



MH-MA-001-007

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

**DOCKETED**

DAVID BREWSTER, ET AL.,	)	
Plaintiffs	)	
	)	
v.	)	CIVIL ACTION NO. 76-4423-F
	)	
MICHAEL S. DUKAKIS, ET AL.,	)	
Defendants	)	

MEMORANDUM AND ORDER

March 12, 1987

FREEDMAN, C.J.

The history of this litigation has been recounted too many times to require still another repetition here. In the interest of expeditiously resolving the few areas of controversy remaining between the parties, therefore, the Court will proceed directly to the heart of the matter.

Pursuant to Paragraph 57 of the Final Consent Decree entered into by the parties and approved by this Court on December 7, 1978, the court-appointed Monitor has submitted a Recommended Order providing for the Court's disengagement from the Consent Decree. On March 2, 1987 the Court held a hearing on this recommendation at which counsel for plaintiffs and defendants presented oral arguments. The Monitor was also present and addressed some comments to the

Court.<sup>1</sup> Having carefully considered the briefs and oral

<sup>1</sup>At the hearing, the Court expressed its willingness to receive comments from interested community organizations within ten days. Two such comments were received and have been reviewed by the Court.

argument of the parties and the further comments of the Monitor, the Court will, with some adjustments, adopt the Recommended Order of the Monitor.

The parties are in full agreement with nearly every aspect of the Recommended Order. What is in contention, though, is the final section. This section sets forth a three-year timetable for the Court's disengagement. At the conclusion of this period, the Monitor is to report to the Court and a hearing will be held as to whether "the defendants have made significant good faith efforts and progress. . . ." If this is found,

the Court will make a finding that the defendants are in compliance with the Consent Decree and will end its jurisdiction over the case and the mental health system in Western Massachusetts and the Decree will be terminated and notwithstanding said termination of the Consent Decree, the maintenance of effort provisions in Section VII herein shall remain in effect.

Recommended Order, Paragraph 53.

Defendants are in full agreement with this language. Plaintiffs agree that it is appropriate to conclude this case and to permit the gradual withdrawal of active supervision of the Court. Nevertheless, plaintiffs fear the Monitor's proposed language could lead in the future to a wholesale return to pre-Decree conditions. In the words of their counsel, plaintiffs fear that "a fundamental undermining of the whole purpose of the case" could occur and plaintiffs would be powerless to return to Court to stop it. Transcript of February 6, 1987 Hearing at 14.

Though the Court deems this contingency highly unlikely to happen, it does seem to be in everyone's interest for this Court to state at this juncture that plaintiffs would not be without a remedy should the highly unlikely come to pass. The Court, therefore, shall add to the final paragraph of the Recommended Order the following sentence:

The Court notes that said maintenance of effort provisions, in addition to the stated principles therein, are designed to prevent a virtual undermining of the Decree's accomplishments or a dismantling of the mental health system created in Western Massachusetts by the Decree.

At the hearing, the parties also expressed some disagreement about one clause contained in the maintenance of efforts section. The paragraph at issue now reads:

Notwithstanding the Court's Disengagement Orders and subject to available resources and appropriations, the community mental health system of services established under the Decree shall be maintained at appropriation levels and annualized appropriations. . . .

Recommended Order, Paragraph 39 (emphasis added). The Court agrees with the position of plaintiffs' counsel that the inclusion of "available resources" gives the appearance of according too much authority to the Department for the allocation of appropriated revenue among the areas of the Commonwealth. Hearing Transcript at 12. The Court will, therefore, eliminate the words "available resources," to clarify this point.

In light of one of the public comments received, see supra n. 1, the Court wishes to clarify one further aspect of the disengagement section. At every occasion at which the

Monitor is to report to the Court about progress in the implementation of the Decree during the next three years, representatives of interested community organizations will have the opportunity to make their feelings known to the Monitor and the Court.

As so modified, the Court hereby ADOPTS the Monitor's Recommended Order. An Order of Disengagement embracing the modifications contained herein shall issue.<sup>2</sup>

The Court also wishes to add its voice to those of the parties in expressing its thanks to the tireless efforts of the Monitor who enabled the parties to accomplish so much for the citizens of Western Massachusetts and for bringing into sight the conclusion of this case.

It is So Ordered.

  
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Chief United States District Judge

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<sup>2</sup>The Court has also reorganized the Recommended Order somewhat and made some grammatical and stylistic corrections.