

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JACQUELINE FIELDS, et. al.)
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 Plaintiffs,)
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 vs.)
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)
GORDON JOHNSON,)
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)
 Defendant.)

No. 89 C 1624
Magistrate Gottschall

PLAINTIFFS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
IN SUPPORT OF PRELIMINARY INJUNCTIVE RELIEF

I. INTRODUCTION

This is a civil rights action brought pursuant to 42 U.S.C. §1983 filed on behalf of a class of plaintiff parents whose children are the subject of an indicated report of abuse or neglect made by the Illinois Department of Children and Family Services (DCFS).¹ Plaintiffs allege that defendant Gordon Johnson, director of DCFS, has violated and continues to violate their rights under the Adoption Assistance and Child Welfare Act of 1980 ("AACWA"), 42 U.S.C. §§620 et seq. and §§671 et seq. and the First and Fourteenth Amendments to the United States Constitution.

Now pending for decision are the individual claims of plaintiffs Gina Johnson and James Norman for preliminary injunctive relief. They seek an order (1) enjoining defendant from continuing to impose financial conditions upon them as a prerequisite for plaintiffs obtaining custody of their children,

¹ The class is defined in plaintiffs' Complaint at Paragraph 6. No class has yet been certified.

while failing to provide any services through which plaintiffs could meet those financial conditions; and (2) directing defendant to provide coordinated services to enable them to find permanent adequate housing.

A five day hearing was held from May 16 to 22, 1989 during which the following witnesses testified for plaintiffs: plaintiffs James Norman; Gina Johnson; Sarah's Inn counsellor Sherrie Parker; Dr. Ner Littner, psychiatric expert on the traumatic effects of parent-child separation; Chicago Urban League low-income housing specialist Smallie Mike Cook; Margaret Hughes, administrator of the Federal Emergency Management Act program in Chicago, and rebuttal child welfare expert Denise Kane. Defendants' witnesses included defendant's designated representative Theresa Mayberry-Dunn; DCFS child protective worker Walter Henry, who investigated the Johnson case; DCFS worker Susan Bobolink (James Norman's worker); DCFS worker John Mukasa-Ssebaana (Gina Johnson's worker); and the head of the DCFS "Family First" program, Diane Yost. Numerous exhibits were admitted into evidence as well as the depositions of Mr. Mukasa-Ssebaana, Ms. Bobolink, and Cook County DCFS Regional Administrator Ina Denton for use by plaintiffs under Fed.R.Civ.P. 32(a)(2).

II. FINDINGS OF FACT

Based on the testimony of record, the evidence presented and the briefs and argument of counsel, the Court finds as follows:

A. The Child Welfare System In Illinois

1. Gordon Johnson is the director of DCFS and is, by law, charged with its administration.

2. DCFS receives millions of dollars yearly to implement the child welfare programs mandated by the AACWA.

3. When DCFS receives information that a child in Illinois is abused or neglected (typically through a call to the DCFS' hotline) a worker from the DCFS's Division of Child Protection (DCP) is assigned to interview the child and must do so within 24 hours. DCFS has published criteria for what constitutes abuse and neglect which, in relevant part, appear in Pls. Exh. 13.

4. The DCP workers are empowered to take protective custody of children and, as a matter of DCFS policy, have broad discretion to determine in each case whether to do so.

5. When children are taken into protective custody, or later into temporary custody or guardianship, the placement is referred to as substitute care or foster care. The cost of such placement can be more than \$100 per day.

6. As a matter of DCFS policy and practice, DCP workers do not routinely assess family needs and do not arrange for the provision of services to enable families to stay together. According to DCFS policy, it is the responsibility of the follow-up worker, not the DCP worker, to arrange for services to the family. This follow-up worker is assigned 2-3 weeks after children come into custody and often does not actually act on the case until a later time.

7. By DCFS regulation, the follow-up worker must complete

the service plan for a family (hereinafter "case plan") within 30 days of case opening. The case plan must include a complete listing of services to be provided by DCFS to the family to meet the child's permanency goal, e.g. "return home".

8. DCFS conducts administrative case reviews ("ACRs") concerning progress on case plans at six month intervals but does not conduct ACRS if the children are in foster placement with a relative.

9. DCFS routinely provides counseling and homemaker services to families either directly or through "purchase of service" (POS) agreements with other agencies. It does not provide services to assist with housing, either directly or through a POS.

10. DCFS has one cash fund to assist families, the Harris Fund. At the time of trial, these funds were still available. To obtain this money, a DCFS worker must process a grant request and receive approval. Money is only given on a limited basis and only when reunification of the family is "imminent". The average grant given is \$350. DCFS provides no other cash resources to assist impoverished families in obtaining or furnishing adequate housing.

11. In order to comply with the AACWA, DCFS has created a "Family First" program which serves a very small number of families and provides home-based services to avoid removal of children from the home. This program serves a limited population and has not been offered to plaintiffs since it only serves

intact families.

12. Apart from a small project at the Ida B. Wells Homes, DCFS has no liaison or contract with the Chicago Housing Authority or the Illinois Department of Public Aid, the principal sources of cash and housing for low-income persons in Chicago. DCFS has no job referral program for parents.

B. The Effects of Separation on Parent and Child

13. Children and parents suffer both initial and long term traumatic effects of separation. These harmful effects upon the child include feelings of helplessness, guilt, self-blame, anger, and rejection. Prolonged separation can cause multi-generational effects, including "repetition" of placement of children and possible severe psycho-pathology. Parents also suffer harm and emotional trauma from separation, including feelings of self-blame, loss of self-esteem, and reduced ability to function.

C. Appropriate Social Work Practice

14. According to appropriate social work standards for avoiding placement or reuniting families, vigorous services must be provided to families to address their problems as soon as possible. The sooner services are offered, the more likely it is that the family will be able to stay intact or be reunited. Good social work practice dictates that the social worker be involved in developing case plans, working cooperatively with the family and arranging services within a 48-hour period.

15. The aggressive provision of services remains critically important throughout the first year of separation; after a family

has been separated for one year, the rates of successful reunification decline dramatically. In addition, a minimally adequate service plan must contain tasks for the service provider as well as the client to perform.

D. Plaintiff Norman

16. James Norman is the single surviving parent of Lynetta Norman, age 12 and Jamie Norman, age 10. These children were taken into DCFS custody on August 16, 1988 by DCP worker Sylvia Walker when she found the children home alone, with no gas or electric utilities and no working refrigerator. The house was messy with papers and clothes strewn about. The children appeared "very healthy" and denied that they had been frequently left alone by their father. Ms. Walker placed the children with elderly maternal relatives in Harvey, Illinois, where they still remain.

17. Ms. Walker made no effort at the time she removed the children to contact Mr. Norman; she offered no services of any kind to the family; and she later determined that allegations of inadequate food and inadequate supervision were unfounded. She did find "indicated" the allegations of "environmental neglect".

18. The Norman case did not satisfy DCFS own written criteria for neglect since the housing they occupied was not unsafe for the children.

19. All the problems suffered by the Norman family in August of 1988 could have been remedied by the provision of services which already existed in the Chicago area. This would

have enabled the family to remain together. Such available services include: placing a homemaker in the home until Mr. Norman returned; arranging a budgeting skills course for Mr. Norman through United Charities; providing IHEAP and IDPA cash assistance for the refrigerator and utility problems, using Harris fund monies for rent, and advocating for additional public benefits or Social Security on Mr. Norman's behalf. None of these services to prevent placement were offered or arranged for the family.

20. Prior to removal of his children, Mr. Norman had been working part time and receiving \$300.00 per month Social Security for his children plus food stamps. When the children were removed and DCFS began phoning his place of employment, he lost his job, food stamps and the \$300.00 Social Security payments. This precipitated the loss of his apartment and he was forced to move into the crowded home of his cousin, where he presently resides. He currently has no income.

21. Both case plans prepared by DCFS for Mr. Norman were done without his participation. Both impose upon him as a condition for return of his children that he obtain "verifiable income" and "adequate" housing with utilities. Neither plan provides that DCFS will offer, or arrange for any other agency to offer services to assist Mr. Norman to obtain housing or income.

22. Mr. Norman's four DCFS workers failed to offer him any assistance in meeting those conditions. They never advised him of the availability of services or his right to receive them.

23. Mr. Norman's current worker, Ms. Bobolink, did nothing on the Norman case for the first three months it was assigned to her. She did finally meet with Mr. Norman in person on April 20th of this year, just prior to the scheduling of this case for preliminary injunction hearing. She claimed to have made one call on Mr. Norman's behalf to the Chicago Housing Authority but no assistance has resulted from that call. She also referred Mr. Norman to DCFS' youth employment specialist, a service she concedes is inappropriate for an adult. Ms. Bobolink has never applied for cash assistance for Mr. Norman.

24. Though Mr. Norman has been hospitalized twice for a serious heart ailment, his DCFS workers were not aware of this disability until Mr. Norman was deposed in this action. They have made no effort to help him establish entitlement to possible disability benefits.

25. In response to this litigation, Ms. Bobolink has prepared a case plan addendum in which DCFS for the first time commits to "assisting" Mr. Norman with applications for subsidized housing and for Social Security disability benefits. DCFS has not rendered any assistance with either application however.

26. It has been impossible for Mr. Norman to find employment given his serious heart ailment and the lack of funds for transportation. Without a job or other source of income, it is also impossible for him to afford private housing which would cost him at least \$450 per month. Start up costs for private

housing are considerably higher, at least \$1350. If Mr. Norman were to regain custody of his children, he would again receive Social Security on their behalf as well as AFDC and food stamps. Unless custody is regained, however, he will be ineligible for these benefits or for subsidized family housing.

27. In addition to DCFS's Harris Fund, there are services which exist in the Chicago area to meet the cash and housing needs of the Norman family. The Federal Emergency Management Assistance (FEMA) program administers housing, utility and cash programs. IHEAP and IRAPP provide utility assistance. The rent and security deposit funds provided through these programs could enable Mr. Norman to obtain housing for himself and his daughter.

28. The Norman family has suffered irreparably and continues to suffer from the needless separation caused by DCFS. DCFS has done nothing to mitigate the harm caused by separation the Norman family.

E. Plaintiff Johnson

29. Gina Johnson is the natural mother of five children, Wade, age 9, Randy, age 7, Cheryl, age 5, Crystal, age 4 and Terrica age 3. Her children were taken into DCFS custody in March 1988 by DCP worker Walter Henry after Cheryl was sexually abused by Randy. Randy and his brother had lived most of their childhood with their natural father, a convicted murderer. At the time of the assault, they had been in plaintiff Johnson's care for three weeks. DCFS psychological evaluations showed both boys to be severely disturbed.

30. Mr. Walker made no effort to offer any services to the family at that time to attempt to keep the family intact. He also did nothing to minimize the trauma of separation of the children.

31. Upon entering DCFS custody, Wade and Randy have been placed in one foster home, Crystal and Terrica in another, and Cheryl in a third.

32. Services did exist in the Chicago area at that time which could have been utilized to prevent removal of at least some of the siblings from their mother, including removal of the perpetrator, coupled either with placement of a caretaker in the home or placement of the remaining family members in a protective shelter for the victims of domestic violence.

33. When DCFS intervened to remove the Johnson children, plaintiff Johnson lost her principle source of income -- AFDC of \$504 -- and her apartment. She received no income until July, 1988, when she began receiving \$154 per month in General Assistance benefits. Through the help of her sexual abuse counselor, Ms. Sherrie Parker, Johnson is receiving specialized treatment and services through a battered women's shelter, Sarah's Inn. Sarah's Inn, in conjunction with the Austin People's Action Center ("APAC") is providing Ms. Johnson with her own apartment and supportive services as part of its program. The apartment is paid for at least in part through a FEMA grant.

34. Ms. Johnson's DCFS worker has consistently conditioned return of her children upon Ms. Johnson's securing permanent,

stable housing and income. Ms. Johnson has never been advised by DCFS that she had a right to receive any services to meet those conditions. Plaintiff has fulfilled every other requirement in her case plan. Her counselor recommends a phased-in return of her daughters (with initial unsupervised visits, monitoring, and reunification with one child at a time). The DCFS worker insists that the phased-in plan cannot proceed until Ms. Johnson has been in her own "permanent" apartment without supportive help for six months.

35. This "permanent" housing requirement, also referred to by the DCFS worker as "independent functioning" is merely an economic condition imposed upon plaintiff for return of her children. Such a requirement runs afoul of social work practice standards which mandate no such "independence" test and, to the contrary, encourage a supportive living arrangement for reunification of a family effected by domestic violence. There is no written DCFS policy requiring any such waiting period.

36. While DCFS has offered services to plaintiff Johnson, it has failed to provide her with any assistance in meeting the "permanent housing" condition it has imposed upon her. DCFS is not committed in any of the service plans to offering her housing assistance or cash. How she might afford her own apartment remains a mystery: without custody of some of her children she is not ineligible for subsidized housing or AFDC and she cannot afford private housing on her GA grant. If her children are not returned soon, she will lose the housing she does have. By

refusing to proceed with her phased in reunification plan and refusing to offer her housing or cash assistance, DCFS is blocking the only avenues by which she can return to "independence".

37. The Johnson family has suffered irreparably from their prolonged separation. DCFS did nothing to mitigate the harm caused by separation of the Johnson family.

III. CONCLUSIONS OF LAW

1. Plaintiffs have a reasonable probability of success on the merits:

a. Defendant violated plaintiffs' constitutional rights to family integrity by improperly removing their children from them.

b. Defendant violated and continues to violate plaintiffs' constitutional rights to family integrity by intervening excessively into their families, unnecessarily maintaining their children in foster care and taking no action to reunite their families.

c. Defendant violated and continues to violate plaintiffs' constitutional rights to family integrity by causing and perpetuating those very conditions now allegedly requiring separation of these families: lack of adequate housing and income.

d. Defendant has violated and continues to violate plaintiffs' due process rights by imposing conditions for family reunification upon them which are beyond their control.

e. Defendant violated and continues to violate plaintiffs' right pursuant to 42 U.S.C. §671(a)(15) to have the state agency make "reasonable efforts" to prevent the removal of their children from their homes.

f. Defendant violated and continues to violate plaintiffs' right pursuant to 42 U.S.C. §671(a)(15) to have the state agency make ongoing "reasonable efforts" to reunite them with their children.

g. Defendant has violated and continues to violate plaintiffs' right pursuant to 42 U.S.C. §§671(a)(16) and 675(1) to have a case plan which assures the receipt of appropriate services "to facilitate the return of the child".

h. Defendant has violated and continues to violate James Norman's right pursuant to 42 U.S.C. §671(a)(16) to a case review to assure compliance with federal law.

i. Defendant has violated and continues to violate plaintiffs' right to receive services coordinated with other child welfare programs and related services as required by 42 U.S.C. §§622(b)(2) and (7) and §671(a)(4).

2. Plaintiffs will suffer irreparable injury if relief is denied:

a. Deprivation of plaintiffs' fundamental constitutional rights constitutes irreparable injury.

b. Plaintiffs have suffered loss of subsistence income which constitutes irreparable injury.

c. Plaintiffs have suffered severe emotional and

psychological trauma due to the removal and separation of their children from them, which constitutes irreparable injury.

3. The hardship to plaintiffs from denying relief outweighs the hardship to defendant from granting relief.

4. There is no adequate remedy at law.

5. The public interest is served by granting preliminary injunctive relief which will promote family reunification.

6. Defendant's arguments against relief have no merit.

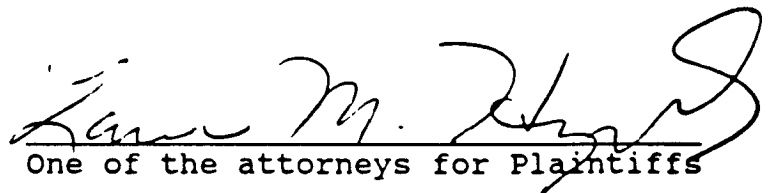
a. The doctrine of abstention is no bar to the relief requested.

b. The eleventh amendment is no bar to the relief requested.

c. The doctrine of collateral estoppel does not apply to bar the relief requested, since the issues raised here were not litigated in state court.

7. Plaintiffs are indigent and cannot afford a bond.

Respectfully submitted,


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