

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

FOURTH DIVISION

Patricia Welsh, et al,)
 Plaintiffs,)
 vs.)
 Vera J. Likins, et al,)
 Defendants.)

D.

MEMORANDUM ORDER

No. 4-72-Civ. 451

In a Memorandum Order dated May 19, 1976, this Court found that certain fiscal and complement control provisions of Minnesota law constitute substantial barriers to compliance by the defendants Likins and Offerman with their obligations under this Court's Order of October 1, 1974, as modified, in part, by this Court's Order of April 15, 1976. For reasons expressed in the Memorandum Order of May 19, 1976, this Court concluded that it had the power, as a single judge, to enjoin enforcement of those fiscal and complement control provisions insofar as enforcement would interfere with the equitable relief required by the prior Orders. The Court requested further briefing, however, on the defendants' contention that certain additional defendants would need to be joined under Rule 19 prior to issuance of such injunctive relief. Pursuant to that request, briefs were submitted by both sides on the issue of the need for additional parties, and oral argument was heard on July 7, 1976. On the basis of all the records and proceedings herein, and after considering the briefs and arguments of counsel, the Court has concluded that no additional parties need be joined, and that enforcement of the fiscal and complement control laws specified in paragraph 1 of the following Order should be enjoined.

As a threshold matter, defendants question the power of this Court to enter the relief requested by the plaintiffs given the fact that the May 19, 1976; Order has been appealed. The May 19 Order, containing four paragraphs, consisted of the following actions: (1) denial of plaintiffs' motion for convening of a three-judge court; (2) denial of plaintiffs' request for an Order directing seizure and transfer of certain Medicaid payments; (3) a stay of this Court's ruling on the request for an injunction against the fiscal and complement control laws; and (4) denial of defendants' motion for dismissal of the supplemental

complaint. The rule as to the effect of an appeal on this Court's jurisdiction is set forth by Professor Moore in 7 Moore's Federal Practice ¶ 203.11 at 738-39 (1975):

"The filing of a timely and effective notice of appeal divests the district court of jurisdiction only with respect to the judgment brought up for review by the appeal. . . . [W]here an appeal is taken from a judgment which does not finally determine the entire action, the appeal does not prevent the district court from proceeding with matters not involved in the appeal. Thus an appeal from an order granting or denying a preliminary injunction does not divest the district court of jurisdiction to proceed with the action on the merits. . . ."

See also Janousek v. Doyle, 313 F.2d 916 (8th Cir. 1963). This Court concludes that the filing of an appeal from the May 19 Order did not divest it of jurisdiction to rule on plaintiffs' request for an injunction against the fiscal and complement control provisions.

Defendants Brubacher and Christianson are, respectively, the Commissioner of Administration and the Commissioner of Finance of the State of Minnesota, whose duties are set forth in chapters 16 and 16A of the Minnesota Statutes and in other provisions of Minnesota law such as appropriations acts, which are not codified as part of the Minnesota Statutes. Pursuant to these provisions, it is the responsibility of the defendants Brubacher and Christianson, inter alia, to enforce the fiscal and complement control provisions of Minnesota law specified in paragraph 1 of the following Order.

This Court finds that effective relief can be provided the plaintiffs in this case without addition of any other parties, including the Governor of the State of Minnesota, any members of the legislature, and any law enforcement officials of the State of Minnesota. Failure to join any such persons as parties to this action will not as a practical matter and in the context of the Order issued herewith subject any of the defendants to a substantial risk of incurring multiple or differing obligations which could not be cured by further Order of this Court. Nor will failure to join such persons impair or impede their ability to protect any interest in the matter claimed by them.

As for the propriety of injunctive relief, the Court acknowledges this to be a difficult legal issue; it is not a novel one, however, for several courts, including the Eighth Circuit, have upheld or ordered such relief in analogous circumstances. See cases cited in Memorandum Order of May 19, 1976, at Slip Op. 5. On the authority of these cases, the Court does not retreat from its earlier ruling that the relief is proper and appropriate. The Court has resolved to do

everything within its power to secure to the plaintiff residents of Cambridge their constitutional rights. The plaintiffs have nowhere else to turn. No other forum has been willing to air their grievances, much less offer them redress. It must never be forgotten that the plaintiffs have been involuntarily committed. Albeit for the most humane of reasons, their liberty--perhaps the most fundamental of the rights secured to all of us by the Constitution--has been denied them at the hands of the State, and many of them will as a practical matter never be set free. The Court has found that they are inadequately housed, equipped, fed, treated, and cared for, and that their very safety is imperiled by their surroundings and by lack of adequate staff. What the people of the State of Minnesota have done and are continuing to do to the plaintiffs is--despite the loftiest of motives--inhumane and unconstitutional. Plaintiffs' cause cries out for the utmost relief that this Court can offer, consistent with its power.

IT IS ORDERED:

1. That the defendants Brubacher and Christianson, their successors in office, agents, and employees and all persons in active concert or participation with them, are hereby enjoined from enforcing or attempting to enforce any provision of State law which, if implemented or enforced, would cause the defendants Likins and Offerman, their successors in office, agents, employees, and all persons in active concert or participation with them, to be unable to comply with this Court's Orders dated October 1, 1974, and April 15, 1976. The provisions of State law referred to in this Order include, but are not limited to:

- (1) Article XI, section 1 of the Minnesota Constitution;
- (2) Minnesota Statutes § 10.17;
- (3) Minnesota Statutes § 16.32;
- (4) Minnesota Statutes § 16.173
- (5) Minnesota Statutes § 16A.14, as added by section 8 of Chapter 231 of the Minnesota Laws 1976;
- (6) Minnesota Statutes § 16A.15, as amended by section 10 of Chapter 231 of the Minnesota Laws 1976;
- (7) Minnesota Statutes § 16A.57;
- (8) Minnesota Laws 1975, Chapter 434, § 12;
- (9) Minnesota Laws 1975, Chapter 434, § 24;
- (10) Minnesota Laws 1975, Chapter 434, § 2, subd. 17;
- (11) Minnesota Laws 1976, Chapter 347, § 12;
- (12) Minnesota Laws 1976, Chapter 348, § 20.

2. That copies of this Order may be served on the defendants Likins, Offerman, Brubacher, and Christianson personally by counsel for the plaintiffs or by such other person as they designate, or by certified mail, return receipt requested.

3. That the defendants Brubacher and Christianson shall provide copies of this Order to all persons in their respective departments who, on a regular basis, are involved, or reasonably could be expected to be involved, in activities concerning the Department of Public Welfare which would be affected by the terms of this Order. No later than twenty days from the date of this Order, they shall each provide the Court and counsel for the plaintiffs with a statement setting forth the names and positions of those persons provided copies of this Order.

4. That the injunctive part of the Order and Judgment be stayed until time for appeal has passed or until exhaustion of the appellate process.

LET JUDGMENT BE ENTERED ACCORDINGLY.

July 28, 1976.

/S/ Earl R. Larson

United States District Judge