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United States District Court, M.D. Alabama,
Northern Division.

Ricky WYATT, By and Through his aunt and legal guardian Mrs. W.C. RAWLINS, Jr., et al.,
Plaintiffs,
Calvin Moore, et al., Plaintiff–Intervenors,
v.
Ken WALLIS, as Commissioner of Mental Health and Mental Retardation, and the State of Mental Health Officer, et al., Defendants,
United States of America, et al., Amici Curiae.

Civ. A. No. 3195–N. | Sept. 22, 1986.

Attorneys and Law Firms

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Algert Agricola, Mark Montiel, and David Byrne, Montgomery, Ala., for State defendants.

R. David Christy, Montgomery, Ala., for Horsley.

Opinion

ORDER

MYRON H. THOMPSON, Chief Judge.

***1** This class action lawsuit involving the Mental Health and Mental Retardation System of the State of Alabama is now before the court on the parties' proposed settlement of the latest round of litigation. A hearing was held on the settlement on August 22, 1986. For reasons that follow, the court has concluded that the settlement is due to be approved.

I. BACKGROUND

A brief review of the sixteen-year history of this case will aid in the court's discussion of its decision. This suit began on October 23, 1970, with a complaint filed in this court alleging that staff reductions at Bryce Hospital, the state-run institution for the mentally ill at Tuscaloosa, Alabama, had deprived the patients of rights under state and federal law.[1] On March 12, 1971, in response to a request for preliminary relief, the Honorable Frank M. Johnson, Jr., then chief district judge, found that the patients who had been involuntarily committed to Bryce Hospital because of mental illness were being deprived of their constitutional right "to receive such individual treatment as will give each of them a realistic opportunity to be cured or to improve his or her mental condition." *Wyatt v. Stickney,* 325 F.Supp. 781, 784 (M.D.Ala.1971).

On August 22, 1971, the court granted the plaintiffs' request to enlarge the plaintiff class to include patients involuntarily committed at Searcy Hospital, the state's other mental illness institution, and at Partlow State School and Hospital, the state's institution for the mentally retarded. On December 10, 1971, the court entered another order which identified numerous factors which contributed to the degrading and dehumanizing environment at Bryce Hospital. *Wyatt v. Stickney,* 334 F.Supp. 1341, 1343–44 (M.D.Ala.1971). The court additionally found on the basis of preliminary evidence relating to Searcy and Partlow that there were "strong indications" that conditions at these institutions were no better than at Bryce. *Id.* Finding that the defendants had failed to submit an adequate proposal for the "minimum medical and constitutional standards for the operation of these institutions," 334 F.Supp. at 1344, the court ruled that it would hold another hearing to allow the parties and amici to present proposed minimum standards. The court cautioned that the "plaintiffs' rights are present ones, and they must be not only declared but secured at the earliest practicable date." *Id.*

In response to the court's order, the plaintiffs, defendants, and amici jointly proposed certain minimum standards for adequate treatment and habilitation of the residents at the state's mental illness and mental retardation facilities. In addition, the parties independently proposed other standards to be considered in determining the minimum

constitutional standards. After hearing testimony from the foremost mental health and mental retardation authorities in the United States, the court on April 13, 1972, entered orders establishing minimum constitutional standards for adequate care and treatment of the mentally ill and mentally retarded. *Wyatt v. Stickney,* 344 F.Supp. 373, 379–86 (mental illness) (M.D.Ala.1972); *Wyatt v. Stickney,* 344 F.Supp. 387, 392, 394–407 (M.D.Ala.1972) (mental retardation).

***2** Litigation began again in this case in December 1975, when the court allowed the parties to reopen discovery to determine whether the defendants had complied with the standards set forth in the 1972 orders. In June 1977, the plaintiffs and amici curiae filed a motion for further relief and requested, among other things, that the court appoint a special master or receiver to assure the defendants' compliance with the 1972 orders. Later, in a separate petition Governor James advised the court that "the Alabama mental health system is in a distress situation" and that achievement "of an effective mental health system maintained and operated in the interest of the safety and welfare of the patients and indeed, all of the citizens of this state, require[s] the assertion of the extraordinary equitable powers of this Court." The Governor then requested that the court appoint him receiver of the Alabama Mental Health and Mental Retardation System. On January 2, 1980, Governor James submitted a proposed plan of compliance, which provided for "complete compliance with the 1972 Court Order within 18 months, except new physical plant construction or major renovation." Then, on January 15, 1980, upon consideration of the nominations submitted by all the parties and the plan of compliance submitted by Governor James, the court appointed Governor James as temporary receiver of the state system.

The current phase of this litigation began on March 9, 1981, when the plaintiffs moved for the provision of sufficient funds for compliance with this court's orders and Governor James's plan of implementation. Shortly thereafter, on May 18, 1981, Governor James and the Commissioner of Mental Health and Retardation moved for modification of this court's 1972 standards and orders. Then, on August 25, 1981, Governor James moved for termination of the receivership, and on January 4, 1982, the plaintiffs moved to remove and replace Governor James as receiver. During the period of time in which parties filed amendments and responses to these various motions, discovery was gradually reopened.

On January 14, 1983, James's term as governor ended and he resigned as receiver. On February 1, 1983, the court appointed a non-state official as receiver. The defendants appealed to, and obtained a stay of the appointment from, the Eleventh Circuit. In response to the stay, the court appointed Ken Wallis, the new governor's legal advisor, as receiver.

II. THE SETTLEMENT

In July 1986, the parties submitted a proposed settlement of the last round of litigation regarding the Alabama Mental Health and Mental Retardation System. The settlement provides for the dissolution of not only the receivership but also the Office of Court Monitor, an office specifically created to monitor on a daily basis the defendants' implementation of the court's orders and standards. It also provides for the denial of not only the defendants' motions to vacate the prior standards and orders of the court and terminate this litigation, but also the plaintiffs' motions for judicially ordered funding and appointment of an independent receiver. The settlement states that the prior orders and standards issued by the court regarding the obligations of the state system are to remain in full force and effect, and that the defendants are "to continue to make substantial progress in achieving compliance with the orders and standards."

***3** The settlement also requires that the defendants make reasonable efforts to achieve and maintain full accreditation of the state's mental health facilities by the Joint Commission on the Accreditation of Hospitals, and that they make reasonable efforts to achieve and maintain full certification of the state's mental retardation facilities under Title XIX of the Social Security Act. The defendants are also required to continue to make substantial progress in placing members of the plaintiff class in community facilities and programs and to take all reasonable steps to implement various plans to be filed later with the court under seal, including plans for the physical improvement of Bryce Hospital and for the construction of community facilities.

The settlement also requires that the parties establish a patient advocate program to help protect the rights of the plaintiff class and a quality assurance program to monitor and assure the quality of care provided to patients. The advocacy and quality assurance programs are to be operated by and within the Mental Health and Mental Retardation System.

The parties are also required to establish a process by which plaintiffs' counsel would be apprised of the defendants' compliance with the settlement. The settlement also requires that the defendants pay the plaintiffs their costs and reasonable attorney fees.

Finally, the settlement provides that should the defendants fail to comply with significant provisions in the settlement—including substantial progress in achieving and maintaining compliance with the prior orders and standards of the court, in placing members of the plaintiff

class in community facilities and programs, and in achieving and maintaining full accreditation for the mental health facilities and full certification for the mental retardation facilities—the court will entertain requests to reactivate its active supervision of the state Mental Health and Mental Retardation System.

After notice of the settlement was given to the public, the court held a hearing on the settlement on August 22, 1986. Both before and during the hearing, the court received a number of objections to the settlement.

III. THE LAW

Courts have repeatedly stated that voluntary settlement is the preferred means of resolving class action disputes. *See, e.g., Bennett v. Behring Corp.,* 737 F.2d 982, 986 (11th Cir.1984); *Holmes v. Continental Can Co.,* 706 F.2d 1144, 1147 (11th Cir.1983); *Pettway v. American Cast Iron Pipe Co.,* 576 F.2d 1157, 1214 (5th Cir.1978), *cert. denied,* 439 U.S. 1115, 99 S.Ct. 1020 (1979); *Johnson v. Montgomery County Sheriff's Department,* 604 F.Supp. 1346 (M.D.Ala.1985); *Lurns v. Russell Corporation,* 604 F.Supp. 1335 (M.D.Ala.1984). However, "[b]ecause of the potential for a collusive settlement, a sellout of a highly meritorious claim, or a settlement that ignores the interests of minority class members, the district judge has a heavy duty to ensure that any settlement is 'fair, reasonable and adequate'...." *Piambino v. Bailey,* 757 F.2d 1112, 1139 (11th Cir.1985), *cert. denied,* —— U.S. ——, 106 S.Ct. 2889 (1986). The district judge also has a duty to ensure that the settlement is not illegal or against public policy. *United States v. City of Alexandria,* 614 F.2d 1358, 1362 (5th Cir.1980).[2] Furthermore, a court should be even more circumspect about accepting a settlement where, as here, many members of the plaintiff class are not themselves capable of assessing the settlement and voicing their views on whether it is fair, reasonable and adequate, and the court must therefore rely on comments from such secondary sources as public interest groups and organizations.

***4** In considering these concerns, a court has broad discretion *to accept* a settlement. *Bennett,* 737 F.2d at 986. The converse is not true, however; a court does not have such broad discretion *to reject* a settlement. The law in this circuit is that "[t]he public policy in favor of voluntary settlements, which is fostered by a deferential standard of appellate review, is defeated by a standard which would allow trial courts to impose their views of reasonableness, subject only to highly deferential 'abuse of discretion' review, on settlements...." *City of Alexandria,* 614 F.2d at 1362. It clearly appears that the law does not countenance "that individual federal judges should have almost unchallengeable power" to reject settlements. *Id.* This is particularly true where all the named parties and their counsel favor the settlement and there is no evidence of fraud, collusion or the like among counsel, *Cotton v. Hinton,* 559 F.2d at 1326, 1331 (5th Cir.1977), and there are no diverging interests among definable groups within the class, such as would possibly raise a conflict within the class. *Pettway,* 576 F.2d at 1216. Under such circumstances, a court simply may not freely substitute its own judgment for that of counsel as to whether the settlement is adequate, fair, and reasonable. *Pettway, supra; Cotton, supra; see also Armstrong v. Board of School Directors,* 616 F.2d 305, 315 (7th Cir.1980) ("Judges should not substitute their own judgment as to optimal settlement terms for the judgment of the litigants and their counsel").

To be sure, the settlement here offers both substantial pluses and substantial minuses for the plaintiff class. However, under the heightened standard of this circuit, this court cannot reject the settlement and must accept it.

The first significant plus is that the settlement preserves the integrity and force of the court's prior historic standards and orders. This settlement provision may not appear at first blush to be that significant and substantial, but it is. After the initiation of the last round of litigation, which was in substantial part a vigorous frontal attack by the defendants on the continued validity of the court's prior standards and orders, a number of appellate decisions cast substantial doubt on whether these standards and orders could withstand the challenge. *See, e.g., Youngberg v. Romeo,* 457 U.S. 307, 102 S.Ct. 2452 (1982); *Newman v. Graddick,* 740 F.2d 1513 (11th Cir.1984). As both the plaintiffs and the defendants now correctly observe, the incorporation of these standards into a settlement makes these standards and orders unsusceptible to challenges because of present and future changes in the law. Without question, one of the most significant things bargained away by the defendants in order to secure the plaintiffs' approval of the settlement is the defendants' vigorously asserted and often repeated contention that the court's prior standards and orders are always subject to attack because of present and future changes in the law.

***5** The settlement does not stop with the preservation of the court's prior standards and orders, however. It also requires that the defendants secure and maintain accreditation by the Joint Commission on Hospital Accreditation and certification under Title XIX of the Social Security Act. But perhaps most importantly, the settlement achieves something the plaintiffs were unable to achieve in the past: it substantially broadens the focus of the litigation to include community placement and requires that the defendants make substantial progress in placing people in the community. Indeed, part of the capital construction program contemplated by the settlement includes the construction of hundreds of

community beds throughout the state. Generally, community placement is preferred to institutional placement, and at present there is a great dearth of community facilities throughout the state.

According to a number of objectors, a significant minus is the termination of the receivership. The court disagrees with this contention. First, the court doubts whether under the present law and facts the continuation of the receivership could be justified. But second and most importantly, the receivership was never a true receivership; the receiver was never independent of the defendants, and, while specially empowered to bring about immediate and substantial changes not otherwise obtainable, the receiver never exercised these powers. The receivership, in effect, merely shifted the responsibility for the Mental Health and Mental Retardation System from one state official or group of officials to another state official. The creation of the receivership was more an act of significance than substance, and with time it has lost even its significance.

Another significant minus, according to a number of objectors, is the dissolution of the Monitor's Office. The court is deeply troubled by this provision in the settlement and is concerned that, in view of past friction between the monitor and the defendants, the provision may reflect an unsavory retaliatory sentiment, an effort by the defendants "to get the last lick." Indeed, the monitor and his staff have over the years served as an independent check on whether the defendants were taking all reasonable steps to bring the Mental Health and Mental Retardation System into compliance with the standards and orders of the court. The monitor and his staff have performed this task admirably, always with vigor, objectivity, and fairness. Admittedly, the settlement does provide for a patient advocate program and a quality assurance program. While these two programs will in substantial measure take over the responsibilities of the monitor, they will do so under the control of the defendants; they will lack the independence the monitor had. Nonetheless, the court's concerns, though serious, do not warrant disapproval of the settlement under the standards of this circuit for accepting and rejecting settlements. *See Halderman v. Pennhurst State School and Hospital,* 610 F.Supp. 1221, 1231 (E.D.P.1985) (court approved settlement containing monitoring procedures that were less effective than court-ordered procedures).

***6** Another troubling concern for the court and many objectors is that the settlement provides no specific deadlines or certainty of funds for compliance. Indeed, the settlement allows the defendants until December 1, 1986, to submit future plans for the state system, and merely enjoins them to take "reasonable steps" to implement the plans.

Admittedly, on the one hand, there has been in this lawsuit a trail of broken promises of when there would be full compliance with the standards and orders of this court. On the other hand, one cannot question that since this lawsuit began there has been substantial and dramatic improvement in the Alabama Mental Health and Mental Retardation System. Counsel for the plaintiffs therefore correctly point out that past experience with the court-ordered deadlines has brought substantial compliance but not timely full compliance. Counsel for both plaintiffs and defendants ask that the court now try the approach offered by the settlement. While they admit that they cannot assure the court that the settlement will bring about early full compliance, they believe that, in light of the present state of the law and the present political climate in the state, the settlement is more likely to do so than a new set of specific deadlines. The court cannot say that counsel's belief is unreasonable or unfounded.

Finally, a number of objectors to the settlement strongly question whether the court should terminate its active supervision of the Mental Health and Mental Retardation System when a number of state public service programs, including the Mental Health and Mental Retardation System, are threatened with a severe shortage of state funding. Counsel for plaintiffs correctly observe that if the point is reached where lack of funding actually threatens or impedes the ability of the defendants to continue in their efforts to reach and maintain full compliance with standards and orders of the court, the plaintiffs are still authorized by the settlement to request appropriate relief from the court. That relief would include reactivation of active court supervision of the system, if warranted.

IV.

The court is convinced that the settlement here is a mixed bag, as are all settlements; courts have repeatedly emphasized that "[c]ompromise is the essence of settlement," and part of any settlement is "the yielding of absolutes." *Cotton,* 559 F.2d at 1130. But more importantly, under the standards previously articulated for accepting and rejecting settlements, the court must conclude, in the absence of fraud or collusion or a conflict within the class, that *overall* the settlement is fair, adequate and reasonable. While admittedly the settlement contains troubling provisions, it also contains significant and substantial rewards for the plaintiff class. Therefore, viewing the settlement not in fragments but "as a whole" as the court must, *Cotton,* 559 F.2d at 1326, the court will approve the settlement. *See Halderman v. Pennhurst State School and Hospital,* 610 F.Supp. 1221 (E.D.Pa.1985) (court approved "imperfect" settlement of mental retardation case).

***7** Accordingly, it is the ORDER, JUDGMENT, and DECREE of the court that the settlement entered into and submitted by the parties is approved and adopted by the court.

CONSENT DECREE

The parties in this action have settled the outstanding disputed matters in this case and have consented to the entry of an injunction with the following terms. The Court finds that the parties' settlement is reasonable and fair. It is therefore ORDERED, ADJUDGED, and DECREED that:

1. All pending motions be and are hereby DENIED as moot.

2. The Court's active supervision of the state's mental health and mental retardation system be and is hereby TERMINATED.

3. The Court's prior orders placing the Alabama mental health and mental retardation system in receivership be and are hereby VACATED.

4. The obligations and powers of the Court Monitor shall be TERMINATED as of October 1, 1986, and the monitorship shall at that time end. The Court and all parties express their heartfelt thanks for the work done by Dr. Roger Hildreth and his staff.

5. All defendants except for the defendant Commissioner of Mental Health and Mental Retardation and the defendant institutional directors be and are hereby DISMISSED as parties in this action.

6. The prior orders of, and standards issued by, this Court regarding the obligations of the state's mental health and mental retardation system shall REMAIN IN EFFECT.

7. The Court and the parties recognize that the defendants have made substantial and significant progress in attaining compliance with the orders and standards issued by this Court; however, the Court and the parties also recognize that the state's mental health and mental retardation system is still not in compliance with portions of these orders and standards, including those orders and standards compliance with which would require significant capital expenditures to improve the physical conditions in which patients at Bryce Hospital are served. Accordingly, the defendants are hereby ENJOINED to continue to make substantial progress in achieving compliance with the orders and standards referred to in paragraph 6 above.

8. The defendants have commendably chosen to seek and maintain accreditation from the Joint Commission on Hospitals of the state's mental illness facilities and certification under Title XIX of the Social Security Act of the state's mental retardation facilities as a means of achieving progress toward compliance with the prior orders of this Court. By agreement of the parties, the defendants are hereby ENJOINED to make all reasonable efforts to achieve full accreditation of Alabama's mental health facilities by the Joint Commission on the Accreditation of Hospitals and full certification of Alabama's mental retardation facilities under Title XIX of the Social Security Act—and once attained, to continue to maintain such accreditation and certification.

9. The defendants be and are hereby ENJOINED to continue to make substantial progress in placing members of the plaintiff class in community facilities and programs. In this regard, the Court commends the defendants for their plans to raise capital funds to provide needed community placements and services; the defendants have represented that they will implement their plans as soon as is feasible.

***8** 10. The Court has agreed to the issuance of this Decree based not only on the commendable progress made to date towards achieving compliance with the prior orders of this Court but also on representations made by the defendants concerning the future plans of the state's mental health and mental retardation system. Documents reflecting these representations will be filed with the Clerk on or before December 1, 1986, and, with the exception of defendants' plan for capital spending, shall be available to the public. The defendants' plan for capital spending shall be filed and maintained under seal until presented to the Legislature. The defendants are ENJOINED to take all reasonable steps to implement the plans described in these documents.

11. The private plaintiffs and the defendants be and are hereby ENJOINED to cooperate to establish:

a. A process by which the private plaintiffs' counsel will be apprised of the progress made by the defendants toward the ends described in paragraphs 7, 8, and 9 above; and

b. A process by which the defendants will continue to receive input from independent experts concerning means of achieving the ends described in paragraphs 7, 8, and 9 above;

c. A patient advocate system, operated within and by the Alabama Department of Mental Health and Mental Retardation, to help protect the rights of the plaintiff class; and

d. A quality assurance system operated by the central office of the Alabama Department of Mental Health and Retardation to monitor and assure the quality of care provided by the Department.

12. The parties be and are hereby PLACED ON NOTICE that the Court will entertain requests to reassert its active supervision of the Alabama mental health and mental retardation system if defendants do not continue to make substantial progress toward the ends described in paragraphs 7, 8, and 9 above.

13. It is RECOGNIZED that defendants may, after October 1, 1988, move for a finding that they have met their obligations under this Consent Order.

14. The defendants be and are hereby ENJOINED to pay the private plaintiffs their costs and a reasonable attorneys' fee for legal work done in connection with all pending motions and the negotiation of this Decree. The private plaintiffs and the defendants should seek to negotiate the amount of costs and fees to be paid to plaintiffs. If after 90 days from the date of this Decree the parties have not arrived at an agreement, the plaintiffs shall have an additional 90 days within which to file a motion for costs and fees.

Footnotes

1 While this suit also initially involved a claim that employees at Bryce had been deprived of certain rights as a result of significant staff reductions, that aspect of the litigation was later withdrawn and never became relevant to the proceedings involving the rights of committed residents. *See Wyatt v. Stickney,* 325 F.Supp. 781, 782 n. 1 (M.D.Ala.1971).

2 The law of the former Fifth Circuit prior to October 1, 1981, is binding on the New Eleventh Circuit. *Bonner v. City of Prichard, Alabama,* 661 F.2d 1206 (1981) (en banc).