

2002 WL 32820139 (Cal.Superior) (Trial Motion, Memorandum and Affidavit)
Superior Court of California.
Los Angeles County

CAPITOL PEOPLE FIRST, Plaintiff(s),
v.
DEPARTMENT OF DEVELOPMENTAL SERVICES, Defendant(s).

No. 02-038715.
July 10, 2002.

Order

Demurrer to Complaint Overruled

Protection & Advocacy Inc., Attn: Goldblatt, Ellen S., 433 Hegenberger Road, Suite 220, Oakland, CA 94621

State of California - Attorney General's, Office, Attn; Carson, Susan M, 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004

The Demurrer to Complaint filed for Department of Developmental Services (DDS) was set for hearing on 06/13/2002 at 10:00 AM in Department 22 before the Honorable Ronald M, Sabraw, The Tentative Ruling was published and was contested.

The matter was argued and submitted, and good cause appearing therefore,

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: Demurrer of Defendants to the Petition for Writ of Mandate and Verified Complaint is decided as follows:

Demurrers to fifth cause of action alleging violation of state constitutional rights (paras 251-254) the sixth cause of action alleging violation of federal constitutional rights (paras 255-261) are OVERRULED.

The fifth and sixth causes of action each commingle several different theories of constitutional law. The state law claim concerns the right to personal liberty under Article 1, Section 1, substantive and procedural due process under Article 1, Sections 1 and 7(a), equal protection under Article 1, Section 7(a), and the right of association under Article 1, Section 7(a). The federal law claim concerns substantive and procedural due process and the liberty interest under the due process clause of the Fourteenth Amendment, the right of association under the First Amendment, and equal protection under the equal protection clause of the Fourteenth Amendment.

On a demurrer, the Court may not parse Plaintiff's claims. A demurrer must eliminate an entire cause of action and does not lie to a portion of a cause of action. PH II, Inc. v. Superior Court (1995) 33 Cal. App. 4th 1680, 1682-83. Therefore, a cause of action survives if any portion of the cause of action survives.

Defendants argue, accurately, that individuals do not have a Constitutional due process right to be placed in the least restrictive environment or in a community setting. The Constitution does require, however, that professional make a reasoned recommendation to place an individual in a restricted environment. The Constitution requires that "the courts make certain that professional judgment in fact was exercised." Youngberg v. Romeo (1982) 457 U.S. 307, 319-320. The Petition and Complaint allege that professionals fail to conduct adequate assessments and fail to do individualized program planning.

(Complaint at 111, 113d, 172-175.)

Defendants argue that Plaintiffs cannot assert a Constitutional claim that individuals cannot be placed in institutions if required by budgetary and resource constraints. Addressing Constitutional and ADA claims, the Court in *Williams v. Wasserman* (D.Md. 2001) 164 F. Supp. 2d 591, 627, held “While the State may not confine patients to mental institutions who do not belong there simply because it is financially or politically expedient to do so... it is sufficient if a state acts reasonably to implement community placement, without arbitrary or undue delay in light of legitimate budget constraints and the competing demands of other disabled citizens.” Plaintiffs argue that other federal courts have held that professional judgment may be lacking if either the professional decision or the actual placement after a decision is made are based on the availability of resources. *Thomas S. by Brooks v. Flaherty* (W.D.N.C. 1988) 699 F.Supp. 1178, 1195 and 1202 (para 10) (Noting “tendency among human service professionals in the state psychiatric institutions to conform their recommendations for treatment or habilitation of class members to the constraints imposed by the state’s inadequate service delivery system, rather than to exercise true professional judgment.”); *Lelsz v. Kavanagh* (N.D, Tex. 1987) 673 F. Supp. 828, 835 (“When professionally acceptable judgments are not effectuated because of administrative ineptitude or insufficient funds, the inadequacy of care is not removed from judicial purview simply because the initial judgments made by professionals were proper.”) The Petition and Complaint allege that defendants place individuals based on resource and fiscal restraints rather than professional judgment. (Complaint at 111, 113e and f, 164-171, 176-180.)

There is little California law directly addressing the Constitutional issues raised in this complaint. Therefore, prudence dictates that the demurer be overruled so the Court can visit the issue on a fully developed factual record. In addition, virtually all of the California and Federal case law on the subject of the due process implications of medical institutionalization is at the summary judgment or trial phase. Therefore, the Court holds that the Complaint adequately states due process claims under the California and United States Constitutions.

Having found that the Fifth and Sixth Causes of Action adequately allege due process claims, the Court does not need to reach whether Plaintiff has adequately plead claims regarding equal protection and the right to association.

The State of California is a proper party to the first, second, fourth, fifth, sixth, seventh, and ninth causes of action. Under the Lanterman Development Disabilities Services Act, the State of California accepts a responsibility for persons with developmental disabilities and an obligation with it much discharge. *Welf & Inst. Code § 4501*; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal,3d 384, 393 (“[T]he [Lanternan] Act clearly defines the right of the developmentally disabled person to be provided with services and the corresponding obligation of the state to provide them. Indeed, sections 4501 and 4502 clearly speak in terms of the responsibility of the state and the rights of persons with developmental disabilities.”)

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