' motion demonstrate only minimal movement towards community placement for these plaintiffs prior to the filing of this suit. See Affidavit of John F. Cole, Regional Administrator of the Division of Developmental Disabilities.

It is clear from the client records contained in the appendix to defendants' brief that each of the plaintiffs had been institutionalized for several decades. There is nothing to suggest that any of the plaintiffs experienced an improvement in disability that prompted the government to initiate community placement. There is nothing to suggest that any of the plaintiffs were already on a waiting list for community placement at the time this suit was filed. Indeed, it appears that the plaintiffs were never placed on a waiting list and even may have been placed ahead of some people who were classified as urgently needing community placement.

Given the existence of a lengthy waiting list for community placement, and the relatively prompt placement of plaintiffs in the community less than two years after this suit was filed, the court is satisfied that this litigation was a material factor in the state's placement of plaintiffs into the community and that plaintiffs are prevailing parties entitled to attorneys' fees under Section 1988.

Amount of Fee Award

Having determined that plaintiffs are prevailing parties under Sec. 1988, the court must determine what fee is 'reasonable'. Defendants argue that any fee award should be substantially reduced because plaintiffs achieved only 'limited success.' Defendants also argue that no fees should be awarded for fees incurred after October 14, 1988, the date upon which plaintiffs' counsel was notified that the state had secured a building for eventual placement. Defendants also contend that the rates charged by plaintiffs' counsel are excessive and that certain fees are duplicative or unnecessary.

Plaintiffs maintain that the rates and hours claimed are reasonable. Plaintiffs have submitted affidavits in support of their position.

The evidence submitted by plaintiff documenting the hours worked and rates claimed comports with the instructions of the United States Supreme Court in Hensley v. Eckerhart, 461 U.S. 424, 433–434 (1983). The court has reviewed the affidavits and concludes that the rates are reasonable in relation to counsel's expertise and experience. The court also concludes that the total number of hours claimed is adequately supported by contemporaneous time records. The product of reasonable hours times a reasonable rate, according to counsel's calculations, is $40,151.00.

Under Hensley, the court should focus on 'the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation.' 461 U.S. at 435. The court has already determined that plaintiffs obtained the primary relief sought, namely placement in the community. That the court did not have occasion to rule on plaintiffs' constitutional claims does not detract from the significance of this relief obtained. However, since this relief was essentially assured as of October 14, 1988, the date upon which plaintiffs' counsel was notified that a building has been secured by the state, the court will subtract from the total lodestar fees incurred after this date. This results in a fee of $34,258.50.[1]

***5** The court will also award fees incurred by plaintiffs in preparing the fee petition, as documented by plaintiffs' counsel, in the amount of $4,341.50. See Institutionalized Juveniles, 758 F.2d at 924–925. This yields a total attorneys' fee award of $38,600.00.

The court will also award costs to plaintiffs in the amount $889.65. Id., at 926.

CONCLUSION

Prior to the filing of the Complaint, plaintiffs had been institutionalized by the State of New Jersey for decades. Even if plaintiffs would have been slated for placement in the community independently of this litigation, they would have certainly languished at the end of a long waiting list. In less than two years after this suit was

initiated, all six plaintiffs were placed in community residences. Although the court did not have occasion to rule on any of the compelling constitutional claims advanced by plaintiffs, there is no question that plaintiffs obtained the primary benefit sought in this litigation and that the lawsuit was a catalyst for the government's relatively prompt actions in this matter. Therefore, plaintiffs are entitled to reasonable attorneys' fees under Section 1988 of the Civil Rights Attorneys' Fees Act of 1976 and costs as set forth above.

Footnotes

1 Fees incurred after October 14, 1988 include $3,532.50 by Stephen Gold, Esq. and $2,360.00 by Ilene Shane, Esq. Subtracting these fees of $5,892.50 from the total fees of $40,151.00 results in an award of $34,258.50.