

EVERGREEN LEGAL SERVICES  
KING COUNTY OFFICE

94 FEB 18 AM 9:18

CIVIL TRACK 1  
JUDGE SCHINDLER

IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

WASHINGTON STATE COALITION FOR )  
THE HOMELESS; et at., )  
 )  
Plaintiffs, )  
 )  
v.s. )  
 )  
DEPARTMENT OF SOCIAL AND HEALTH )  
SERVICES, et al., )  
 )  
Defendants. )

No. 91-2-15889-4

ORDER ON CROSS MOTIONS  
FOR SUMMARY JUDGMENT

The plaintiffs made a motion for partial summary judgment seeking a declaratory judgment. The defendants cross moved for summary judgment on all of Plaintiffs' claims. The parties submitted the following pleadings and record:

Stipulation of Facts, dated September 1, 1993;  
Stipulation of Exhibits;  
Plaintiff's Motion for Partial Summary Judgment, with supporting declarations and affidavits;

Declaration of Terrence A. Carroll;  
Declaration of Elizabeth A. Cole, M.S.W.;  
Declaration of Kurt Creager;  
Declaration of Martha C. Dilts, M.S.W.;  
Declaration of Ronald L. Oldham;  
Declaration of Lenore Rubin, Ph.D.;  
Affidavit of Mary Beth Shinn, Ph.D.;

Defendants Response to Plaintiffs' Memorandum in Support of Partial Summary Judgment;  
Plaintiffs' Reply in Support of their Motion for Partial Summary Judgment, and supporting declaration;

Third declaration of Michael Mirra, with attached interrogatory and DSHS response;

Defendants' Motion for Summary Judgment, and supporting declarations;

Declaration of Richard Anderson;  
Declaration of Lee Doran;

Plaintiffs' Memorandum Opposing Defendants' Motion for Summary Judgment, and supporting declarations;

Affidavit of Kay Young McChesney, Ph.D.;

Defendants' Reply Memorandum in Support of Motion for  
Summary Judgment;  
Record pertaining to the individual damage claims;

Hill Family

Declaration and excerpts of deposition transcript  
of Stan and Marie Hill;

Coughlin Family

Declaration of Kerry Coughlin and excerpts of her  
deposition transcript;

First, Second and Third Declaration of Bradford K.  
Kinsey, G.A.L. and excerpts of his deposition  
transcript;

Excerpts of deposition transcript of Tracy Dalton,  
C.P.S.;

Sanders Family

Second Declaration of Elizabeth Sanders;

First Declaration and excerpts of deposition  
transcript of Bruce Norton, C.W.S.;

Declaration of Miriam Baroga;

Brief of Amici Curiae;

Defendant's Response to Brief of Amici.

A. Plaintiffs' Claims Pursuant to RCW 74.13

Plaintiff's motion for a declaratory ruling pursuant to  
RCW 74.13 is granted.

1. RCW 74.13.031 provides that "The department shall have  
the duty to provide child welfare services as defined in RCW  
74.13.020 and shall (1) Develop, administer, supervise, and  
monitor a coordinated and comprehensive plan that establishes,  
aids, and strengthens services for the protection and care of  
homeless, runaway, dependent or neglected children." As defined  
in RCW 74.13.020, child welfare services are public social  
services "which strengthen, supplement or substitute for parental  
care and supervision for the purpose of: ... (2) Protecting and  
caring for homeless, dependent, or neglected children, ... (4)  
protecting and promoting the welfare of children, including  
strengthening of their own homes where possible, or where needed,  
...". Homeless children include children who are members of  
homeless families.

2. The language of RCW 74.13.031 is mandatory. The  
department is required to have a plan that establishes, aids, and  
strengthens services for the protection and care of homeless

children. Although the department has discretion concerning the provision of child welfare services, housing would certainly be a component that would need to be addressed in any plan that complies with state law.

3. Plaintiffs' motion for summary judgment on the grounds that the defendants do not have a plan pursuant to RCW 74.13.031 is denied. There is a material issue of fact as to whether the state has a plan as required by RCW 74.13.031. At trial, the burden is on the state to establish that they have a plan that meets the requirements of the law. The plaintiffs then have the burden to show the defendants' plan is inadequate and does not meet the requirements of the law. The defendants will then have the opportunity to respond to the evidence presented by the plaintiffs.

4. Defendants' motion for summary judgment on the grounds that RCW 74.13 does not create an entitlement that would be protected by the Washington and United States Constitutions is granted. RCW 74.13.031 and 74.13.020 do not create a specific entitlement to housing assistance for homeless children and their families whose denial or deprivation is protected by the Washington State or United States Constitutions.

B. Defendants' Claims Pursuant to RCW 74.14A and RCW 13.34.

1. The legislative scheme of RCW 13.34 and RCW 74.14A contemplates immediate and intensive support services to reunify a family where a child may be removed from parental custody. All reasonable efforts must be made to prevent the unnecessary separation of children from their parents. In the more recently enacted RCW 74.14A Children and Family Services, the Washington State legislature reaffirmed its intent RCW 13.34. The family unit is the fundamental resource of American life which should be nurtured and the family unit should remain intact absent compelling evidence to the contrary.

2. Federal law requires that to obtain federal reimbursement, a state must have a plan which provides that in each case reasonable efforts will be made to prevent or eliminate the need for removal of the child from his parents and make it possible for the child to be returned to his parents. In the Adoption Assistance and Child Welfare Act, these objectives are to be accomplished by providing Child Welfare Services that preserve the integrity of the family and prevent or eliminate the need for removal of the child from the family.

3. The State of Washington has enacted legislation to conform with Federal Law to determine what services are provided (RCW 13.34, 74.14A). In Suter v. Artist M., 118 L.Ed.2d 1 (1992), the United States Supreme Court held that the term "reasonable efforts" imposed only a generalized duty on the states. Congress in the Adoption Assistance and Child Welfare Act left a great deal of discretion to the states to determine what services are

to be provided. Such discretion, however is not unfettered. As noted in Suter v. Artist M. the determination that reasonable efforts have been made and that reasonable services have been provided is ultimately the responsibility of the judiciary. Congress relied on the ability of the judiciary to ensure that reasonable efforts were made by the State to reunite the family and prevent removal from the home. That determination will vary with the circumstances of each individual case. However, for those cases that the court determines that a family's homelessness is the primary factor that would either result in a child's placement or prevent reunification and if it is in the child's best interest, the court has the authority to require the department to provide housing assistance. Housing assistance can range from providing assistance in retaining or obtaining housing from federal, state, local or private agencies to the expenditure of funds.

C. The Damage Claims of the Plaintiffs' Claim Representatives.

1. The plaintiffs Hill, Coughlin, and Sanders do not meet the legal requirements necessary to obtain damages. The department's motion for summary judgment discussing their claims for damages is granted.

DONE IN OPEN COURT this

16 day of February,  
1994.

  
The Hon. Ann Schindler, Judge