

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

IN RE COUNTY OF WAYNE, EDWARD McNAMARA,
Wayne County Executive, WAYNE COUNTY
JUVENILE DETENTION FACILITY, and
WARREN C. EVANS, its interim director,

JENNIFER M. GRANHOLM (P40922)
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County of Wayne
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In Re: Co. of Wayne



JI-MI-002-002

A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in this court, where it was given docket number 93-331636 AS and was assigned to Chief Judge Richard C. Kaufman. The action is no longer pending.

COMPLAINT FOR WRIT OF SUPERINTENDING CONTROL/PROHIBITION AND OTHER RELIEF

NOW COME Plaintiffs, COUNTY OF WAYNE, EDWARD McNAMARA, Wayne County Executive, WAYNE COUNTY YOUTH HOME, and WARREN C. EVANS, its interim director, by and through their attorney, Jennifer M. Granholm, Wayne County Corporation Counsel, and state as follows for their Complaint for Writ of Superintending Control/Prohibition:

INTRODUCTION - NATURE OF THE CASE

1. This is a civil action filed pursuant to MCR 3.302 for a Writ of Superintending Control over the Probate Court for the County of Wayne.

2. This complaint arises out of the Probate Court's use of the Wayne County Juvenile Detention Facility ("JDF") for the

detention of delinquent youth in a manner which has created severe overcrowding at the JDF, thereby jeopardizing its physical integrity, the safety and care of the youth detained in the JDF, and the safety of the JDF staff.

JURISDICTION

3. This Court has jurisdiction to issue a Writ of Superintending Control over the Probate Court pursuant to MCL § 600.615 and MCR 3.302. People v. Flint Municipal Judge, 383 Mich 429, 432; 175 NW2d 750 (1970).

4. The Circuit Court has general supervisory superintending control over inferior courts as a matter of constitutional law. Michigan Constitution, Article 6, § 13.

PLAINTIFFS

5. The County of Wayne ("County" or "Wayne County") in the State of Michigan is a charter county.

6. Edward H. McNamara is the duly elected County Executive for the County of Wayne.

7. Warren C. Evans is the duly appointed interim director of the Wayne County Juvenile Detention Facility.

8. The Wayne County Juvenile Detention Facility (the "JDF") is a high security care and detention facility for delinquent children in Wayne County. MCL § 712A.16.

DEFENDANTS

9. The Probate Court for Wayne County is a Court of record,

organized and existing under the Michigan State Constitution and the Revised Judicature Act as amended, and operated pursuant to the procedures set forth in the Revised Probate Code and the Michigan Court Rules. MCL § 600.801, et seq., MCL § 700.1, et seq., MCL § 70.1, et seq.

10. From July 1, 1987 to the present, the Honorable Freddie G. Burton has been the duly elected and qualified Chief Judge of the Probate Court for the County of Wayne and during the above stated time he has presided over the Probate Court.

11. The current judges of the Juvenile Division of the Probate Court for Wayne County are duly elected and qualified judges of that Court.

12. The Honorable Frances Pitts is the presiding judge of the Juvenile Division of the Probate Court for Wayne County.

GENERAL ALLEGATIONS

13. Wayne County exclusively operates and funds the JDF. MCL §§712A.16, 712A.25.

14. The JDF is operated as an agency of Wayne County and has been operated as such since 1983. MCL § 712A.16(2).

15. The JDF is not operated as an agency of the Probate Court.

16. The JDF is not statutorily required to operate as an agency of the Probate Court. MCL § 712A.16(2).

17. The Director of the JDF is responsible for operating the JDF as a detention, treatment, care, training and diagnostic

facility for delinquent youth within Wayne County. MCL § 712A.16(2).

18. On November 8, 1993, certain of the Plaintiffs herein filed a first Complaint for Writ of Superintending Control/Prohibition, requesting that then Judge Kaufman issue a writ to permit the Plaintiffs to have discretion to control the population of the JDF.

19. In April of 1994, the U.S. Department of Justice ("DOJ") dispatched a team of experts to review the conditions at the JDF pursuant to the Civil Rights of Incarcerated Persons Act ("CRIPA"), 42 U.S.C. § 1997(g). At the time of that visit, the population of the facility hovered between 210 and 230 residents.

20. On April 26, 1994, following the DOJ's April 1994 visit, the County, Wayne County Prosecutor John O'Hair and the Probate Court signed an Agreement to Control Population. That agreement specified that the population would be maintained at 146, in order to allow for renovations of the facility to take place. The population of the facility, however, has consistently been well above that specified in the Agreement.

21. The DOJ issued the report of their investigation in December of 1994, citing numerous constitutional violations that the JDF and the County were required to embark upon remedying within 49 days. Overcrowding was listed as a main problem, which triggered numerous other constitutional violations listed in the report.

22. On February 16, 1995, the County responded to the federal

investigation, agreeing, among other things, that it would hold the population of the facility at a constitutional level, with 160 boys and one unit for girls (175 children total). That population limit would enable other violations cited by the DOJ to be remedied.

23. After the DOJ investigation, the Probate Court signed an agreement with Warren Evans that the expected time frame for processing orders committing juveniles to the care of the State would be three (3) business days. The Probate Court is responsible for processing the paperwork that moves a child from being committed to the State to being accepted by the State. Since the signing of that agreement, on an average week, many juveniles are in the facility in excess of the three days specified in the agreement. For example, on May 11, 1995, 28 juveniles had a total of 217 excess bed days over the three-day agreement. That excess resulted in 31 beds being occupied that otherwise would have been available to other youth entering the JDF. Today, there are at least 10 children who are in the facility in excess of the three day agreement. In other words, the Probate Court's failure to comply with the three day agreement has resulted in significant overcrowding.

24. On any given day, several children are remanded to the facility who are probation violators from truancy charges or status offenses. Today, for example, there are five children detained who are school truants and three who are detained for incorrigibility. Those children not only cause problems for proper classification of all juveniles, but they occupy bed space that could be used for

more serious offenders. The director and the Probate Court have continually met to resolve this "remand" problem; however, the Court continues to insist upon placing low-risk remanded juveniles into the JDF.

25. Unless the population problems are rectified, the CRIPA investigation may result in a court monitor to control the JDF, possibly removing the oversight of the facility from the County altogether.

26. To fulfill the responsibilities set forth above, the Director must maintain a population at or below the maximum capacity of the JDF.

27. To maintain the population of the JDF within its legal and practical maximum capacity, the Director must have the authority to deny entry to or release from the JDF certain children who would benefit from a suitable but less restrictive environment, as provided by law.

28. The commitment to the U.S. Department of Justice, the design of the facility, the staffing ratio requirements, the need for a proper classification system for juveniles, the need to provide a room with a bed for each resident, and the need for a mental health ward for juveniles, all dictate that the maximum bedded capacity of the JDF is 175 children -- either 160 boys and 15 girls, or 175 boys.

29. Despite the efforts of the Director to control the population of the JDF, Probate Court assignments to the JDF have caused it to be consistently overcrowded and, at times, the

population has reached well in excess of 200 juveniles. The County Executive and the JDF Director have repeatedly sought the cooperation of the Probate Judges to reduce the population in the JDF to a level that would allow the JDF to function according to its statutory mandate, and according to the federal requirements of CRIPA.

30. Despite the County's repeated efforts and the DOJ's scathing report, and despite the County's provision of alternatives to detention, such as tethers for lower-risk youth and the addition of 21 secure beds for girls at Boysville and four foster care slots in connection with the Boysville contract, the Probate Court has ignored the County's requests for a reduced population and continues to assign juveniles to the JDF in excess of the JDF's capacity.

31. The DOJ report required, and the County has repeatedly demonstrated its willingness for, more programming in the JDF to focus upon the care, treatment and rehabilitation of the youth who stay there. Without relief from the overcrowding, the County cannot hope to meet its goal.

32. When overcrowded, the children must sleep on mattresses on the floors of the common areas and the hallways; there are no other sleeping accommodations for them.

33. The excessive population of the JDF continues to plague all aspects of its operation and programming.

34. When overcrowded, to maintain an adequate staff-to-child ratio, County employees must work excessive overtime, thereby

increasing the cost of operation, further compromising security and proper care.

35. When overcrowded, teachers, counselors and supervisors must act primarily as guards to maintain order. The result is that academic training, recreational programs, health care, security, classification of the juveniles, maintenance of the facility and other essential aspects of the operation of the JDF can be severely compromised. All of these problems were cited by the DOJ in their report.

36. In sum, the overcrowding of the JDF restricts the County's efforts to provide the level of care necessary to address the broad range of needs of those children and youth assigned to it by the Probate Court.

37. The Probate Court has exclusive original jurisdiction within the County over any child under 17 years of age as provided in the Revised Judicature Act, MCL § 712A.2 et seq.

38. Notwithstanding its jurisdiction, the Probate Court has no statutory authority to force an independent care and detention facility to admit all children assigned to it by the Probate Court, particularly when the assignment will cause the facility to exceed its legal and practical maximum capacity.

39. Since the JDF is an independent care and detention facility, the Probate Court lacks jurisdiction or other statutory authority to force the JDF to accept children when such acceptance will cause the facility to exceed its legal and practical maximum capacity.

40. The Probate Court has exceeded its jurisdiction by systematically assigning to the JDF delinquent and status offenders in Wayne County who are presented to the Court without (1) considering tethering options for low risk children who may be "remanded" to the facility after a probation violation; (2) determining whether there are available beds and accommodations in the JDF for the assigned children; and (3) seeking the concurrence of the director of the JDF.

WRIT OF SUPERINTENDING CONTROL

41. Plaintiff incorporates by reference herein the preceding paragraphs 1 through 37.

42. Pursuant to MCR 3.302, a Superintending Control Order replaces a Writ of Prohibition when directed to a lower court.

43. Superintending control is a proper remedy where a plaintiff seeks review of the general policies and practices of an inferior court, even though an individual litigant has an available appeal. City of Detroit v. Recorder's Court Traffic and Ordinance Judge, 104 Mich App 214, 304 NW2d 829 (1981).

44. Plaintiffs in this case challenge the generalized practice by the Probate Court of assigning to the JDF delinquent children in Wayne County who are presented to the Court without: (1) considering tethering options for low risk children who may be "remanded" to the facility after a probation violation; (2) determining whether there are available beds and accommodations in the JDF for the assigned children; and (3) seeking the concurrence of the director of the JDF.

45. A great burden of inconvenience and expense will result to Plaintiff JDF if it must individually contest the placement of each child in excess of its maximum capacity.

46. Plaintiffs thus have no adequate remedy other than a Writ of Superintending Control which prohibits the Probate Court from assigning children to the JDF in a manner which causes the JDF to exceed its legal and practical maximum capacity.

47. The Probate Court has exceeded its jurisdiction by: (1) admitting children to the JDF in excess of its maximum capacity, thus threatening the safety and security of the JDF and its residents; and (2) ignoring, discounting, or failing to observe the statutory mandate, as interpreted by the Michigan Supreme Court in the Michigan Court Rules, of placing juveniles in the "least restrictive environment" and "most family-like setting" possible for delinquent, and abused and neglected children. Issuance of a Writ of Superintending Control to enjoin the Probate Court from this practice is warranted. MCR 5.935 (D) (5) and 5.965 (C) (4).

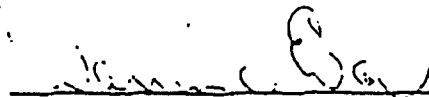
48. To remedy the extreme overcrowding caused by the above practices of the Probate Court, issuance of a Writ of Superintending Control to direct the Probate Court to remove and relocate from the JDF those number of children identified by the Director and found by him to be in excess of the maximum capacity of the JDF is also warranted.

WHEREFORE, Plaintiff requests that this court:

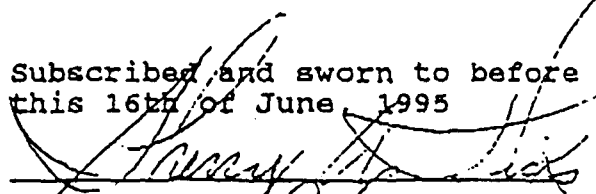
- A. Find, order and declare that the Director of the JDF has the exclusive power to establish and maintain the maximum capacity of the JDF;

- B. Find, order and declare that the Probate Court lacks jurisdiction to send all Wayne County delinquent it believes require detention to the JDF without seeking the concurrence of the director and without determining whether there are available tethering options;
- C. Pursuant to the Motion for Restraining Order filed this day, enjoin the Probate Court from sending any children to the JDF without specific agreement of the director that there are available accommodations and that each child has been accepted for admission to the JDF;
- D. Find, order and declare that the director of the JDF can immediately name and return to the Probate Court from the JDF that number of children, the admission of which exceeds the maximum capacity of the JDF;
- E. Issue a Writ of Superintending Control, mandating that the Probate Court shall not prohibit or interfere with the Director's assignment of children to alternative placements consistent with the mandates of the Probate Code and the Michigan Court Rules following the preliminary classification of all potential admits to the JDF by Probate Court intake staff;
- F. Award Plaintiffs their costs and attorney fees in bringing this action; and
- G. Grant such other relief as this Court deems appropriate.

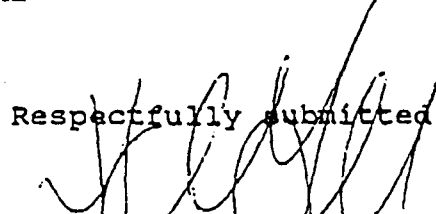
The foregoing statements are true to my best information, belief and knowledge.


WARREN C. EVANS

Subscribed and sworn to before me
this 16th of June 1995


Notary public, Wayne County, MI
My Commission Expires: 12/16/95

Respectfully submitted,


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Dated: 6/16/95