

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

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ROGER G. CANUPP, JACOB MYERS,
LAWRENCE MCGEE, HUBERT DAVIDSON,
TYWAUN JACKSON, and CHARLES DURDEN,

CLERK OF DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS, FLORIDA

Plaintiffs,

vs.

Case No. 2:04-cv-260-FtM-33DNF

LIBERTY BEHAVIORAL HEALTHCARE
CORP., LUCY HADI, Secretary of the
Department of Children and Families,

Defendants.

ORDER

This matter comes before the Court upon Defendant Reiger's Motion for Partial Summary Judgment on the Pleadings and/or Partial Summary Judgment (Doc. #24) filed July 22, 2004 ("Defendant's Motion"). Defendant seeks "partial judgment on the pleadings . . . and/or partial summary judgement . . . **of the procedural due process claims by Plaintiff Kramer in Count [4]** attacking the confinement policies of Liberty Behavioral Health Corp[oration]." Defendant's Motion, page 1 (emphasis added)¹.

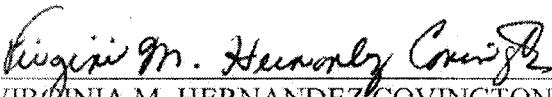
¹ Defendant in its incorporated Memorandum of Law ambiguously claims that "the Court lacks jurisdiction of the claims alleging lack of a discharge process and post-discharge care." Motion at page 11. First, it is unclear whether Defendant intends this argument to apply to Plaintiffs' Complaint generally or apply to Plaintiff Kramer only. Second, it is unclear whether Plaintiff contends that the Court lacks jurisdiction concerning the fact or duration of a plaintiff's confinement at the FCCC. Clearly, 28 U.S.C. Section 2254 vests the Court with jurisdiction to entertain such claims. The Court, however, does not construe Plaintiffs' Complaint as challenging the statutory discharge process established under the Sexually Violent Predator Act. Section 394.910, et seq., Fla.Stat. (2003). Rather, the Court reads Plaintiffs' Complaint as challenging the sufficiency of a Stage IV community treatment

(continued...)

On March 14, 2005, the Court entered an Order dismissing certain named Plaintiffs (including Plaintiff Kramer) and Count 4 of Plaintiffs' Complaint (Doc. #62). Consequently, the Court finds Defendant's Motion moot.

ACCORDINGLY, it is hereby **ORDERED, ADJUDGED and DECREED** that Defendant Reiger's Motion for Partial Summary Judgment on the Pleadings and/or Partial Summary Judgment (Doc. #24) is **DENIED** as moot.

DONE AND ORDERED in Chambers in Fort Myers, Florida, on this 22nd day of March, 2005.


VIRGINIA M. HERNANDEZ COVINGTON
UNITED STATES DISTRICT JUDGE

SA: hmk
Copies: All Parties of Record

¹(...continued)
program. Complaint, page 9, ¶45, page 11, ¶52.