

IN THE U. S. DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

TAMPA DIVISION

MILLER FRANK JOHNSON,
LLOYD KOGER, GAIL BJERKENES,
SANDRA GUINN and DANIEL FENNELL
on behalf of themselves and
all others similarly situated,

Plaintiffs,

vs.

Civil Action No. 87-369-Civ-T-10A

RICHARD INSLEY, in his individual
capacity and as Administrator
of G. PIERCE WOOD MEMORIAL
HOSPITAL (G.P.W.), and
GREGORY L. COLER in his
individual capacity and as
Secretary of FLORIDA DEPART-
MENT OF HEALTH AND
REHABILITATIVE SERVICES,

CLASS ACTION

Defendants.

FILED
DEC 14 10 27 AM '87

AMENDED COMPLAINT

I. INTRODUCTION

1. This is a suit brought pursuant to 42 U.S.C. §1983 to redress violations of the 1st, 5th, 6th and 14th Amendments to the United States Constitution.

2. Plaintiffs seek declaratory and injunctive relief under the 1st and 14th Amendments to prevent the Defendants from restricting their association with others or their liberty for reasons not related to treatment. Plaintiffs allege that they are unnecessarily restricted while on the grounds of G. Pierce Wood Memorial Hospital (G.P.W.) and that they are denied access to telephones for reasons unrelated to their treatment needs.

6

3. Plaintiffs also allege that between 50 and 125 of the patients at G.P.W. require treatment in alternative, less restrictive facilities in their home communities. The mental health of these patients, whom the defendants label as "discharge ready," deteriorates significantly in the unnecessarily restrictive setting of hospitals such as G.P.W.

4. Plaintiffs seek declaratory and injunctive relief under the 5th, 6th and 14th Amendments to prevent the Defendants from denying them access to the courts. Plaintiffs allege that Defendants' failure to provide them with a law library or attorney representation effectively denies them this access.

II. JURISDICTION

5. This court has jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. §§1331, 1343(3), 2201(a), 2202 and 42 U.S.C. §1983.

6. The unlawful practices and policies alleged below were and are now being committed by the Defendant within the Middle District of Florida.

III. PARTIES

7. Plaintiffs, MILLER FRANK JOHNSON, LLOYD L. KOGER, GAIL BJERKENES, SANDRA GUINN and DANIEL FENNELL are psychiatric patients at G. Pierce Wood Memorial Hospital in DeSoto County, Florida.

8. Defendant, RICHARD INSLEY, is the Administrator of G. Pierce Wood Memorial Hospital, DeSoto County, Florida.

9. Defendant, GREGORY L. COLER is the Secretary of the Florida Department of Health and Rehabilitative Services (HRS). This is the department of state government responsible for providing a comprehensive statewide program of mental health care. As a result, HRS exercises executive and administrative supervision over all mental health facilities in the state of Florida, including G. Pierce Wood Memorial Hospital.

IV. CLASS ACTION ALLEGATIONS

10. This action is brought pursuant to Fed. R. Civ. P. 23(a) and (b)(2) since Defendants have acted in a manner generally applicable to the class as a whole.

11. The Plaintiff class consists of all present and future patients at G. Pierce Wood Memorial Hospital.

12. There is a Plaintiff sub-class of all present and future patients at G.P.W. who have been medically determined to be "discharge ready" for a period of 15 days or longer but who have not been released.

13. This action is properly brought as a class action because:

a. The class is so numerous that joinder of all members is impracticable.

b. Questions of law and fact common to the class include, but are not limited to, whether the defendants have deprived them of:

- 1) their right to movement;
- 2) their right to liberty, free from unreasonable restraint;

3) their right to the least restrictive appropriate available treatment;

4) their right to communicate freely and privately with persons outside the facility and to use telephones in the least restrictive manner;

5) their right to associate with other patients of their choice; and

6) their right of access to the courts.

c. The named Plaintiffs' claims are typical of those of the class. Plaintiffs are patients at G. Pierce Wood Memorial Hospital who have been denied:

1) their right to movement and freedom from unreasonable restraint;

2) their right to the least restrictive appropriate available treatment;

3) their right to communicate freely and privately with persons outside the facility and to use telephones in the least restrictive manner;

4) their right to liberty, free from unreasonable restraint;

5) their right to associate with other patients of their choice;

6) their right of access to the courts.

14. The Plaintiffs will fairly and adequately protect and represent the interests of the class since all their claims are identical to the claims of the class as a whole and they have retained competent counsel to represent them and others similarly situated.

15. Defendants have acted or refused to act on grounds generally applicable to the class as a whole.

V. FACTS

16. Plaintiffs, Miller Frank Johnson, Lloyd Koger, Gail Bjerkenes, Sandra Guinn and Daniel Fennel, are patients at G. Pierce Wood Memorial Hospital (G.P.W.), a state-operated psychiatric treatment facility housing over 800 people like the plaintiffs.

17. Plaintiffs' ability to move freely about G.P.W.'s grounds is governed by whether they possess grounds privileges.

18. Grounds privileges are initially granted by a treatment team of mental health professionals, but they are routinely revoked and reinstated by ward staff who possess no more than a high school diploma.

19. As a result, Plaintiffs' rights to freedom of movement and liberty are being restricted, not for any reasons related to their treatment, but to punish them for disobedience, coerce them into following hospital rules or other rules arbitrarily created by G.P.W.'s staff and to serve their convenience.

20. The Plaintiffs have been deprived of access to public telephones because of there are no telephones on the wards and because of arbitrary restrictions, not related to their treatment, placed on the use of telephones.

21. The Plaintiffs have been deprived of access to the courts because there is no law library available to them and they do not have access to attorneys.

22. As to the representative Plaintiff, Miller Frank Johnson, over one year ago his doctors determined that he was ready to be discharged from G.P.W.

23. Mr. Johnson has not been discharged, in part, because of a lack of alternative treatment services in the communities served by G.P.W.

24. The representative Plaintiff, GAIL BJERKENES, was committed to G.P.W. in January, 1986.

25. She was determined to be discharge ready on August 5, 1986.

26. She remained in this status, but was not discharged, until at least March 5, 1987.

27. Somewhere between March 5 and May 20, 1987, she regressed to the point where she was no longer discharge ready.

28. Ms. Bjerkenes is not considered to be discharge ready at this time.

29. The representative Plaintiff, DANIEL FENNELL, was committed to G.P.W. on November 16, 1973.

30. He has been discharge ready many times over the past 14 years, but he has never been discharged.

31. Currently, Mr. Fennell has been discharge ready since June 1, 1987.

32. Although he has been recommended for placement in a group home or similar facility, the lack of such facilities in the communities served by G.P.W. has resulted in his not being discharged.

VII. CLAIMS FOR RELIEF

COUNT I

33. The Defendants' confinement of Plaintiffs for reasons other than treatment, described in Paragraphs 1-32, has deprived them of their right to associate with other patients of their own choosing in violation of the First and Fourteenth Amendments to the United States Constitution.

COUNT II

34. The Defendants' confinement of Plaintiffs for reasons other than treatment, described in Paragraphs 1-32, has deprived them of their liberty without due process of law in violation of the Fourteenth Amendment to the United States Constitution.

COUNT III

35. Defendants' restrictions on access to public telephones, described in Paragraphs 1-32, restricts the Plaintiffs' ability to associate with others and deprives them of their liberty in violation of the First and Fourteenth Amendments to the U.S. Constitution.

COUNT IV

36. Defendants' failure to provide legal assistance, described in Paragraphs 1-32, denies Plaintiffs access to the courts in violation of the Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution.

VIII. IRREPARABLE HARM

37. Plaintiffs have no plain, speedy, or adequate remedy at law to secure redress. Unless restrained and enjoined by this Court, Defendants will continue to deny Plaintiffs their rights under the Constitution of the United States as described in Paragraphs 1-32. By virtue of the foregoing, Plaintiffs have suffered and will continue to suffer immediate and irreparable injury.

IX. PRAYER FOR RELIEF


WHEREFORE, Plaintiffs request that this Court:


- a) Certify this action as a class action;
- b) Grant a jury trial on all issues on which Plaintiffs are entitled as a matter of right;
- c) Declare that Defendants' confinement and restriction of patients for reasons other than treatment violates their rights as guaranteed by the First, Fifth, Sixth and Fourteenth Amendments to the United States Constitution.
- d) Grant preliminary and permanent injunctive relief restraining and enjoining the Defendants, their officers, agents, employees, attorneys, and successors in office, and all other persons in active concert and participation with them, from any further confinement or restriction of patients for purposes other than treatment;
- e) Award Plaintiffs costs and reasonable attorneys' fees and costs pursuant to 42 U.S.C. §1988; and

f) Grant any other relief the Court deems equitable.

Respectfully submitted,

DATED: December 11, 1987


JAMES F. MENSING
Florida Rural Legal Services, Inc.
305 North Jackson Avenue
Post Office Drawer 1499
Bartow, Florida 33830
Telephone: 813/534-1781


JAMES K. GREEN
Green, Eisenberg & Cohen
301 Clematis Street, Suite 200
West Palm Beach, Florida 33401
Telephone: 305/659-2009

Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing AMENDED COMPLAINT has been sent by regular U.S. mail, postage prepaid, to G. PIERCE WOOD MEMORIAL HOSPITAL, 5100 Highway 31, Arcadia, Florida 33821; Gregory L. Coler, Secretary, DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES, 1317 Winewood Boulevard, Tallahassee, Florida 32399-0700; and John Miller, General Counsel, DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES, 1317 Winewood Boulevard, Tallahassee, Florida 32399-0700 on this 11th day of December, 1987.


JAMES F. MENSING

/cjc