

FILED

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U. S. DISTRICT COURT
NEW HAVEN, CT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

LEO McCOY and WILLIAM McCOY :
by their parents and :
guardians Leo & Esther McCoy :
Plaintiffs, :

CIV. NO. H-85-465 (JAC)

v. :

MICHAEL BELMONT, individually :
and as Superintendent, :
Southbury Training School; :

JEAN GINO, M.D., individually :
and as Medical Director of :
Southbury Training School; :

OFELIA TEE KING, M.D., :
individually; :

PHILADELPO GUEVARRA, M.D. :
individually; :

BRIAN LENSINK, Commissioner :
Connecticut Department of :
Mental Retardation; :

PAUL BRUCH, M.D., :
individually, :

JUNE 9, 1988

Defendants :

THIRD AMENDED COMPLAINT

1. JURISDICTION

1. This action arises under the Constitution and laws of the United States and seeks a declaratory judgment, preliminary and permanent injunctive relief and money damages to redress the deprivation under color of State law of rights secured to plaintiffs by the First, Ninth and Fourteenth

Amendments to the Constitution of the United States, and by Federal laws, in particular 42 U.S.C. Section 1396 et seq. The amount in controversy exceeds Ten Thousand (\$10,000.00) Dollars exclusive of interest and costs.

2. The jurisdiction of this Court is invoked under 28 U.S.C. Sections 1331, 1343, 2201, 2202; 42 U.S.C. Sections 1983, 1985, 1986, and 1988.

II. FACTS

3. Plaintiffs Leo McCoy, Jr., and William McCoy were, at the time of the filing of this lawsuit, twenty-nine-years old and twenty-six-years old respectively and lived at Southbury Training School, Southbury, Connecticut. They have lived at Southbury Training School since about July 22, 1968.

4. Leo and William lived at home with their parents until approximately ages twelve and nine respectively. Their parents strove to keep them at home even though a free public special education or other programs to support the family were unavailable.

5. Because defendants offered no community programs, no support services to the family, no homemaker services, no respite care, no visiting therapists, and no small community residences, the McCoy's had no alternative but to allow their sons' placement at Southbury Training School.

6. At all times relevant to these proceedings the plaintiffs have been incapable of managing their own affairs,

incapable of making informed choices about their care and treatment, unable to initiate legal actions on their own behalf and have been or should have been declared legally incompetent by a Connecticut Probate Court.

7. On or about May 5, 1976, the Southbury Probate Court determined that plaintiff Leo McCoy was incompetent and appointed his parents, Leo and Esther McCoy as guardians. On or about June 16, 1977, the Southbury Probate Court determined that plaintiff William McCoy was incompetent and appointed Mr. and Mrs. McCoy as guardians.

8. During the last seventeen years the plaintiffs have lived in the same cottage at Southbury Training School (Cottage 34). This cottage is certified by State and Federal officials as a facility that meets the program and facility requirements of an intermediate care facility for the mentally retarded (ICFMR) under 42 C.F.R. Section 442.400 et seq. Fifty percent of the cost of care of the plaintiffs is reimbursed under this ICFMR program by the Federal Government.

9. During their stay at Southbury Training School, plaintiffs have received no effective program, and have spent their days sitting or lying on the floor idly with nothing to do.

10. During this period the plaintiffs have been subjected to physical restraint.

11. No programs were available during this period to teach them affirmative skills and appropriate behaviors.

12. As a result of the lack of programs and inadequate supervision by untrained staff, they have received numerous contusions, lacerations, fractures and have regressed and continue to regress in a number of skill areas and to deteriorate physically. Further, the plaintiffs have learned no new affirmative skills.

13. Despite repeated complaints by the parents about inadequate conditions and the lack of programs and services necessary to meet the health and safety needs of their sons to State and Federal officials, defendants have taken no action to provide the decent care and programs their sons so desperately need.

14. The State has not provided plaintiffs with effective specialized services or programs during their stay at Southbury. Such effective programs can be provided only if the state develops the small group homes or other community residences with appropriate staffing and support. To this date the state has failed to develop the necessary community programs.

15. Defendant Michael Belmont, is the former Superintendent of Southbury Training School. He was Superintendent up until after this lawsuit was filed. His successor in office and present Superintendent of Southbury

Training School is Stephen Staugaitis. He is responsible for:

a) the operation and administration of the Training School, and for the custody, control, and provision of adequate care and treatment to all persons admitted to the Training School;

b) authorizing transfers into and out of the Training School from or to another state or private facility for the mentally retarded;

c) placing any mentally retarded person committed or admitted to the Training School in a private boarding home, group home or other residential facility. The Superintendent remains responsible for exercising control over the person after the transfer and for exercising the power to return such a person to the Training School.

16. Defendant Jean Gino, M.D. is the director of Medical Care at the Southbury Training School. As such, she is responsible for ensuring that each resident of Southbury Training School receives medical care comparable to the available to citizens in the community. In the face of these responsibilities Dr. Gino failed to assign physicians and design medical care responsibilities in a way that would ensure that medical problems of residents were appropriately diagnosed and treated. Dr. Gino has also provided medical care and treatment to each of the named plaintiffs on various

occasions.

17. Ofelia Tee King, M.D. is a practicing physician at Southbury Training School and was assigned to provide medical care to the plaintiffs from 1983 through the present. During this period of time Dr. Tee King took no action to diagnose or treat Leo McCoy's scoliosis or William McCoy's hearing and vision problems or medical problems associated with his feeding, bowels and hand-in-mouth behavior. Dr. Tee King is sued in her individual capacity only.

18. Philadelpo Guevarra, is a resident of Southbury, Connecticut and was assigned to provide medical care to the plaintiffs from 1978 - 1983. During this time period Dr. Guevarra took no action to diagnose or treat Leo McCoy's scoliosis or William McCoy's medical problems associated with his vision, hearing, feeding, bowels and hand-in-mouth behavior.

19. Paul Bruch, M.D. was a practicing physician at the Southbury Training School during the period November 1960 through 1986. During this period of time orthopedic medical issues were referred to him for resolution. Other physicians at the Training School routinely referred all orthopedic problems in the Training School to Dr. Bruch and would rely on him to resolve those problems. Pursuant to this practice, Leo McCoy's scoliosis was referred to Dr. Bruch for resolution in 1975 or 1976. Other physicians took no action

to address Leo's orthopedic problems in light of this referral. Although Dr. Bruch became aware of Leo's scoliosis and substantial spinal curvature he took no action to refer Leo to an orthopedic specialist or to provide medical or other necessary specialized interventions to treat Leo's spine or to curtail or halt the progression of his spinal curvature.

20. Defendant Brian Lensink is the Commissioner of the Department of Mental Retardation for the State of Connecticut. He is responsible for:

- a) the planning and development of a complete, comprehensive and integrated statewide program for the mentally retarded;
- b) the implementation of said program;
- c) the coordination of efforts of the Department of Mental Retardation with other state departments and agencies, municipal governments, and private agencies concerned with and providing services for the mentally retarded;
- d) the administration and operation of the state training schools, regional centers, and all state operated community and residential facilities established for diagnosis, care and training of the retarded;
- e) the development of criteria as to the eligibility of any retarded person for residential care in any public or state supported private institution;

f) after considering the recommendation of a properly designated diagnostic agency, he may assign a retarded person to a public or state supported private institution. He may transfer such persons from one institution to another when necessary or desirable for his welfare;

g) Under Connecticut law Commissioner Lensink is properly sued in his official capacity for negligent acts of Department of Mental Retardation (DMR) employees (Connecticut General Statutes Section 19a-24).

21. Southbury Training School is located on the outskirts of Southbury, Connecticut, a small rural community in western Connecticut.

22. Southbury's isolation precludes the use of community resources as an integral part of a training program, to meet health needs, to provide employment or recreation, or as aids in the development of those diversified activities which citizens living in society take for granted.

23. Living and activity space in cottage 34 at Southbury Training School is inadequate in design, insufficient in area and inappropriate in setting. The building is not functional for modern needs. It is dirty and unsanitary, exposing plaintiffs to physical health hazards in addition to occasional odors. Further, there is no natural sunlight in the day hall where plaintiffs spend most of their

waking hours.

24. Cottage 34 at Southbury was designed for mass management and custodial convenience. Plaintiffs spend almost all of their time in large groups in multi-function rooms, which allow no separation of activities, such as would be found in private or group homes or in normal work or recreation places. Plaintiffs are not given the opportunity to experience a variety of environments during the day, as are community members.

25. The physical layout and furnishings of Cottage 34 are devoid of warmth, individuality, or dignity. The living area is sparsely furnished and is without the lamps, sofas, rugs, comfortable chairs, pictures, magazines, and other age-appropriate furnishings associated with normal living. Plaintiffs are denied the developmental, sensory and intellectual stimulation, comfort and pleasure community residents obtain from the usual physical accoutrements in homes, schools, restaurants, workplaces, and recreational facilities.

26. The physical setting in Cottage 34 does not allow privacy, individuality, or freedom of association to plaintiffs. They spend their days in a large "day room".

27. Plaintiffs are deprived of their freedom to choose or reject their associates and to determine when and in what way they relate to their friends.

28. Because of the shortage of staff and the lack of facilities for storage of personal items, the few belongings which plaintiffs own are usually lost, stolen or destroyed within a short period of time. These conditions deprive plaintiffs of their dignity and identity, and also fail to help them develop the self-respect, consideration for others, and understanding of property relationships necessary to functioning in the community.

29. Toilet facilities are inadequate. The Cottage at times has a definite stench of urine.

30. Plaintiffs' personal clothing is routinely lost, and plaintiffs are frequently required to wear improper fitting clothes and underclothes. Plaintiffs are deprived of the personal development, comfort and satisfaction that accompany the right to choose among a selection of appropriate, clean, fitting, seasonable, and attractive personal clothing and to present an appearance similar to other citizens.

31. Staff-resident ratios and staff training are inadequate to provide care, let alone to evoke development and habilitation or to protect plaintiffs from harm. The staffing requirements of recognized authoritative minimum standards are not met.

32. Plaintiffs are not provided with the services, stimulation, and attention necessary to prevent deterioration

of and injury to their physical condition, psychological well-being, and personal development. As a result, plaintiffs regression and physical deterioration continue.

33. Staff-patient ratios and the gross scale of institutional living operate to discourage personal, intimate, primary relationships like those enjoyed in normal living.

34. Defendants have failed to recruit, employ and train direct care and professional personnel in sufficient numbers and have failed to place personnel in an environment where it is possible for them to stimulate and assist in the daily life activities of plaintiffs.

35. Adequate evaluations of plaintiffs' physical, social, psychological, and personal development are not made. Individualized habilitation plans and programs that conform to recognized professional standards are not provided.

36. Defendants have failed to provide periodic review of the effectiveness of said plan or program.

37. Defendants have failed to provide necessary services, including medical and dental care and treatment, nursing care, psychological services, personal care, protective and social work services, physical and occupational therapy, speech pathology and audiology services, recreation, vocational and rehabilitative training.

38. Defendants have failed to provide for each

plaintiff an individualized exit plan for placement in a less restrictive integrated community setting.

39. Plaintiffs spend most of their time in a day room adjoining their sleeping quarters without planned activity, often sitting or lying alone. Rarely are they taken outside unless by their parents during home visits. There is very little interaction between staff and classmembers on the wards. Age-appropriate activities are unavailable.

40. Activities such as eating, toileting, and bathing are often conducted en masse, at predetermined and unchanging times chosen for the convenience of the facility. This regimentation deprives plaintiffs of the normally experienced freedom and dignity of choosing when to attend to their individual daily tasks and interests, and arranging their appearances according to their personal taste.

41. The behavior of plaintiffs may differ from those of other persons, but those differences can be diminished.

42. Plaintiffs, like other persons, vary in their needs, wishes, and abilities, and at different points of life, different activities and environments are appropriate to each person.

43. Southbury Training School has classified plaintiffs once and in the gross, based on a few salient characteristics, with little opportunity for re-evaluation or

change.

44. In Cottage 34 plaintiffs are, by reason of their placement, segregated and isolated from the rest of society. Defendants' actions deprive plaintiffs of the opportunity to interact with non-retired people in non-custodial relationships and in normal community settings.

45. Plaintiffs are denied the experience of observing how other people behave and interact and of learning to carry out age-appropriate and acceptable social behavior and of experiencing the dignity and freedom of living in the community as normally as they may.

46. Plaintiffs are human beings who have feelings, needs, and motivations like other people. They have, to varying degrees, the potential for growth, development, and achievement of self-care and self support. They are capable of benefiting from treatment and habilitative care to maximize their potential and to satisfy their social, emotional and economic needs. For neither of them is institutionalization necessary, either for their habilitation, treatment or care.

47. Plaintiffs could be discharged, given adequate alternative living arrangements with access to appropriate back-up-services.

48. Defendants, by their acts and omissions set out more specifically in paragraphs 1 through 47 above have,

through substantial departures from accepted standards for providing care and services to the individual plaintiffs, directly, proximately, knowingly and intentionally, harmed plaintiffs, and deprived them of their civil rights in one or more of the following respects:

a) Plaintiffs have suffered physical, and emotional harm including, but not limited to, broken bones, lacerations, contusions, muscle contractures, increased curvature of plaintiff Leo McCoy's spine and related damage to internal organs and systems, pain and suffering, hearing loss, poor dental care, loss of skills due to lack of program and decreased life span;

b) plaintiffs have been deprived of their rights to adequate clothing, freedom from harm, to decent, safe, sanitary and humane living conditions, to adequate programming to prevent deterioration and regression and to develop new skills, and loss of First Amendment freedoms;

c) plaintiffs have been deprived of the right to work and participate in society.

49. These injuries have occurred and continue to occur despite the continuous complaints of parents and investigations by state and federal authorities. Significantly, these complaints, and formal findings of the United States Justice Department reveal that conditions at Southbury fail to satisfy the minimum requirements of the

United States Constitution. These complaints are often met by retaliation by officers at Southbury rather than by effective corrective action.

50. Monetary damages and other remedies at law, in and of themselves, are inadequate to remedy all the conditions described above. Plaintiffs have been and will continue to be irreparably harmed by the defendants' conduct described in paragraphs 1 - 49 above.

III. CLAIMS

COUNT I: EQUAL PROTECTION CLAIM

51. By segregating plaintiffs from society, the defendants have violated plaintiffs rights secured by the Equal Protection and Due Process Clauses of the United States Constitution.

COUNT II: DUE PROCESS CLAIMS

52. The acts and omissions of the defendants constitute such a substantial departure from minimum acceptable professional standards as to indicate that no professional judgment was exercised. As such they deny plaintiffs their constitutional rights secured by the Due Process Clause of the United States Constitution:

a) to the habilitation necessary to enable plaintiffs to communicate, associate, and assemble with others of their choice and otherwise to exercise their rights under the First Amendment;

b) to privacy, liberty, dignity, and family integrity under the First, Fifth, Ninth and Fourteenth Amendments;

c) to an individualized habilitation plan and program;

d) to the opportunity to be heard on the appropriateness of the plan, program and environment of treatment;

e) to protection from harm, freedom from restraint, to reasonably safe conditions, to individualized treatment and habilitation to preserve and develop skills in the least restrictive environment under the Due Process Clause of the United States Constitution.

COUNT III: SOCIAL SECURITY ACT CLAIM

53. Defendants have violated plaintiffs' rights secured by the Social Security Act, 42 U.S.C. Section 1396 et seq. and the regulations promulgated thereunder by not providing them necessary treatment, therapies, programs and services to maximize plaintiffs' potential.

COUNT IV: PENDENT STATE CLAIM AS TO DEFENDANTS
GINO, TEE KING, GUEVARRA AND BRUCH

54. As a direct and proximate result of the improper diagnosis and treatment of plaintiffs, no effective treatment or follow-up care for William McCoy's deafness, blindness, feeding, hand-in-mouth and bowel problems or Leo McCoy's scoliosis was obtained.

55. The injuries and losses sustained by the plaintiffs were caused by the failure of the defendants Gino, Tee King,

Guevarra and Bruch to exercise that degree of skill, care and diligence expected of physicians in one or more of the following ways:

- a) they failed to properly monitor plaintiffs' physical status;
- b) they failed to ensure that plaintiffs received adequate medical treatment;
- c) they failed to provide adequate diagnosis in accordance with medical standards accepted in the community;
- d) they failed to request proper medical consultations.

56. As a direct and proximate result of the negligence of defendants Gino, Tee King, Guevarra¹⁷ and Bruch the plaintiffs have suffered extreme anxiety, pain and permanent physical, mental and emotional damages. Virtually all of their physical and mental processes were weakened, their capacity to carry on and enjoy life's activities and their earning capacity were all substantially destroyed. Further, as a result of the negligence of these defendants, plaintiff Leo McCoy's life expectancy has been substantially shortened.

57. The failure of these defendants to exercise reasonable medical care on behalf of the plaintiffs increased the risk of harm to them.

58. The failure to exercise reasonable medical care by these defendants on behalf of the plaintiffs deprived them of the opportunity to obtain timely and appropriate care.

59. As a consequence of these injuries, plaintiffs have spent monies for hospitalization, physical care, medication and medical care, and will be forced to incur substantial medical costs in the future and they have lost earning capacity.

V. RELIEF

WHEREFORE, plaintiffs respectfully request that this Court:

1. Permanently enjoin defendants to provide each plaintiff effective services in the least separate, most integrated, least restrictive community setting appropriate to their needs.
2. Preliminarily and permanently enjoin defendants from transferring plaintiffs from Southbury Training School, Cottage 34, (in William McCoy's case - the infirmary) unless such transfer is to the least separate, most integrated, least restrictive community setting appropriated to their needs, ancillary and necessary services provided.
3. Preliminarily and permanently enjoin defendants to make available in advance of that time and with dispatch the necessary alternative residential facilities and services in the community.
4. Preliminarily and permanently enjoin defendants to develop written individualized habilitation and exit plans for each plaintiff and to provide an individualized

habilitation program for each.

5. Preliminarily and permanently enjoin defendants to make available a friend-advocate to each plaintiff to assist each in securing the substantive and procedural protections aforesaid.

6. Award monetary damages to plaintiffs.


7. Award exemplary and punitive damages to plaintiffs.

8. Award plaintiffs costs and attorneys' fees pursuant to 42 U.S.C. Section 1988.

9. Award plaintiffs such other relief as is necessary to effectuate their rights to effective services in an integrated community setting.

Respectfully submitted,

By


David C. Shaw
Trowbridge, Ide, Courtney & Mansfield, P.C.
207 Main Street
Hartford, Ct 06106