

COMMONWEALTH OF MASSACHUSETTS
Supreme Judicial Court

BRISTOL SS.

~~NO. 07101~~
NO. 06956
~~NO. 07045~~

JUDGE ROTENBERG EDUCATIONAL CENTER, INC.
f/k/a BEHAVIOR RESEARCH INSTITUTE, *et al.*,
Plaintiffs, Appellees,

v.

PHILIP CAMPBELL, IN HIS CAPACITY AS THE
COMMISSIONER OF MENTAL RETARDATION.
Defendant in Contempt Proceeding, Appellant.

ON DIRECT APPELLATE REVIEW FROM
A FINAL JUDGMENT OF THE
BRISTOL SUPERIOR/PROBATE COURT

BRIEF OF JUDGE ROTENBERG EDUCATIONAL CENTER, INC.

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STATEMENT OF THE ISSUES

1. Whether the Trial Court abused its discretion in finding that the Commissioner of Mental Retardation was in contempt of a court-approved Settlement Agreement by violating its express provisions and overall objectives through a course of bad faith regulatory conduct.
2. Whether the Trial Court abused its broad discretion and caused substantial prejudice to the rights of the Commissioner of Mental Retardation in making evidentiary rulings during the course of the three week trial, requiring reversal of the judgment.
3. Whether the Trial Court's 303 detailed Findings of Fact are all clearly erroneous and not supported by the record evidence.
4. Whether the Trial Court abused its discretion in granting equitable relief in the form of a permanent injunction and temporary receivership, and in granting reasonable attorneys' fees as remedies for contempt of the court-approved Settlement Agreement.
5. Whether a Single Justice committed an abuse of discretion in denying relief, pursuant to G. L. c. 211, § 3, in the form of a stay pending appeal.
6. Whether this Court should award the Plaintiffs/Appellees appellate attorneys' fees and costs for defending a frivolous appeal from the judgment of contempt which appeal had no basis in law or in fact for being reversed on appeal, and involves distortions of the trial record.
7. Whether SJC-06956, the appeal from the issuance of a status quo preliminary injunction by the Trial Court, is rendered moot by the entry of final judgment in the underlying contempt action.
8. Whether SJC-07045, the appeal from the modification of two interlocutory orders of the Trial Court by a Single Justice of the Appeals Court, is rendered moot by the entry of final judgment in the underlying contempt action.

STATEMENT OF THE CASE

INTRODUCTION

This appeal consolidates three separate matters as ordered by this Court on March 8, 1996. (S.A. 151).¹ First, there is DMR's appeal after trial from a judgment of contempt and order dated October 6, 1995. (App. 1353). Second, DMR appeals from the issuance of a pre-trial preliminary injunction dated March 24, 1995. (App. 128). Finally, JRC appeals from the modification of the preliminary injunction by a Single Justice of the Appeals Court (*Brown, J.*). (S.A. 137).

A. The Contempt Proceedings

The genesis of this case began on February 28, 1986, when the Behavior Research Institute, now known as the Judge Rotenberg Educational Center, Inc. ("JRC" or "BRI"), and a proposed class of parents acting individually, and on behalf of their children enrolled at JRC, filed a Complaint against the Massachusetts Office for Children and its Director ("OFC"). (App. 52). OFC had issued orders requiring JRC to stop treatments for its severely developmentally disabled student population, closing intake at the school, and threatening suspension of JRC's license. (App. 52). The Complaint asserted civil rights violations and sought injunctive relief for OFC's bad faith regulatory and licensing activities. (App. 52) The action was filed in the Bristol County Probate and Family Court and the late Justice Ernest Rotenberg was specially assigned as a Superior Court Justice to hear all of the claims (the "Trial Court"). (App. 5).

Because of the severe harm being caused to the students, Plaintiffs moved for a preliminary injunction seeking to enjoin OFC from terminating the treatment plans. (App. 81). Following an evidentiary hearing, the Trial Court issued a decision on June 4, 1986 which made extensive findings regarding the

¹ All references to the record herein are referenced as follows: references to the Appendix cited as "App. ___;" references to the Trial Transcript according to volume and consecutive numbered pages therein cited as "Tr. __, __;" references to Uncontested Trial Exhibits and pages therein cited as "U-__, __;" references to Trial Exhibits admitted by JRC and pages therein cited as "JRC-__, __;" references to Trial Exhibits admitted by DMR and pages therein cited as "DMR-__, __;" and references to the Supplemental Appendix submitted by JRC cited as "S.A. ___."

Director's bad faith regulatory practices and granted the requested injunction. (App.107). A Single Justice of the Appeals Court (Greaney, C.J.) denied the Director relief from the preliminary injunction, concluding that there was ample support for the Trial Court's findings of bad faith and the injunction which had been issued. (App. 109-111,113).

Following injunctive relief, BRI, the Plaintiff Class and OFC engaged in settlement discussions which culminated in a Settlement Agreement dated December 12, 1996. ("Settlement Agreement"). (U-2; App. 120,131). The Trial Court approved the Settlement Agreement on January 7, 1987 finding it to be fair and reasonable, and incorporated it as an order of the court. (U-4 S.A. 18). Among its provisions, Part A of the Settlement Agreement provided that treatment decisions for JRC students were to be made by the Court using the substituted judgment criteria. (U-2, 2). Pursuant to Paragraph B, Dr. John Daignault was appointed as Court Monitor ("Court Monitor" or "Dr. Daignault") to undertake "general monitoring of JRC's treatment and educational program," and to arbitrate any disputes between the parties. (U-2, 6). Finally the parties were required to act in good faith in carrying out their responsibilities under the Settlement Agreement. (U-2, 14).

The Trial Court's order provided for the termination of the Settlement Agreement in one year "unless the Court orders otherwise." (U-4). After two six-month extensions, on July 7, 1988, the Trial Court issued an order extending jurisdiction over the Settlement Agreement "until further order of this Court." (App. 135-137). The order noted that there were no objections to the extension of jurisdiction. (App. 137).

On December 29, 1988, the Department of Mental Retardation ("DMR") moved to amend the Settlement Agreement. DMR entered the case as successor to OFC and the Department of Mental Health ("DMH") in regulating JRC. (U-13). The Trial Court specially noted that it was treating DMR's motion as an intervention under Rule 24 and "welcom[ed] [DMR] as a party under the Settlement Agreement." (U-13). DMR did not appeal or otherwise challenge the Court's order.

The proceedings which gave rise to the judgment of contempt, began on September 7, 1993, when JRC filed a complaint for contempt pursuant to Mass. R. Civ. P. 65.3 against DMR Commissioner Philip Campbell claiming violations of the court-approved Settlement Agreement. (S.A. 27). In essence, JRC's claims as amended alleged inter alia that the Commissioner violated the Settlement Agreement by interfering with court-authorized treatment provisions, refusing to mediate disputes with Dr. Daignault, and failing to act in good faith in his regulation of JRC.

On March 23, 1995, the Commissioner decertified JRC and ordered all court-approved treatment procedures stopped as of July 1, 1995. (U-179). The next day, JRC moved for a preliminary injunction seeking to enjoin the Commissioner from revoking JRC's certification, and preserve the status quo pending trial. The Trial Court allowed the motion that same date. (App. 283).²

The trial of JRC's contempt claims took place during three weeks in June and July of 1995. The Trial Court heard from seventeen witnesses and admitted over four hundred exhibits. In its Judgment and Order dated October 6, 1995, the Trial Court held the Commissioner in contempt, finding that he had violated the provisions of the Settlement Agreement thereby causing "egregious and irreparable" harm to JRC, its students and their parents. (App. 1340). As a remedy for the contempt, the Trial Court ordered that DMR be enjoined from failing to comply with the terms of the Settlement Agreement, and from interfering with outstanding treatment orders issued by the Court. (App. 1340, 1342). The trial judge also ordered that DMR be stripped of its regulatory authority over JRC and a receiver was appointed to assume DMR's regulatory responsibilities over JRC until further order of the Court. (App. 1342-1348). Plaintiffs were also awarded attorneys fees and expenses. (App. 1341).

Final judgment entered on October 6, 1995. (App. 48). On October 11, 1995, the Commissioner filed his notice of appeal. (App. 1353). Thereafter,

² After Judge Rotenberg's death, Judge Elizabeth O'Neill LaStaiti of the Probate and Family Court was specially assigned in August 1992 as a Justice of the Superior Court to replace Judge Rotenberg with respect to these matters. (App. 1207).

this Court granted Direct Appellate Review and the appeal was docketed as SJC-07101.

The Commissioner filed a Motion to Stay the injunctive and receivership orders pursuant to Mass. R. Civ. P. 62(a), which was denied by the Trial Court on November 6, 1995. (App. 1432). Thereafter, the Commissioner renewed his Motion to Stay in the Appeals Court, pursuant to Mass. R. App. P. 6(a), where a Single Justice, (Smith, J.), denied the motion on November 28, 1995 following a hearing. (App. 1454).

After receiving the Single Justice's decision, the Commissioner filed a petition pursuant to G. L. c. 211, § 3, with a Single Justice of this Court requesting relief from the denial of the stay by both the Trial Court and the Single Justice of the Appeals Court. (App. 1456). On December 5, 1995, this Court (Lynch, J.) denied the motion. (App. 1465). On December 8, 1995, the Commissioner then filed an appeal from the order of the Single Justice pursuant to SJC Rule 2:21, docketed as SJC-07093, as well as a request for a stay of the Single Justice's order. (App. 1466, 1467). On January 12, 1996, the full bench of this Court denied the requested stay pending appeal, and dismissed the appeal as both moot and in violation of SJC Rule 2:21. See Commissioner of Mental Retardation v. Judge Rotenberg Educational Center, Inc., 421 Mass. 1010 (1996). (App. 1471).

B. Appeal From The Preliminary Injunction - SJC-06956

On March 24, 1995, the Trial Court entered a status quo preliminary injunction in favor of JRC and the Plaintiff Class enjoining the Commissioner from decertifying the JRC treatment program pending a trial on the merits of the contempt action. (S.A. 127). The Commissioner appealed the injunction to a full panel of the Appeals Court pursuant to G. L. c. 231, § 118, ¶ 2. (S.A. 128). This Court granted direct appellate review and the appeal was docketed as SJC-06956.

On October 31, 1995, JRC filed a Motion to Dismiss SJC-06956 on the grounds that the final judgment entered by the Trial Court in the contempt case rendered an appeal from an interlocutory preliminary injunction order moot. (S.A. 138). Following a hearing and report of the Single Justice (Greaney, J.),

this Court denied the motion to dismiss on March 8, 1996, and ordered that any issues in SJC-06956 be briefed as part of the appeal from the final judgment of contempt in SJC-07101. (S.A. 151).

C. Appeal From Modification Of Interlocutory Orders By
The Single Justice Of The Appeals Court- SJC-07045

In addition to filing an appeal to the full panel of the Appeals Court, the Commissioner filed a petition pursuant to G. L. c. 231, § 118, ¶ 1, seeking relief or modification of the Trial Court's order dated March 24, 1995 granting the preliminary injunction. (S.A. 129). The petition was docketed as 95-J-300. On May 11, 1995, without a hearing and without providing JRC with any opportunity to respond, a Single Justice of the Appeals Court (Brown, J.) modified the preliminary injunction by adding a third subparagraph which ordered that JRC stop using four treatment procedures which had been previously authorized by the Probate Court. (S.A. 133).

In a related matter, the court-appointed counsel in fifty-two guardianship proceedings filed identical motions in the Probate Court to stop these same four treatment procedures ("Global Motion"). (S.A. 40-41). On April 14, 1995, the Trial Court denied the Global Motion. (S.A. 67). Guardianship Counsel then filed a petition with the Single Justice of the Appeals Court for interlocutory relief from the denial of the Global Motion, which was docketed as 95-J-362. (S.A. 135). On June 7, 1995, again without a hearing, the Single Justice (Brown, J.) modified the denial of the Global Motion by incorporating the order of 95-J-300 into the order in 95-J-362. (S.A. 135).

On June 12, 1995, in response to a motion to clarify filed by DMR, the Single Justice issued a supplemental order in 95-J-300 expressly setting forth the four treatment procedures JRC was required to terminate, which were the same as those listed in 95-J-362. (S.A. 134). JRC filed a petition under G. L. c. 211, § 3, with a Single Justice of this Court (Abrams, J.) seeking to vacate the modification of the preliminary injunction and restore the status quo pending trial. The petition was denied. (S.A. 136). JRC then filed an appeal to a full panel of the Appeals Court from the parallel orders entered in 95-J-300 and 95-J-

362. That consolidated appeal was docketed as *SJC-07045* after this Court granted directed appellate review. (S.A. 137).

On January 4, 1996, *JRC* filed a motion to dismiss *SJC-07045* with the Single Justice of this Court on the grounds that the entry of final judgment in the contempt action rendered an appeal from the interlocutory orders moot. (S.A. 144). On March 8, 1996, the full bench of this Court, after report by the Single Justice, denied the motion and instructed the parties to brief the issues raised in *SJC-07045* in the appeal from the final judgment of contempt. (S.A. 151).

VII. SJC-06956 AND SJC-07045 - APPEAL FROM THE INTERLOCUTORY ORDERS

A. SJC-06956 Has Been Rendered Moot By Entry Of Final Judgment

It is well-settled that a preliminary injunction does not survive the entry of final judgment in the action in which the injunctive relief was originally granted:

When a final decree is entered, a preliminary injunction has served its purpose. If the Plaintiff is then deemed entitled to an injunction, the final decree can provide it... [A] preliminary injunction does not survive the entry of a final decree [which becomes effective as soon as entered], whether relief is thereby granted or denied.

Carlson v. Lawrence H. Oppenheim Co., 334 Mass. 462, 465 (1956), quoting from Lowell Bar Association v. Loeb, 315 Mass. 176, 189-190 (1943); see also, In The Matter Of McKnight, 406 Mass. at 792 n.4 (preliminary injunction remains in effect only until a final judgment is rendered). Thus, an appellate court will normally refuse to undertake any review of a preliminary injunction once final judgment has entered because all issues concerning the propriety of the preliminary injunction are extinguished and rendered moot by the entry of a final order. See Mahony v. Board of Assessors of Watertown, 362 Mass. 210, 216 n.3 (1972); see also 8A Smith & Zobel, Rules Practice §65.10, p.92 (1984) (full determination of case by Trial Court renders appellate review of preliminary injunction moot).

Even if the Trial Court had not expressly dissolved the status quo preliminary injunction in its Judgment and Order, (App. 1342), the entry of final judgment in the underlying contempt proceeding on October 6, 1995, immediately and automatically extinguished the preliminary injunction as a matter of law leaving nothing for this Court to decide regarding to the propriety of preliminary injunctive relief. In practical terms, this Court cannot grant any relief in either vacating or affirming the preliminary injunction which will not be subsumed in the decision on the appeal on the merits from the contempt judgment. The entry of final judgment expressly and by operation of law, has

rendered an appeal from the preliminary judgment moot and SJC-06956 does not present any live issues for this Court to decide.

B. SJC-07045, the Modified Interlocutory Orders of the Trial Court Should Be Vacated

1. The modified preliminary injunction is moot

The order of the Single Justice of the Appeals Court in 95-J-300 is merely a modified preliminary injunction. There is no question that, as already discussed in regards to SJC-06956, had the Single Justice not modified the status quo preliminary injunction, it would have been rendered moot by the entry of the final judgment. Thus, it logically follows that the entry of final judgment in the underlying contempt proceeding automatically extinguished the modified version of the preliminary injunction as a matter of law leaving nothing for this Court to decide in regards to the first prong of the consolidated appeal.

2. The modified order on the global motion is vacated by the final judgment

The Appeals Court Single Justice expressly incorporated the order on the modified preliminary injunction in 95-J-300 into his order partially vacating the denial of the Global Motion in 95-J-362. (S.A. 135). Although the Single Justice of the Appeals Court issued no opinion and did not give JRC an opportunity to respond to the Commissioner's petition, both orders on their face show that they were both based upon and connected with the modification of the original preliminary injunction. Thus, the order modifying the Global Motion was likewise vacated when the underlying preliminary injunction, as subsequently modified by the Single Justice, was extinguished upon entry of final judgment.

Furthermore, the Single Justice in modifying the Global Motion approved and upheld condition 96-1 in the Commissioner's January 20 Letter, by ordering the four specific Level III aversive therapies decertified in the letter terminated and removed from all treatment plans. (S.A. 135). Although the Trial Court did not revoke any of the outstanding certification decisions by the Commissioner in issuing its judgment, the Trial Court ordered the receiver to review all such

regulatory decisions imposed on JRC by the Commissioner to ensure that such regulation complied with the Settlement Agreement and the law, and to revoke any that did not. (App. 1343-44). Allowing the order of the Single Justice, which upholds the Commissioner's decision terminating the four treatments, to stand would result in an irreconcilable conflict with the express relief granted in the Judgment and Order. The inconsistency is exemplified by the fact that the receiver has since rescinded the January 20 Letter in whole, yet JRC is unable to apply any of the four court-approved Level III therapies in condition 96-1 because the receiver has deferred to the outstanding order of the Single Justice. (S.A. 81). The untenable result is that an interlocutory order controls where a final judgment exists, and that the full relief of the Judgment and Order cannot be enjoyed because of the modification of the Global Motion. Likewise, the order of the Single Justice upholding the Commissioner's termination of these four treatments continues to violate Part A of the Settlement Agreement, which requires that the Trial Court, not the Commissioner, make treatment decisions. The modified Global Motion can no longer stand in light of the entry of final judgment, the relief granted and the terms of the Settlement Agreement, must be vacated by this Court.

CONCLUSION

For the reasons set forth above, the Judge Rotenberg Educational Center, Inc, requests this Honorable Court to:

1. Affirm the judgment of contempt and relief granted by the Trial Court;
2. Award them costs and appellate attorneys' fees;
3. Dismiss with prejudice the appeal from the preliminary injunction; and
4. Vacate the interlocutory orders of the Trial Court as modified by a Single Justice of the Appeals Court.

Respectfully submitted,

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