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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

MILLER FRANK JOHNSON, et al.

Plaintiffs,

v.

Case No.: 8:87-CV-369-T-24TBM

MARTIN VAN HOLDEN, et al.,

Defendants.

_____ /

ORDER

This cause comes before the Court on Defendants' Motion to Terminate Consent Decree and Exit Criteria Stipulation (Doc. No. 1327), Plaintiffs' Response in Opposition (Doc. No. 1364), Defendants' Supplemental Motion to Terminate Consent Decree and Exit Criteria Stipulation (Doc. No. 1414), and Plaintiffs' Response in Opposition (Doc. No. 1423). A hearing was held on these motions on May 22, 2002.

I. History of the Case

This case was originally filed on March 11, 1987 by a class of plaintiffs on behalf of mentally ill persons who are or have been patients at G. Pierce Wood Memorial Hospital ("GPW"), a state psychiatric hospital in Arcadia, Florida. Plaintiffs filed an amended complaint on December 14, 1987 and a third amended complaint on December 14, 1988 (Doc. No. 30). The Third Amended Complaint contained five counts. In Count I, Plaintiffs alleged that the denial of less restrictive treatment and the conditions of their confinement violated their rights under the Fourteenth Amendment. Count II stated a claim for denial of procedural due process

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resulting from Defendants' allegedly arbitrary revocations of Plaintiffs' grounds privileges, which allowed Plaintiffs to move freely about the facility. Count III asserted a claim under the First, Ninth, and Fourteenth Amendments for denial of their liberty and association rights resulting from the lack of access to telephones and the hospital's policies of prohibiting visitors under twelve and prohibiting "consensual kissing and hugging between male and female patients and visitors." (Doc. No. 30). In Count IV Plaintiffs asserted a claim under the First, Fifth, Sixth, and Fourteenth Amendments for denial of access to courts. Finally, in Count V Plaintiffs asserted a claim for violation of their rights under the Fourteenth Amendment stemming from an alleged lack of appropriate programs, services, and trained staff.

In 1989, the case was partially settled by a consent decree (Doc. No. 68). The Court retained jurisdiction over the case and appointed monitors to monitor compliance with the consent decree. In 1993, after further negotiation, the parties entered a stipulation regarding exit criteria for the consent decree and a stipulation regarding legal access and Plaintiffs moved the Court to approve the stipulations regarding legal access and exit criteria (Doc. No. 403). In 1994, Defendants filed their notices of withdrawal from both stipulations (Doc. Nos. 430, 434, 491). However, Defendants later filed a motion to withdraw their notices of withdrawal from the stipulation regarding legal access and stipulation regarding exit criteria. (Doc. No. 443). The Court granted Defendants' motion to withdraw their notices of withdraw in an order dated July 12, 1994.(Doc. No. 457. Defendants also filed a motion to dismiss Count IV of the Third Amended Complaint, the legal access claim, and to terminate the stipulation on legal access in December, 1994 (Doc. No. 503). In an order dated March 23, 1998 (Doc. No. 705), this Court adopted Magistrate Judge Thomas McCoun's Report and Recommendation (Doc. No. 681),

granted Plaintiffs' motion to approve stipulations regarding exit criteria and legal access (Doc. No. 403), denied Defendants' remaining motion to withdraw from the exit criteria stipulation (Doc. No. 491), denied Defendants' motion to dismiss Count IV of the Third Amended Complaint (Doc. No. 503), and granted the United States' Motion to Intervene (Doc. No. 637).

On April 2, 1998, the United States intervened in this action pursuant to the Civil Rights of Institutionalized Persons Act. In their complaint in intervention, the United States alleged that conditions at GPW violated the constitutional rights of current and former patients. The United States also alleged that Defendants violated the Americans With Disabilities Act by failing to provide services and programs to current and former GPW patients in the most integrated setting appropriate to their needs. The United States sought prospective injunctive relief on behalf of these current and former GPW patients. After a non-jury trial, the Court directed the Clerk to enter judgment in favor of Defendants and against Plaintiffs and Plaintiff-Intervener on all claims tried before it. The Court found that they failed to prove by a preponderance of the evidence that Defendants were violating the statutory and constitutional rights of current and former GPW patients. Specifically, the Court found that Plaintiffs and Plaintiff -Intervener failed to prove that the patients at GPW were inadequately supervised; inadequately treated for self-injurious behavior; inadequately protected from environmental hazards; or that adverse incidents were inadequately investigated and/or responded to. Additionally, the Court found that Plaintiffs and Plaintiff-Intervener failed to prove inadequate assessment of patients; inadequate treatment planning; inadequate provision of active treatment; or inadequate discharge planning. As to community services, the Court found that Plaintiffs and Plaintiff-Intervener failed to prove that Defendants were not providing adequate community services to meet the assessed functional and

clinical needs of current and former GPW patients, nor did Plaintiffs prove that Defendants were not providing such services in the most integrated setting appropriate to the needs of patients. Finally, the Court found that Plaintiffs failed to prove a violation of the ADA. The Court, however, did not specifically address Defendants' obligations under the Consent Decree as measured by the Exit Criteria Stipulation. The Court made it clear that it was not the purpose of the trial to evaluate Defendants' obligations under the Consent Decree but rather to try the constitutional violations and the ADA violations raised by the United States in its complaint.

On February 7, 2002, the last patient was transferred out of GPW and on February 28, 2002 the hospital formally closed.(affidavit of William Briscoe M.D.)

II. Defendants' Motion to Terminate Consent Decree and Exit Criteria and Motion to Dismiss

Defendants seek to terminate the Consent Decree and Exit Criteria and to dismiss the case with prejudice. (Doc. No. 1327 and 1414). In their motion to terminate (Doc. No. 1327), Defendants assert that the Court should terminate the consent decree and exit criteria and dismiss the case for several reasons. First, Defendants argue that it is no longer equitable to continue to enforce the consent decree as the facts of the case have significantly changed since the parties entered into the Consent Decree. Second, Defendants assert that the Court lacks jurisdiction to enforce the Consent Decree in the absence of any ongoing violations of federal law. Lastly, Defendants argue that they are entitled to termination of the Consent Decree under United States v. City of Miami, 2 F.3d 1497, 1508 (11th Cir. 1993) because the basic purpose of the decree has been fully achieved and there is no significant chance of recurring violations once the decree is lifted. In their supplemental motion to terminate (Doc. No. 1414), Defendants reiterate the

arguments in their original motion and further state that the hospital closure now renders moot the legal access claim, the community exit criteria, and all but arguably two paragraphs of the consent decree. Defendants further assert that those remaining provisions of the consent decree dealing with the community are short-term commitments that have been completed, or are exhortatory and unenforceable, or are so closely linked to the hospital that they do not remain viable after the hospital closure.

In their responses to Defendants' motions, Plaintiffs assert that Defendants erroneously rely on the Court's June 28, 2001 order in the intervener's case to show compliance with the consent decree and exit criteria stipulation as that issue was not before the Court in the non jury trial. Plaintiffs also assert that there is no basis to vacate the consent decree and exit criteria stipulation because Defendants have failed to demonstrate compliance which satisfies the basic purpose of the consent decree. Plaintiffs agree that the hospital closure renders moot most, but not all, of the provisions of the Consent Decree. Specifically, Plaintiffs agree that the hospital closure renders moot that part of the Consent Decree and Exit Criteria pertaining to both Defendants' hospital obligations and to the legal access claim. However, Plaintiffs argue that none of the Community Exit Criteria are rendered moot by the closure. Plaintiffs further assert that this Court has jurisdiction to enforce that part of the Consent Decree and Exit Criteria that remain viable because Defendants have made no showing that the lingering effects of inappropriate hospitalization have been abated.

III. Legal Standard for Termination

In the Eleventh Circuit, the standard for terminating consent decrees is set forth in the cases of and United States v. City of Miami, 2 F.3d 1497, 1508 (11th Cir. 1993) and Allen v.

Alabama State Bd. of Ed., 164 F.3d 1347, 1350 (11th Cir. 1999).¹ The Court finds these cases more applicable to the issue of termination than Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367 (1992) as that case dealt specifically with modification of a consent decree. In Rufo, the Supreme Court held that when a party seeks relief from a consent decree the court must determine whether the circumstances are such that continued enforcement of the decree is still equitable. 502 U.S. at 383. The party seeking modification of the decree shoulders the burden of establishing a significant change in the law or facts that warrants such revision. Id. If the moving party carries its burden, the court must then “consider whether the proposed modification is suitably tailored to the changed circumstances.” Id.

Defendants argue that the Eleventh Circuit has applied Rufo’s equitable considerations in the context of termination. The case Defendants cite, however, did not deal with a termination; that case also concerned a motion to modify a consent decree. See Jacksonville Branch NAACP v. Duval County Sch. Bd., 978 F.2d 1574, 1582 (11th Cir. 1992). As such, the Court will evaluate Defendants’ motion to terminate under the standard set forth in City of Miami and Allen.

In City of Miami, the city entered into a consent decree which prohibited it from discriminating against its employees and prospective employees on the basis of race, sex, or national origin. The union consented to the terms of the decree. The city then implemented its own affirmative action program. 2 F.3d at 1501. Fifteen years after the consent decree was entered, the union filed a motion to vacate or modify, contending that the consent decree had

¹ The Court notes that the Allen opinion was later vacated by stipulation of the parties. 216 F.3d 1263 (11th Cir. 2000). However, the opinion remains persuasive authority as it is a clear pronouncement of this Circuit’s standard for the termination of consent decrees.

served its purpose. The union contended that the decree “in its current form is no longer directed at correcting actual discrimination or the effects of actual discrimination. Rather, the City has institutionalized [sic] a quota system that unduly infringes the interest of employees not benefitting from the plan.” *Id.* at 1502. The district court denied the union’s motion to vacate or modify the decree, holding that the union “had not presented ‘an evidentiary or legal basis’ for such action.” *Id.* at 1503. The Eleventh Circuit vacated the district court’s order and remanded the case to the district court for review in light of recent Supreme Court decisions articulating “legal principles. . . applicable to requirements to terminate or modify consent decrees” in cases concerning public institutions. *Id.* at 1498.

The Eleventh Circuit emphasized that the Supreme Court had recently “articulated more flexible standards to be applied to consent decrees which were entered . . . to amicably [redress] statutory and constitutional wrongs committed against individuals by public institutions.” *Id.* at 1503 (citing Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367 (1992)). The Court explained the standard under Rufo for determining whether a consent decree should be modified. However, the Eleventh Circuit stated that in determining whether a consent decree should be terminated, the Supreme Court’s decision in Board of Ed. of Oklahoma City Pub. Schs. v. Dowell, 498 U.S. 237 (1991) was instructive. City of Miami, 2 F.3d at 1505. In remanding the case back to the district court, the Court of Appeals stated that “termination of the consent decree would be appropriate if the district court finds that the decree is clearly no longer necessary either to prevent discrimination in the future or to remedy the effects of past discrimination.” *Id.* at 1508.

Later the Eleventh Circuit more clearly and succinctly articulated the standard for

termination of consent decrees in Allen v. Alabama State Bd. of Ed., 164 F.3d 1347, 1350 (11th Cir. 1999). Citing City of Miami and Dowell, the Court stated that a party seeking termination of a consent decree under Federal Rule of Civil Procedure 60(b)(5) bears the burden of showing that (1) “the basic purposes of the decree have been fully achieved” and (2) “that there is no significant likelihood of recurring violations of federal law once the decree has been lifted.” Allen, 164 F.3d at 1350.

IV. Consent Decree and Exit Criteria Stipulation

The Court must first identify the basic purposes of the Consent Decree. Looking to both the Third Amended Complaint and the Consent Decree, it is clear that Plaintiffs were primarily concerned with two issues: conditions at the hospital and the inappropriate placement of patients at GPW rather than in less restrictive facilities in their communities. The provisions of the consent decree concern either the hospital or community placement.

As an initial matter, the parties agree that those provisions of the Consent Decree and Exit Criteria Stipulation pertaining to the hospital and legal access have been rendered moot by the closing of the hospital. The Court likewise finds that the hospital closure renders these provisions moot. Accordingly, Defendants’ motion to terminate the Consent Decree and Exit Criteria Stipulation is **GRANTED** to the extent that those provisions concerning the hospital are hereby terminated. The closure of the hospital leaves for the Court the determination of whether the remaining community placement provisions, specifically Consent Decree paragraphs 2, 37, and 35 as it pertains to the monitoring of compliance with paragraphs 2 and 37², and the

² Paragraph 2 sets forth that

Beginning February 20, 1989, the defendant will assign clients to living

Community Compliance Exit Criteria,³ should be terminated as well.

A. Basic Purpose of the Decree as to Community Placement and Achievement

In determining whether the basic purpose of appropriate community placement has been achieved, the Court should consider Defendants' "progress or lack thereof" toward that goal. City

units according to their functional levels and specialized program needs based on what is therapeutically appropriate for each client. As community facilities become available, based on specific additional, legislative appropriations, this shall include moving residents from (1) more to less structured living; (2) larger to smaller living facilities; (3) group to individual residence; (4) segregated from the community to integrated into community living; (5) dependent to independent living, according to their needs and as more specifically set forth in the Comprehensive Services Plan for the Alcohol, Drug Abuse and Mental Health Program 1989-1993, pages 71-130, attached hereto and incorporated herein by reference.

Paragraph 37 states that

Patients shall be identified as "discharge ready" based upon determination by the treatment team which will include participation of the client and his case manager. Subject to availability by specific additional legislative appropriations, community placement will be made consistent with the availability of services in the GPW catchment area and consistent with need as identified in the Comprehensive Services Plan for Alcohol, Drug Abuse and Mental Health Program, pages 71-130, attached hereto.

³ The language in the Exit Criteria Stipulation makes clear that it serves as the method for measuring Defendants' compliance with hospital based obligations, while the Community Compliance Exit Criteria is the sole and exclusive method for determining Defendants' performance and completion of community obligations. (Stipulation Regarding Exit Criteria at 2, 7). Plaintiffs do not explicitly concede that the only viable remnant of the Exit Criteria Stipulation is the Community Compliance Exit Criteria, attached as Exhibit 1, but they agree with Defendants as to the mootness of those provisions of the Consent Decree concerning the hospital and legal access claim. The language of the Consent Decree, coupled with Plaintiffs' arguments concerning the viability of the community obligations, leads to the conclusion that if the only provisions of the Consent Decree remaining are those concerning Defendants' community obligations, then the only provisions of the Exit Criteria that survive are those which measure Defendants' performance of these community obligations – the Community Compliance Exit Criteria.

of Miami, 2 F.3d at 1508. Also of importance is Defendants' good faith compliance with the decree. Id. Defendants argue that the basic purpose of the decree has been fulfilled as evidenced by the Court's factual findings in its June 28, 2001 Order on the non-jury intervention trial. Furthermore, Defendants argue that there has been no "reliable record evidence" that Defendants have failed to comply with the decree.

In its June 28, 2001 Order, the Court did not make specific findings as to Defendants' compliance with the provisions of the Consent Decree. In fact, the Court made it clear that it was not the purpose of the trial to evaluate Defendants' obligations under the Consent Decree. Nevertheless, as Defendants emphasize, the Court did make findings that Defendants were complying with their community obligations. As to Defendants' community obligations, the Court made the following findings:

"Upon discharge from GPW, patients are provided several community placement options, (such as family homes, private apartments, assisted living facilities, etc.), according to their needs and abilities." (Doc. No. 1319 at 18)

"The defendants in this matter are placing persons with mental disabilities in community settings rather than in institutions when the relevant treatment professionals have determined that community placement is appropriate" Id.

"Further, the community settings in which patients are placed are integrated and less restrictive than a hospital or institutional setting." Id. at 19.

"The defendants are providing an appropriate array and intensity of community services." Id. at 20.

"...all aspects of the defendants' provision of community services comply with accepted professional standards of care." Id. at 23.

Based on these factual findings, it appears that at the time of trial Defendants had fulfilled the basic purposes of the consent decree as it applies to the community obligations. Specifically, these findings indicate a good faith compliance with the provisions of the consent decree and progress toward the goal of discharging those patients identified as ‘discharge ready’ into appropriate community facilities. Nevertheless, patients continued to be discharged from GPW and placed in the community after the conclusion of the trial in September of 2000 until the last patient was discharged in February of 2002. Although the first prong of the standard for termination appears to have been met, the Court still must consider whether Defendants have shown that they have met the second prong: whether there is a significant likelihood of recurring violations once the decree is lifted.

B. Likelihood of Recurring Violations

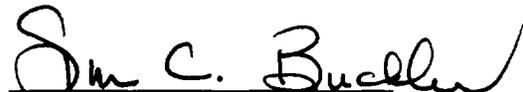
Under the second prong of the standard for termination, Defendants must demonstrate that there is no significant likelihood of recurring violations once the decree is lifted. Allen, 164 F.3d at 1350. Defendants assert that “the Court’s detailed findings demonstrate that there is little likelihood of slippage in care and conditions.” (Doc. No. 1327 at 21). Defendants further argue that they “have no federal law obligations to provide any level of care or safety in the community – people are not in the defendants’ physical custody there.” Id. Defendants cite D.W. v. Rogers, 113 F.3d 1214 (11th Cir. 1997), in support of their argument that they had no obligation to provide the discharged residents with treatment or to ensure that these individuals received care or safety once discharged. D.W., however, did not involve parties who freely entered into a consent decree, binding themselves to obligations to which they voluntarily agreed.

While the Court’s factual findings in its June 28, 2001 Order do indicate that the basic

purposes of the Consent Decree have been achieved, these findings do not indicate that there is no significant likelihood of recurring violations in light of the fact that a great number of patients were discharged after the Court made its findings. In order for the Court to find no such likelihood exists, it is necessary that the Court evaluate Defendants' performance under the Community Compliance Exit Criteria, which the parties stipulated as the method of measuring Defendants' compliance with its community obligations to ensure that those individuals discharged after the Court made its findings in its June 28, 2001 Order were similarly placed in appropriate community settings. Because there is no evidence before the Court that these individuals were discharged into community facilities in compliance with the Community Compliance Exit Criteria, the Court cannot find that there is no significant likelihood of recurring violations of federal law once the decree has been lifted.

Accordingly, it is **ORDERED AND ADJUDGED** that Defendants' Motion to Terminate the Consent Decree and Exit Criteria and Supplemental Motion to Terminate the Consent Decree and Exit Criteria (Doc. Nos. 1327 and 1414) are **GRANTED IN PART, DENIED IN PART**: to the extent the motions seek to terminate Consent Decree paragraphs 2, 37, and 35 as it pertains to the monitoring of Defendants' community obligations, and the Community Compliance Exit Criteria, the motions are **DENIED**; otherwise, the motions are **GRANTED**.

DONE AND ORDERED at Tampa, Florida this 3rd day of June, 2002.


SUSAN C. BUCKLEW
United States District Judge

**Copies to: Counsel of Record
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Date Printed: 06/03/2002

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