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United States District Court, D. Oregon.

UNITED STATES of America, Plaintiff,
Sonya Fryer, et al., Plaintiff–Intervenors,
v.
STATE OR OREGON, et al., Defendants

Civ. No. 86–961–MA. | April 7, 1992.

Attorneys and Law Firms

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Opinion

ORDER

MARSH, District Judge.

***1** On September 13, 1991, at a hearing on the United States' motion for contempt, and in a subsequent opinion issued on October 22, 1991, I made extensive factual findings and held that defendants had taken all reasonable steps to comply with the Consent Decree's goal of protecting residents from harm. The plaintiff's motion was premised in large part upon statistical data which indicated that Fairview residents continued to incur injuries at a rate of well over 50%. Plaintiff argued that, because injuries continued to occur at a "significant" rate, defendants failed to meet the constitutional standards embodied within the consent decree. During the course of those proceedings I expressed concern over the result-oriented approach urged by the plaintiff and the difficulties that such approach caused when attempting to measure the state's progress. *See* Opinion of October 22, 1991, at pp. 14–16. Thus, in an attempt to remedy the situation and avoid future difficulties, I directed the parties "to work together to devise an agreed upon set of professional standards to be applied to each professional field within Fairview" and that these standards should be "designed to augment and further refine any terms within the consent decree that are broad, ambiguous, or capable of several interpretations." *Id.,* at 3.

The parties have now responded to my directive in two completely different ways. Plaintiff has filed a motion for clarification of my directive. The United States now explains that at the time of the September 13, 1991 contempt hearing, the parties were already in the process of formulating a detailed "Plan of Correction" in conjunction with the Advisory Panel which addresses those specific standards to be applied to the various areas of professional discipline at Fairview. Plaintiff contends that the Plan provides "parameters and specific criteria by addressing 24 professional areas and over 200 specific items within those areas governing every relevant aspect of care and treatment at Fairview."[1] U.S. Response to Defendants' Proposed Standards, at p. 5. Plaintiff contends that there is no need for additional "standards" as ordered by the court and has refused to participate with the State defendants on the development of any additional standards beyond those identified in the Plan of Correction. Plaintiff objects to defendants proposed standards as constituting an overly simplistic and incomplete "summarization." Plaintiff argues that adoption of the standards would "abolish the consent decree provisions requiring (defendants) to achieve certain outcomes." U.S. Reply, at 2.

Defendants responded to my order by working with their expert, Kathleen Schwaninger, on a set of "standards." Defendants explain that these standards are "derived from" the Plan of Correction. Defendants contend that the standards are a necessary "tool" to assist the parties and the court in measuring compliance with the Consent Decree and Plan.

***2** One of the difficult aspects inherent in the role of a court exercising continuing jurisdiction over the progress of an on-going consent decree, is that once the decree is entered into, the disputes that come before the court are often just one part of a larger process of negotiation and development. Thus, when I directed the parties to "work together" to devise a set of more specific standards, I did not intend to disrupt any on-going work in progress. As I noted earlier, my sole concern was with the arguments of the parties during the motion for contempt and the difficulty I had in assessing whether defendants were in compliance with the terms of overall objectives of the Consent Decree. Now, it appears to me that both parties agree that the six volume Plan of Correction filed with the Court on February 4, 1992, substantially serves the goal of providing the court and parties with specific goals and objectives by which Fairview's progress may be measured.

This does not mean that the "standards" submitted by defendants would not be a helpful "guide" to defendants in carrying out the plan, or a "tool" that might be used for the convenience of the court in the same manner that charts and summaries are often used at trial to illustrate voluminous documents or submissions. The standards would not be evidence, nor would they become part of the consent decree or Plan of correction without the consent of all parties. Given this interpretation, plaintiff is then free to submit its own "summarization" if it finds it appropriate, or to simply rely upon the underlying relevant portions of the Plan itself.

However, what *is* critical to me is that the specific practices, processes, goals and procedures agreed to by the parties within the Plan also be used as the yardstick against which Fairview's process is measured. What I hope to avoid by this action is the situation I was confronted with last September whereby defendants would be facing contempt sanctions based solely upon the fact that residents continue to incur injuries. As I emphasized in my opinion of October 22, 1991, I see my continued role as limited to ensuring that "defendants have followed the process as set forth in the Consent Decree" and have exercised "professional judgment" aimed at protecting residents from unreasonable risks of harm.[2]

In light of the plaintiff's stipulation that the detailed Plan of Correction sets the standards by which all parties should measure Fairview's progress, I agree that the parties have satisfied my concerns and directives of September 13, 1991. Accordingly, I find that further "clarification" is unnecessary and thus, plaintiff's request for clarification # 507 is MOOT as indicated by this order.

Footnotes

1 Both parties explain that there are still 3 areas within the Plan of Correction which are being negotiated through the Advisory Panel.

2 I wish to reiterate what I expressed last September. For the purposes of the constitutional inquiry, my focus must be upon the actions of defendants and not the injuries sustained. For example, police officers who shoot criminal suspects would automatically commit a constitutional violation if an injury itself was the determinative factor. Instead, under § 1983, courts focus upon the objective reasonableness of the officer's actions in light of all circumstances confronting him or her at the time. Similarly, in this case, while evidence of injuries may be probative to determining what the circumstances were and what actually occurred to produce the injury, the injury itself is not a constitutional violation unless it was the result of an unconstitutional action or omission by the defendants.