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United States District Court,
W.D. Tennessee,
Western Division.

UNITED STATES of America, Plaintiff,
v.
State of TENNESSEE, Defendants,
and
People First of Tennessee, Parent–Guardian Association of Arlington Developmental Center, Intervenors.

No. 92–2062.
|
Feb. 18, 2009.

Attorneys and Law Firms

Amin Aminfar, Robert A. Koch, Corey M. Sanders, Matthew Donnelly, R. Jonas Geissler, Michelle Anne Jones, United States Department of Justice, Washington, DC, Joe A. Dycus, U.S. Attorney's Office, Memphis, TN, for Plaintiff.

Charles J. Cooper, Michael W. Kirk, Nicole J. Moss, David Lehn, Derek L. Shaffer, Jesse Panuccio, Cooper & Kirk, PLLC, Washington, DC, Dianne Stamey Dycus, Attorney General and Reporter, Nashville, Jonathan P. Lakey, Pietrangelo Cook, Memphis, TN, for Defendants.

Earle J. Schwarz, The Offices Of Earle J. Schwarz, Memphis, Jack W. Derryberry, Jr., Ward, Derryberry & Thompson, Nashville, TN, Judith A. Gran, Reisman Carolla Gran, LLP, Haddonfield, NJ, for Intervenors.

ORDER DENYING DEFENDANTS' MOTION TO VACATE ALL OUTSTANDING INJUNCTIVE RELIEF AND TO DISMISS THE CASE

BERNICE BOUIE DONALD, District Judge.

***1** Before the Court is the motion of Defendants State of Tennessee *et al.* ("Defendants") to vacate all outstanding injunctive relief and to dismiss the case. (D.E.# 2280, 2316.) Plaintiff United States of America as well as Intervenors People First of Tennessee ("People First") and the West Tennessee Parent–Guardian Association ("PGA")[1] have each filed opposition to Defendants' motion. (D.E.# 2301, 2304, 2306, 2322, 2318.) For the reasons stated herein, Defendants' motion is **DENIED.**

I. BACKGROUND[2]

This case concerns living conditions at Arlington Developmental Center ("Arlington"), a residential facility owned and operated by the State of Tennessee. *See United States v. State of Tennessee,* 798 F.Supp. 483, 485 (W.D.Tenn.1992)("*Arlington I* "). Arlington's "population consists primarily of individuals currently assessed as severely or profoundly retarded or developmentally disabled, some of whom have associated physical handicaps, and mental or behavioral problems." *United States v. State of Tennessee,* 925 F.Supp. 1292, 1296 (W.D.Tenn.1995)("*Arlington II* "). In January 1992, acting pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997 *et seq.,* the United States filed suit against Defendants alleging that conditions at Arlington were so substandard and dangerous that they violated residents' substantive due process rights under the Fourteenth Amendment. Following a trial on the merits over a two-month period in 1993, this Court found for the United States and concluded that the facility's conditions were below constitutionally minimal standards.[3] (D.E. # 225; 251.) *See Arlington II,* 925 F.Supp. at 1296.

The "remedy phase" has followed and continues to this day. In September 1994, the Court approved a stipulated remedial plan entered into between the United States and Tennessee, which set forth a schedule for compliance and provided for the appointment of a court monitor. *Arlington* II, 925 F.Supp. at 1297. (D.E. # 338: Remedial Order.) For failing to comply with this plan, the Court found Defendants in civil contempt in 1995. *Arlington II,* 925 F.Supp. at 1314–15. This resulted in further efforts to bring Arlington into compliance. In 1995, the Court also certified a plaintiff class[4] in the related case of *People First of Tennessee v. State of Tennessee,* Case No. 92–2213 (W.D.Tenn.), allowed Intervenors to join in the instant case, and extended the relief in this case to the

plaintiff class in *People First.*[5] The Court adopted a "community plan" in August 1997 aimed at addressing the needs of the *People First* class members. (D.E. # 753: Order on Community Plan for West Tennessee.) Although the State of Tennessee appealed, the Sixth Circuit Court of Appeals affirmed the Court's decision. *United States v. Tennessee,* 181 F.3d 105 (Table), 1999 WL 357785 (6th Cir.1999). The Court again found Defendants to be in contempt in 1999. (D.E. # 1088: Memorandum Opinion & Order.) The State then assumed additional obligations by entering into another agreed order. (D.E. # 1116: Agreed Order.)

***2** In 2000, a protracted phase of activity began related to the provision of services to members of the plaintiff class through a newly-formed nonprofit corporation, Community Services Network of West Tennessee.[6] Ultimately, after years of further litigation, the parties agreed to a Settlement Agreement on May 16, 2006, which the Court approved by orders entered on February 15, 2007 and September 11, 2007. (D.E. # 2174: All–Party Consent Order to Motion to Approve 2006 Settlement Agreement; D.E. # 2209: Consent Order in Conjunction with the Approval of 2006 Settlement Agreement.) Now, Defendants have moved to vacate all relief ordered by the Court and to dismiss this case in its entirety. In their brief supporting this motion, Defendants describe in detail the substantial expenses the State incurs as a result of the Court's remedial orders. (D.E.# 2280–2.) According to Defendants, these expenditures are greatly disproportionate to the expenditures being made on behalf of similarly situated mentally retarded individuals located in Middle and East Tennessee. (*Id.*) If the Court were to vacate its previous orders and dismiss this case, Defendants state that they would proceed with closure of Arlington, replace it with several community homes, and open a resource center for the mentally retarded in West Tennessee. (*Id.*)

II. LEGAL STANDARD

Defendants bring their motion pursuant to Rule 60(b) of the Federal Rules of Civil Procedure.[7] They do not specify under which of the six subparts of Rule 60(b) they seek relief. Generally, courts apply Rule 60(b)(5)—which authorizes relief from a judgment whose prospective application is no longer equitable—when considering modification or termination of consent decrees and injunctive relief imposed upon governmental entities. *See, e.g., Agostini v. Felton,* 521 U.S. 203, 240, 117 S.Ct. 1997, 138 L.Ed.2d 391 (1997) (using Fed.R.Civ.P. 60(b)(5) to vacate previously entered injunction); *Doe v. Briley,* 511 F.Supp.2d 904, 910 (M.D.Tenn.2007) (citations omitted) (noting that Fed.R.Civ.P. 60(b)(5) applies to modifications of consent decrees); *Brinkman v. Gilligan,* 85 F.Supp.2d 761, 775 (S.D.Ohio 1999)(applying standard of Fed.R.Civ.P. 60(b)(5) to modification of consent decree). It has been noted that "there exists a strong argument that Rule 60(b)(6) applies to consent decrees in addition to Rule 60(b)(5)." *Briley,* 511 F.Supp.2d at 912. The Court concludes that its analysis of this case would be the same irrespective of whether Defendants' motion is considered under Rule 60(b)(5) or Rule 60(b)(6).

In the context of institutional reform litigation, the United States Supreme Court has held that courts must employ a flexible standard in considering requests for relief from prior judicial orders. *Rufo v. Inmates of Suffolk County Jail,* 502 U.S. 367, 383, 112 S.Ct. 748, 116 L.Ed.2d 867 (1992). Thus, the party seeking relief "bears the burden of establishing that a significant change in circumstances warrants" the modification being sought. *Id.* If a significant change is established, then "the court should consider whether the proposed modification is suitably tailored to the changed circumstance." *Id.; cf. Kalamazoo River Study Group v. Rockwell Int'l Corp.,* 355 F.3d 574, 588 (6th Cir.2004)(noting that *Rufo* 's standard is generally limited to "consent decrees, declaratory judgments, and injunctions, which often require ongoing court supervision and future judicial involvement"). Continued imposition of an order directing this kind of continued prospective relief must be justified by the equities of the particular case. *See Sweeton v. Brown,* 27 F.3d 1162, 1164 (6th Cir.1994) (en banc). "One predicate for altering an injunction or consent decree ... is a change in law—new court decisions or statutes that make legal what once had been illegal." *Associated Builders & Contractors v. Michigan Dep't of Labor and Econ. Growth,* 543 F.3d 275, 278 (6th Cir.2008); *see Deja Vu of Nashville, Inc. v. Metro. Gov't of Nashville & Davidson County,* 466 F.3d 391, 395 (6th Cir.2006)(citing *Sweeton,* 27 F.3d at 1164). Although a hearing is required in order to modify a consent decree or injunction when another party objects to the modification, the trial court may reject a modification without a hearing. *United States v. Wayne County,* 369 F.3d 508, 512 (6th Cir.2004).

III. ANALYSIS

***3** In their motion, Defendants take the position that changes in the law have eroded the legal foundation upon which this Court's prior orders have been based. According to Defendants, at the time this case was filed, the substantive due process rights of the voluntarily committed presented an unsettled legal question. Now, they contend, federal courts of appeals have made clear that those who are voluntarily committed in a government facility have no substantive due process rights to minimally adequate levels of food, shelter, clothing, and medical care. Instead, only the involuntarily committed possess these substantive due process rights. Defendants assert that the residents of Arlington are all present at the facility voluntarily. Thus, according to Defendants, because the Court's remedial orders are all premised on the existence of a right that the law now makes clear does not exist, the Court must vacate all injunctive relief and dismiss this case.

Defendants rely upon two sources of authority to argue that there has been a change in law—law from other circuits and *Higgs v. Latham,* 946 F.2d 895 (Table), 1991 WL 216464 (6th Cir.1991), an unpublished opinion of the Sixth Circuit from 1991 that Defendants contend was previously unavailable for citation under a prior Sixth Circuit local rule.[8] Defendants do not argue that either the United States Supreme Court or the United States Court of Appeals for the Sixth Circuit has recently issued controlling decisions which bring about a fundamental change in law. As will be seen, the Court finds that neither law from other circuits nor *Higgs* is availing for Defendants.

Defendants are correct that liability in this case ultimately rests upon Arlington residents' substantive due process rights under the Fourteenth Amendment as articulated by the Supreme Court in *Youngberg v. Romeo,* 457 U.S. 307, 102 S.Ct. 2452, 73 L.Ed.2d 28 (1982). *See Arlington I,* 798 F.Supp. at 486–87. Defendants are further correct in noting that decisions from other circuits have frequently considered the voluntariness of a committal to a state facility in determining what rights the state owes the individual once in its care and custody. *See, e.g., Torisky v. Schweiker,* 446 F.3d 438, 446 (3d Cir.2006)("[A] custodial relationship created merely by an individual's voluntary submission to state custody is not a 'deprivation of liberty' sufficient to trigger the protections of *Youngberg.*"); *Walton v. Alexander,* 44 F.3d 1297, 1304 (5th Cir.1995)(en banc) ("[T]he state creates a 'special relationship' with a person only when the person is involuntarily taken into state custody and held against his will through the affirmative power of the state; otherwise, the state has no duty arising under the Constitution to protect its citizens against harm by private actors."); *Monahan v. Dorchester Counseling Ctr.,* 961 F.2d 987, 992 (1st Cir.1992)("The state not having restrained [plaintiff] 'against his will,' the Constitution did not impose upon it any responsibility for his safety and well-being.") (italics in original removed) (citing *DeShaney v. Winnebago County Dep't of Soc. Servs.,* 489 U.S. 189, 199–200, 109 S.Ct. 998, 103 L.Ed.2d 249 (1989)).

***4** It is Defendants' argument that Arlington residents are voluntarily committed, however, that fails. Defendants attempt to rely upon Tenn.Code Ann. § 33–5–303, which reads as follows:

> In the case of a person admitted under § 33–5–301, a parent or legal guardian of a child with developmental disability on behalf of the child, a conservator of a person with developmental disability on behalf of the person, or a person with developmental disability who was admitted on the person's own application and does not lack capacity under § 33–3–218 may request discharge from a developmental center at any time by filing a request with the chief officer of the developmental center. If the person cannot file a written request, anyone acting on the person's behalf may file the request with the person's consent. The chief officer shall discharge the person with developmental disability within twelve (12) hours after receipt of the request or at the time stated in the request, whichever is later.

Tenn.Code Ann. § 33–5–303. This stature does require the discharge of persons under certain circumstances.[9] It, however, only absolutely guarantees discharges for those persons who admitted themselves and who do not "lack capacity" as defined by Tennessee law. The actual desires of an individual who has been determined to lack capacity

and who is under the care of a parent, legal guardian, or conservator[10] are themselves of no consequence under this statute and would have to be effected through another, such as the person's conservator.

As noted by People First in its response, Sixth Circuit case law deems an ostensibly "voluntary" committal to in fact be "involuntary" when the committal was instigated by another on the person's behalf. In *Doe v. Austin,* 848 F.2d 1386 (6th Cir.1988), the Sixth Circuit held that "the commitment of mentally retarded adults by the Commonwealth [of Kentucky] upon application by a parent or guardian is to be considered involuntary." *Id.* at 1392. The Court of Appeals explained that the decision of the state to deem a commitment "voluntary" simply because it was undertaken by someone legally empowered to act for the individual committed does not actually make the commitment "voluntary" in fact. *Id.* Likewise, the same logic precludes finding that a person has an absolute right to a discharge when the person's request for a discharge would have to come by way of a conservator or other legal representative. *See Torisky,* 446 F.3d at 447–48 (discussing extensively formally voluntary commitments that are really de *facto* involuntary commitments).

In the instant case, Defendants have not argued or attempted to demonstrate that the residents who remain at Arlington personally admitted themselves and are not under the care of a parent, guardian, or conservator. To the contrary, it appears that most of Arlington's residents are there because of placement by another. *See Arlington I,* 798 F.Supp. at 487. Given that Defendants have not shown that Arlington's residents have themselves made a decision to enter or remain, Tenn.Code Ann. § 33–5–303 does not suffice to render voluntary the continued presence at Arlington of its residents. Accordingly, Defendants' reliance upon case law arguably limiting the substantive due process rights of those who are voluntarily in state custody does not allow relief.

***5** In addition to their argument that decisions from other circuits have converged into a consensus, Defendants contend that changes to the Sixth Circuit's local rules, which had discouraged citation to unpublished authorities, now make available for citation the unpublished Sixth Circuit decision in *Higgs v. Latham,* 946 F.2d 895 (Table), 1991 WL 216464 (6th Cir.1991).[11] Consideration of *Higgs,* though, would not alter this Court's decision. In *Higgs,* a plaintiff alleged that she had been sexually assaulted by a fellow patient while in a state hospital. *Id.* at * 1. A majority of the panel concluded that the victim had voluntarily committed herself.[12] *Id.* at *5. This case is therefore of little value in determining the scope of rights owed to those who are involuntarily committed.

Furthermore, even if Arlington's residents were in the facility voluntarily, this fact would at most relieve Defendants of only some—but not all—of their obligations under the Fourteenth Amendment. Even if an individual is voluntarily in state care, a state may not, for example, affirmatively place the person in a position to be harmed or exceed the scope of the person's consent to treatment. *See, e.g., Lanman v. Hinson,* 529 F.3d 673, 681–83 (6th Cir.2008); *id.* at 688–89 ("[T]he voluntary/involuntary distinction, while perhaps relevant to whether the state has the duty to protect patients from third-party harm, is irrelevant to the right of individuals, whatever their status, to be free from physical abuse at the hands of the State."); *Kallstrom v. City of Columbus,* 136 F.3d 1055, 1065–67 (6th Cir.1998)("[W]hile the state generally does not shoulder an affirmative duty to protect its citizens from private acts of violence, it may not cause or greatly increase the risk of harm to its citizens without due process of law through its own affirmative acts."). At times over the history of this case, the Court has found that conditions at Arlington have presented serious and immediate threats to the lives of Arlington's residents. (*See, e.g.,* D.E. # 388: "Order on Contempt Petition" signed March 31, 1995; D.E. # 409: "Order" signed July 21, 1995.) Thus, even assuming that Arlington's residents could be deemed to be present voluntarily and that Defendants are correct in arguing that this fact removes any affirmative obligations under the Fourteenth Amendment, the question for the Court would be how the existing injunctive relief should be tailored to address the more narrow federal concerns now presented by the facility's conditions. That, however, is not what Defendants have sought in their motion.

As it has found no change in law meriting relief under Rule 60(b), the Court need not address the other arguments raised by the parties opposing Defendants' motion to vacate and dismiss. Among those arguments is the contention that Defendants have not filed their motion within a "reasonable time" as required by Rule 60(c)(1). *See* Fed.R.Civ.P. 60(c)(1) ("A motion under Rule 60(b) must be made within a reasonable time[.]"). The Court, though, does not base its denial on any lack of timeliness by Defendants. Additionally, the Court notes that Defendants' brief in support of this motion describes in great detail the financial and administrative burdens that the Court's orders are placing upon the State of Tennessee. But, Defendants' motion sought relief only on

the grounds that there has been a change in the law, not on any changes in factual circumstances.

IV. CONCLUSION

***6** For the reasons stated above, the Court finds that Defendants have not established the existence of a change in law and therefore have not stated a basis for relief under Fed.R.Civ.P. 60(b). Accordingly, Defendants' motion to dismiss and to vacate is **DENIED.**

IT IS SO ORDERED.

All Citations

Not Reported in F.Supp.2d, 2009 WL 8739431

Footnotes

[1] The Court will use "Intervenors" to refer to People First and the PGA collectively.

[2] The summary provided here is for context only and is not intended to be exhaustive.

[3] Part of the Court's ruling also concerned Defendants' liability under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq.,* related to the provision of education to children residing at Arlington. It appears uncontested by the parties that there are no longer any children at Arlington and that this part of the Court's ruling is now irrelevant.

[4] The Court defined the plaintiff class to include not only current (and certain former) residents of Arlington but also "all persons at risk of being placed" at Arlington. (*People First,* Case No. 92–2213, D.E. # 305.)

[5] *See* D.E. # 305 and D.E. # 306 in Case No. 92–2213.

[6] This case was transferred to the undersigned judge from the Honorable Jon P. McCalla in 2000.

[7] Defendants' motion also cites Fed.R.Civ.P. 12(b)(6) as a basis for their motion, but since Defendants seek relief from orders already entered, the motion should be considered under Rule 60(b).

[8] The Sixth Circuit's local rules formerly disfavored citation to opinions not selected for publication, but Rule 28(f) has liberalized the Circuit's rules regarding citation to unpublished opinions. *See* 6th Cir. R. 28(f) (2009); *see also* Fed. R.App. P. 32.1(b).

[9] The Tennessee General Assembly first enacted language requiring a discharge upon application within twelve hours in 1993. *See* 1993 Tenn. Laws Pub. Ch. 283 (H.B.659).

[10] Tennessee law defines a "conservator" as a "person or persons appointed by the court to provide partial or full supervision, protection and assistance of the person or property, or both, of a disabled person [.]" Tenn.Code Ann. § 34–1–101(4). A "guardian" is a "person or persons appointed by the court to provide partial or full supervision, protection and assistance of the person or property, or both, of a minor[.]" *Id.* § 34–1–101(10). The guardian of a minor who "has previously been determined to be a disabled person" automatically continues as the conservator of the minor upon the minor's eighteenth birthday. *Id.* § 34–2–106(c).

[11] Although Defendants originally erred in believing that *Higgs* had not been cited to Judge McCalla in support of dismissing this case when it first began, they have since acknowledged that they did submit the opinion to the Court for consideration. But, even now unpublished decisions "are not precedentially binding under the doctrine of stare decisis but may be considered for their persuasive value[.]" *United States v. Paull,* 551 F.3d 516, 532 n. 1 (6th Cir.2009)(Griffin, J., concurring in part and dissenting in part).

[12] Judge Suhrheinrich authored a separate concurrence stating that he agreed with the other two judges' decision to affirm the trial court's dismissal of the case, but that he rejected the majority's distinction based on whether the plaintiff had been committed voluntarily or involuntarily. *Higgs,* 1991 WL 216464, at *6 (Suhrheinrich, J., concurring). Instead, he would have held that the state's simple negligence in failing to protect the victim from other patients did not constitute a violation of her Fourteenth Amendment rights. *Id.* at *6–7.