

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CIVIL ACTION NO. 76-1003

FILED

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

PRATT, J.

W. DAVEY, CLERK

E

JOY EVANS, by and through her parents and next friends, BETTY JANE EVANS and HAROLD G. EVANS
4962 12th Street, N.E.
Washington, D.C. 20017,

JOSEPH SCATES, by and through his mother and next friend, VICTORIA SCATES
5908 Southern Avenue, S.E.
Washington, D.C. 20019

VENITA FELTON, by and through her mother and next friend, THERESSA FELTON
114 Joliet Street, S.W. #A
Washington, D.C. 20032,

WILLIAM BROWN, by and through his mother and next friend, RETHA BROWN
1216 Shepherd Street, N.W.
Washington, D.C. 20011

CHRISTINE EXTON, by and through her mother and next friend, ALICE DE GRAFFENREIDT
3359 DuBois Place, S.E.
Washington, D.C. 20019,

JOHN KENNEDY, Jr., by and through his mother and next friend, MARY M. MUSE
2043 Gale Street, S.E.
Washington, D.C. 20018,

Plaintiffs,

v

WALTER E. WASHINGTON, individually and in his capacity as Mayor of the District of Columbia
District Building,
14th and E Streets, N.W.
Washington, D.C. 20001,

LEONARD W. ALLEN, M.D., individually and in his capacity as Chief of the Bureau of Developmental Disabilities, Department of Human Resources for the District of Columbia
1350 E Street, N.W.
Washington, D.C. 20004,

JOSEPH P. YELDELL, individually and in his capacity as Director of the Department of Human Resources for the District of Columbia
1350 E Street, N.W.
Washington, D.C. 20004,

ROLAND J. QUEEN, individually and in his capacity as Director of Forest Haven, at the District of Columbia Children's Center at Laurel, Maryland, under the Department of Human Resources for the District of Columbia
1350 E Street, N.W.
Washington, D.C. 20004,

JEFFERSON R. McALPINE, M.D., individually and in his capacity as Administrator of the Mental Health Administration, Department of Human Resources for the District of Columbia
1350 E Street, N.W.
Washington, D.C. 20004,

Defendants.

76-0293

Come now the plaintiffs and for their cause of action allege the following:

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I
STATEMENT OF THE CASE F. DAVEY, Clerk

1. This is a class action seeking declaratory, injunctive and equitable relief on behalf of the named plaintiffs and all other similarly situated residents of Forest Haven, an institution established for the custody, care, education, training and treatment of substantially retarded persons of the District of Columbia. Plaintiffs allege that they and all others similarly situated are not receiving a constitutionally minimal level of habilitation, a term which incorporates care, treatment, education and training. The treatment, services and habilitation for a person with developmental disabilities should be designed to maximize the developmental potential of the individual, and should be provided in a setting which is least restrictive of the individual's personal liberty. Plaintiffs assert that every individual at Forest Haven has potential for greater development and that the capacities of each resident are not presently being developed to their fullest. Plaintiffs further assert that Forest Haven presently provides only the most meager custodial care which, while a prerequisite for habilitation, does not accomplish the goals of habilitation.

II
JURISDICTION

2. This Court has jurisdiction pursuant to 28 U.S.C. §1331. Claims involved herein arise under the First, Fourth, Fifth and Eighth Amendments to the United States Constitution and under 42 U.S.C. §6001 et. seq. as amended. Such claims exceed \$10,000 exclusive of interest and costs. This Court has pendent jurisdiction to hear claims that may arise under 32 D.C. Code §601 et. seq.

III
DECLARATORY JUDGMENT

3. An actual, substantial controversy now exists between PLAINTIFFS and DEFENDANTS in that PLAINTIFFS contend that the conduct of DEFENDANTS is unlawful and unconstitutional. DEFENDANTS have deliberately subjected PLAINTIFFS and the class they represent to inadequate, improper and impermissible conditions, care and treatment. Furthermore, and in derogation of their rights so secured by law, DEFENDANTS have failed to provide PLAINTIFFS with training and education appropriate to their needs. Unless there is a declaration of the rights of the PLAINTIFFS and of the members of the class they represent, these unlawful acts, practices and omissions of DEFENDANTS will continue. This Court may issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

IV
INJUNCTIVE RELIEF

4. PLAINTIFFS and the class they represent have suffered and will continue to suffer irreparable harm, injury and loss, for which they have no adequate remedy at law, unless DEFENDANTS are restrained from continuing the acts, practices and omissions referred to herein, and unless DEFENDANTS are required to take affirmative actions to dissipate the effects of their unlawful behavior. The Court may issue an injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure.

V
PLAINTIFFS

5. PLAINTIFF JOY EVANS, age 17, brings this action by and through her parents and next friends BETTY JANE EVANS and HAROLD G. EVANS. PLAINTIFF EVANS has been a resident of Forest Haven by civil order of the court since April 1967. PLAINTIFF EVANS suffers from several physical disabilities associated with the disease which has caused her retardation. Especially troublesome are heart complica-

tions, liver damage, and a hernia. These conditions combine to require that PLAINTIFF EVANS be treated in a special manner different from other persons at Forest Haven. Such a treatment program does not exist.

During her first few months of residency at Forest Haven, PLAINTIFF EVANS sustained numerous injuries. In addition, it was necessary for her to be treated by the family's personal physician for an ulcerated skin condition caused by her being restrained on a urine-covered mattress. This condition was neither diagnosed nor treated by medical staff at Forest Haven. In September 1968, PLAINTIFF EVANS was hospitalized at D.C. General Hospital with several injuries whose origin was attributed first to the staff and later to other residents. PLAINTIFF EVANS was discharged from D.C. General Hospital to the care of her parents in November 1968, and she remained at her parents' home until June 1970, when she was returned to Forest Haven. She has since that time suffered lacerations, scratches and bruises, apparently inflicted by other residents. Although she has received one dental examination during her residency at Forest Haven, PLAINTIFF EVANS has received no dental treatment whatsoever.

PLAINTIFF EVANS has had the benefit of approximately eight months of education and training during her residency at Forest Haven; this took place from approximately January through August 1975. She has received no other substantive education or training before or since that time. To the best of her parents' knowledge, there exists no treatment plan of any kind for PLAINTIFF EVANS.

6. PLAINTIFF VENITA FELTON, age 26, brings this action by and through her mother and next friend, THERESSA FELTON. PLAINTIFF FELTON was admitted to Forest Haven by civil court order in May 1955. She remained there until 1965, when she was transferred to

St. Elizabeth's Hospital. She was returned to Forest Haven in 1970, and was again transferred to St. Elizabeth's Hospital in 1971; she remained there until 1973. She has resided at Forest Haven since 1973.

Prior to her initial commitment to Forest Haven in 1955, PLAINTIFF FELTON was able partially to fend for herself, including putting on her socks, brushing her hair, getting drinks of water, and attempting to use the toilet. She has now regressed in all of these areas, although records of her stays at St. Elizabeth's Hospital indicate that she made some progress in some of these areas during her time there.

PLAINTIFF FELTON has been restrained on several occasions. She has suffered various injuries caused by bed strap restraints. On at least three occasions, PLAINTIFF FELTON suffered burns, bruises and lacerations over various parts of her body. PLAINTIFF FELTON has received no dental care whatsoever while a resident at Forest Haven. PLAINTIFF FELTON is so heavily and continually sedated with medication that she often falls asleep during the day. There exists no individual treatment or educational plan for PLAINTIFF FELTON.

Some of PLAINTIFF FELTON's transfers to and from the D.C. Children's Center and St. Elizabeth's Hospital were made without the mother's knowledge or consent.

7. PLAINTIFF CHRISTINE EXTON, age 30, brings this action by and through her mother and next friend, ALICE DE GRAFFENREIDT. PLAINTIFF EXTON was admitted to Forest Haven by civil court order in 1959. She has resided there since that time. When she lived at home, PLAINTIFF EXTON could eat with a fork or spoon; now she eats with her hands. In many other ways, PLAINTIFF EXTON has regressed mentally and physically since residing at Forest Haven.

During her residency at Forest Haven, PLAINTIFF EXTON has suffered numerous physical injuries, including a torn ear, apparently caused by another resident. She has suffered from an apparent nutritional disorder and required hospitalization in May 1975, in order to treat extensive dental problems. PLAINTIFF EXTON frequently appears jittery and nervous as a result of over-medication. PLAINTIFF EXTON has been allowed, along with other women in her unit, to remain nude in the presence of male counselors and staff. PLAINTIFF EXTON has not received any training whatsoever, or any mental health treatment during her residency at Forest Haven.

8. PLAINTIFF JOSEPH SCATES, age 21, brings this action by and through his mother and next friend, VICTORIA SCATES. PLAINTIFF SCATES was admitted to Forest Haven by civil court order in 1969; he has resided there since that time. Before his residency began at Forest Haven, PLAINTIFF SCATES was able to bathe himself and spell simple words; now he has lost these skills. Although he was a lively and active child before 1969, he is now generally sleepy and listless, apparently due to heavy sedation. He is presently not attending school and is not receiving any form of education or treatment.

PLAINTIFF SCATES has suffered welts and bruises on his legs as the result of beatings; his teeth were knocked into his gums in 1974. In 1974, PLAINTIFF SCATES's arms and shoulders received cigarette burns. During the summer of 1975, he suffered severe burns as the result of hot water being sprayed on him in the shower room. The mother has never been notified of these injuries to her son by officials at Forest Haven, but discovered them when she visited him there. In at least one instance, PLAINTIFF SCATES was treated by a private physician at the initiative of his mother. PLAINTIFF SCATES' teeth are presently in need of dental care.

9. PLAINTIFF WILLIAM BROWN, age 13, brings this action by and through his mother and next friend, RETHA BROWN. PLAINTIFF BROWN was committed to Forest Haven by civil court order in 1967. While he has not resided at Forest Haven continuously, he has spent substantial periods of time there. Prior to his more recent residency at Forest Haven, PLAINTIFF BROWN could read at the third grade level, hang up his own clothing, and cook simple meals. He has now significantly regressed in his abilities to do these tasks.

PLAINTIFF BROWN has experienced heightened sexual impulses as he approached adolescence. While at Forest Haven, he was denied social contact with females. He developed aggressive homosexual tendencies and began to think of himself as a female. PLAINTIFF BROWN did not receive any counseling or treatment during his residency at Forest Haven, except on one occasion in December 1974. The lack of recreational or other therapy has caused PLAINTIFF BROWN to become overly concerned with sex.

During PLAINTIFF BROWN's second residency at Forest Haven, his mother's visiting privileges were restricted to Sunday. He was provided by staff at Forest Haven with clothing which was ragged or too small. New clothing brought him by his mother disappeared. PLAINTIFF BROWN was continually denied enough food considering his height and weight.

10. PLAINTIFF JOHN KENNEDY, Jr., age 23, brings this action by and through his mother and next friend MARY M. MUSE. PLAINTIFF KENNEDY was committed to Forest Haven by civil court order in approximately 1960. He resided there until approximately 1968, when he was put on an extended leave status. His mother was told to keep him as long as she could control him. He has been returned to Forest Haven several times in the past few years. PLAINTIFF KENNEDY is presently confined in Lorton Reformatory.

PLAINTIFF KENNEDY received psychological testing at the time of his admission to Forest Haven; he has received no testing since that time. While a resident at Forest Haven, PLAINTIFF KENNEDY received no educational, vocational, or other training, or any mental health treatment. In addition, PLAINTIFF KENNEDY experienced problems with the staff and was punished with extended periods of confinement in a separate residence.

Since PLAINTIFF KENNEDY has been placed on extended leave, his mother has made extensive efforts through Forest Haven, as well as through the Department of Vocational Rehabilitation and several other sources, to secure vocational and educational training for her son. During this time, DEFENDANTS have failed to provide PLAINTIFF KENNEDY with suitable training and treatment. As a result, PLAINTIFF KENNEDY has been left on his own and has developed a criminal record. DEFENDANTS claim that there is no program to help their ward, PLAINTIFF KENNEDY. Because of this claim, PLAINTIFF KENNEDY has been ordered by a court to be transferred to a federal rehabilitation center in Springfield, Missouri.

VI
DEFENDANTS

11. DEFENDANT WALTER E. WASHINGTON is sued individually and in his official capacity as Mayor of the District of Columbia. He exercises overall responsibility for the operation of all public institutions.

12. DEFENDANT JOSEPH P. YELDELL is sued individually and in his official capacity as Director of the Department of Human Resources. He conducts comprehensive planning with respect to his office and coordinates the activities and programs for the health services in the District of Columbia.

13. DEFENDANT JEFFERSON R. McALPINE, M.D., is sued individually and in his official capacity as Director of the Mental Health Ad-

ministration. As such, he is responsible for providing the supervision and control of public facilities pertaining to the mental health of the citizens of the District of Columbia.

14. DEFENDANT LEONARD W. ALLEN, M.D., is sued individually and in his official capacity as Chief of the Bureau of Developmental Disabilities, in the Department of Human Resources for the District of Columbia. He is responsible for oversight of the development of facilities and programs for those citizens of the District of Columbia who have developmental disabilities.

15. DEFENDANT ROLAND J. QUEEN is sued individually and in his official capacity as Superintendent of Forest Haven. As such, he is the chief executive officer of the institution and is charged with the responsibility for its overall operation.

VII
CLASS ACTION

16. a. PLAINTIFFS bring this action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure. It is brought on behalf of all residents of Forest Haven both past and present, who could benefit from individual treatment and educational programs appropriate to their needs. The class consists of over 1,000 members and is so numerous that joinder of all its members is impracticable. The named PLAINTIFFS will adequately represent the class as a whole.

b. The claims, age, sex and capacity to benefit from habilitation, including suitable care, treatment, education and training of the named individual PLAINTIFFS, are not precisely identical to each class member. Nevertheless, they are typical and representative of the claims and characteristics of the members of the class. Therefore, the named PLAINTIFFS will adequately represent the interests of all class members.

c. DEFENDANTS have acted or refused to act on grounds generally applicable to the class, thereby making final injunctive relief

and/or corresponding declaratory relief appropriate with respect to the class as a whole.

d. The questions of law and fact common to the class include questions whether the acts, practices, omissions and conditions perpetrated by DEFENDANTS are unconstitutional and impermissible.

e. For the foregoing reasons, it is apparent that a class action is the most appropriate method for adjudicating the claims raised in this action.

VIII
STATEMENT OF FACTS

17.

a. Forest Haven is located in Maryland, twenty-two miles northeast of Washington, D.C. It was built in 1925, and consists of seventeen one- and two-storey buildings in various stages of disrepair and neglect.

b. The least severely retarded residents live in cottages. The most severely retarded residents live in the Curley Building which accommodates approximately two hundred people.

c. The approximately 1050 residents are overwhelmingly black and from low-income backgrounds. The ages parallel those of the community at large, while intellectual functioning ranges from very low to nearly normal. Segregation of the sexes is strictly maintained; partly as a result, homosexuality flourishes.

d. All of the named PLAINTIFFS and almost all of the other residents of Forest Haven have been committed there by order of a civil court.

18. While the purpose of commitment to Forest Haven includes treatment, education and training, residents receive virtually no treatment. No comprehensive habilitation program is designed at the time of admission or at any subsequent time to meet the individual treatment, educational and custodial needs of each resident. This

is true for the residents with other special needs in addition to mental retardation, as well as for those whose needs derive solely from retardation. Frequently, social and personal care skills acquired prior to admission to Forest Haven are lost as a result of a lack of any habilitation programs.

19.

a. Doors are often locked without reason so that the residents' movements are unduly restricted. Residents are forced thereby to regard themselves as prisoners rather than as people in need of special care and treatment.

b. Many Forest Haven residents live in buildings and cottages which are extremely old and poorly designed, creating both fire and safety hazards. Many structures are filthy; only emergency maintenance is performed. Dim lights, broken steps and falling paint add to the depressing atmosphere. The buildings are often either too hot or too cold for the health and comfort of residents.

c. The areas in which most residents live are sparsely furnished and are strikingly devoid of lamps, sofas, rugs, comfortable chairs, pictures, magazines, books, toys, games and the other accoutrements of normal living.

d. Many residents are required to sleep in large, 20-person, barren dormitories; beds have little space between them. Residents have no privacy and no place to keep personal possessions because these large rooms lack partitions and closets.

e. Toilets often do not have seats. There are generally no walls, partitions or curtains between toilets. In some buildings the toilet facilities are kept locked.

f. Residents are often locked in isolation rooms without furnishings other than a vinyl mattress. These rooms lack material on the walls and on the floor which would adequately protect their residents from inadvertent or self-inflicted injury.

g. Dining room facilities are so unsanitary as to discourage any normal person from eating there.

h. Residents or their families often find themselves forced to buy soap and other supplies because of the extreme shortage of supplies provided the residents by officials at the institution.

20.

a. Inadequate staffing at Forest Haven results in the residents being provided with only marginally adequate custodial care.

b. Some residents have been beaten or physically abused by Forest Haven staff; other residents have been beaten or abused, either physically or sexually, by their peers.

c. Because of inadequate staffing at Forest Haven, only a few residents have any opportunity to engage in any kind of schooling, training, recreational or vocational experiences. The vast majority of residents spend their days at Forest Haven in forced inactivity. Many are over-medicated and exhibit such behavior as head-nodding and/or body posturing. These behaviors are more the result of prolonged deprivation than of mental retardation.

d. The number of employees authorized for Forest Haven is markedly inadequate. There are numerous vacancies as a result of a job freeze instituted by DEFENDANTS. Many staff members have left Forest Haven and the institution has not been permitted by those DEFENDANTS to fill the vacancies, a situation unlike that in some other departments within the District of Columbia.

e. In addition, Forest Haven experiences a very high absentee rate. As a result, the number of staff members available to care for residents on a daily basis is substantially less than that listed in the employment records.

f. Forest Haven does not provide an adequate in-service training program for its existing employees. The absence of such a program diminishes the effectiveness of the staff which remains.

21.

a. Forest Haven does not employ sufficient medical and clinical personnel to provide adequate physical and mental health care for its residents.

b. Drugs are frequently used to control patients who are difficult to manage; medication is often administered by unlicensed attendants without medical training. Physical restraints such as straight-jackets and wrist straps are used to excess.

c. Some residents are not promptly treated for their injuries and illnesses. In some cases, no treatment has been given despite requests for it by the residents or their parents. There is apparently no continuing program of health care or prevention, including initial and annual medical, dental and developmental examinations.

d. Dental care is totally inadequate and programs of preventive dental treatment appear to be completely lacking.

e. Residents are not provided an adequate, nutritious and well-balanced diet. Many residents do not get enough to eat; some are unable to eat enough because they are unable to feed themselves. Some residents are not provided with eating utensils.

f. Forest Haven has yet to compile adequate, complete records on every resident. Such records that do exist do not necessarily include the resident's admission history, medical, dental and developmental diagnosis and progress, or the therapeutic and educational goals and achievements during her/his residency at Forest Haven.

g. Neither residents nor their parents are notified in writing of their rights and responsibilities when the resident is admitted to Forest Haven, or at any subsequent time. Major decisions concerning residents are often made by Forest Haven officials without consulting with the parents or the residents.

22. After-care and rehabilitation programs and vocational training for former residents of Forest Haven are non-existent. This results

in severe difficulty for both the former resident and for the parent as each tries to integrate the former resident into the community at large.

23. The District of Columbia Government has budgeted for, and the Congress of the United States has approved, a plan under which Forest Haven's annual budget would be increased from \$8 million to \$16 million for personnel, supplies, and programs, over an eight-year period beginning in the 1974 fiscal year. Congress approved this increase because of widespread protest over conditions at the institution. So far only \$675,000 of the new funds have materialized over the past two years, despite the fact that \$1.2 million the first year and \$2.2 million the second year have been authorized.

24. The Department of Human Resources has either failed to apply for or is ineligible to receive grants from the United States government because of its failure to spend the monies authorized by the actions detailed in paragraph 23 herein. Grants or other funds which might have been available were not in fact forthcoming because the institution failed to comply with appropriate standards.

IX
FIRST CAUSE OF ACTION

25. As a first cause of action, PLAINTIFFS allege as follows:
PLAINTIFFS incorporate by reference paragraphs 17 through 24. The conditions, practices and omissions alleged in paragraphs 17 through 24 constitute a denial of rights guaranteed PLAINTIFFS under the Fifth Amendment to the United States Constitution.

X
SECOND CAUSE OF ACTION

26. As a second cause of action, PLAINTIFFS allege as follows:
PLAINTIFFS incorporate by reference paragraphs 17 through 22.

The conditions, practices and omissions alleged in paragraphs 17 through 22 constitute a denial of rights guaranteed PLAINTIFFS under the Eighth Amendment to the United States Constitution.

XI
THIRD CAUSE OF ACTION

27. As a third cause of action, PLAINTIFFS allege as follows:
PLAINTIFFS incorporate by reference paragraphs 17 through 22. The conditions, practices and omissions alleged in paragraphs 17 through 22 constitute a denial of rights guaranteed PLAINTIFFS under the First Amendment to the United States Constitution.

XII
FOURTH CAUSE OF ACTION

28. As a fourth cause of action, PLAINTIFFS allege as follows:
PLAINTIFFS incorporate by reference paragraphs 17 through 22. The conditions, practices and omissions alleged in paragraphs 17 through 22 constitute a violation of rights guaranteed PLAINTIFFS under the Fourth Amendment to the United States Constitution.

XIII
FIFTH CAUSE OF ACTION

29. As a fifth cause of action, PLAINTIFFS allege as follows:
PLAINTIFFS incorporate by reference paragraphs 17 through 22. The conditions, practices and omissions alleged in paragraphs 17 through 22 constitute a violation of rights guaranteed PLAINTIFFS under the "Developmentally Disabled Assistance and Bill of Rights Act," 42 U.S.C. §6001 et. seq. as amended.

XIV
SIXTH CAUSE OF ACTION

30. As a sixth cause of action, PLAINTIFFS allege as follows:
PLAINTIFFS incorporate by reference paragraphs 17 through 22. The conditions, practices and omissions alleged in paragraphs 17 through 22 constitute violations of 32 D.C. Code §601 et. seq.

XV
PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS, on behalf of themselves and the class they represent, respectfully pray for the following relief:

1. That the Court enter a judgment declaring that Forest Haven does not meet constitutionally minimum standards of adequate habilitation, including care, treatment, education and training. That it further declare that the acts and omissions complained of herein violate the First, Fourth, Fifth and Eighth Amendments to the United States Constitution; 42 U.S.C. §6001 et. seq. and 32 D.C. Code §601 et. seq.
2. That the Court permanently enjoin DEFENDANTS from continuing to operate Forest Haven in a manner which violates the rights of its residents and that the Court require DEFENDANTS to provide for the residents of Forest Haven, such appropriate and additional habilitation as may be necessary to prevent further regression and deterioration they have suffered as a result of being residents at Forest Haven.
3. That the Court maintain continuing jurisdiction of this case.
4. That PLAINTIFFS be awarded the costs of this proceeding.
5. And that the Court order further relief as it deems just and proper.

Respectfully submitted,

JOY EVANS, et. al., Plaintiffs.

By



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