

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

W.R., individually and on behalf
of her minor son, JOSEPH R.; :
SUSAN K.; M.O., individually and
on behalf of her son, OMAR S., :

Plaintiffs, :

V. :

CASE NO. 3:02CV429 (RNC)

CONNECTICUT DEPARTMENT OF :
CHILDREN AND FAMILIES, and :
CHRISTINE REGALIA, in her :
official capacity as Commissioner
of the Connecticut Department :
of Children and Families, :

Defendants. :

RULING AND ORDER

Plaintiffs bring this action on behalf of themselves and other children in the custody of the Connecticut Department of Children and Families ("DCF") challenging DCF's failure to provide them with community-based residential placements. They claim that they have been denied such placements because of their mental and emotional disabilities in violation of the Americans with Disabilities Act, 42 U.S.C. § 12132 (the ADA), Section 504 of the Rehabilitation Act, 29 U.S.C. § 794(a) (the Rehabilitation Act); Conn. Gen. Stat. §§ 17a-3 and 17a-6; and the Twenty-First Amendment of the Connecticut Constitution. The complaint seeks class certification, injunctive and declaratory relief and, in the case of one of the named plaintiffs, money damages.

Defendants have moved to dismiss the action on the grounds that (1) the complaint fails to state a claim under the ADA or the Rehabilitation Act; (2) Younger abstention is necessary to avoid interfering with pending state proceedings involving the named parties;¹ (3) Burford abstention is necessary to avoid interfering with the State's initiative known as "KidCare," which aims to radically restructure and reform the delivery of mental health services to children with serious mental and emotional disabilities;² (4) plaintiffs have failed to exhaust administrative remedies; and (5) money damages are unavailable. The motion to dismiss is granted as to the claim for damages under the Rehabilitation Act but otherwise denied.

I. Facts

The complaint alleges the following facts. Joseph R. and Omar S. are minors in DCF custody who suffer from mental illness and, as a result, display assaultive behaviors beyond their control. DCF took custody of these children because their special needs could not be met in their home environments. Omar has been placed in a number of foster homes. Joseph has been placed in various hospitals and institutions. None of these placements has adequately met either child's special needs.

Susan K. was in DCF custody from the time she was nine years of

¹ See Younger v. Harris, 401 U.S. 37 (1971).

² See Burford v. Sun Oil Co., 319 U.S. 315 (1943).

age until she turned eighteen. She suffers from emotional disabilities that cause oppositional and sometimes assaultive behaviors. Because of her emotional disabilities, she is unable to live successfully in a community-based residential program without 24-hour supports, including special medical treatment. She has been placed in various foster homes, shelters, institutions, respite care facilities, hospitals, and a loosely supervised apartment. None of these placements provided her with the care and support she needs. Once she turned eighteen, she was transferred by DCF to the Connecticut Department of Mental Health and Addictive Services. As a result of assaultive behaviors, she is now confined in York Prison for Women.

The complaint alleges that each of the plaintiffs would be better served in community-based residential programs, and that DCF is required by law to place them in such programs with additional professional staffing if necessary to meet their needs.

II. Discussion

A. Injunctive Relief Under The ADA and the Rehabilitation Act³

DCF relies heavily on the proposition that neither the ADA nor the Rehabilitation Act requires it to create new programs for disabled individuals, citing Rodriguez v. City of New York, 197 F.3d 611, 618-19

³ The ADA and section 504 of the Rehabilitation Act impose the same requirements so the analysis of the sufficiency of these claims is the same. See Rodriguez, 197 F.3d at 618 ("Because section 504 of the Rehabilitation Act and the ADA impose identical requirements, we consider these claims in tandem.").

(2d Cir. 1999). Plaintiffs counter that this case is controlled by Olmstead v. L.C. by Zimring, 527 U.S. 581 (1999), which recognizes that in some cases the ADA may require that persons with mental disabilities be placed in community-based residential programs. The critical distinction between Rodriguez and Olmstead is whether the requested benefit involves creating a new service, as in Rodriguez, or extending an existing program to additional individuals, as in Olmstead. Because the record does not provide much information as to whether, and in what circumstances, DCF provides community-based residential placements to children with mental and emotional disabilities, it is not possible to determine at this stage whether the case is governed by Rodriguez or Olmstead.⁴

B. Abstention

1. Younger

Plaintiffs seem to concede that each of them is a party to a pending state proceeding involving services provided by DCF. Thus, Younger's requirement that there be an ongoing state proceeding involving the same or similar issues appears to be met with regard to all three plaintiffs. However, the record discloses very little information about any of the pending proceedings. In the absence of more information, there might be some risk that this action could

⁴ Defendants also argue that Olmstead is inapplicable because it applies only to individuals who are institutionalized. However, the complaint alleges that the plaintiffs are institutionalized.

interfere in some way with one or more of those proceedings, but the record is not sufficiently developed to permit sound conclusions as to the likelihood, nature or extent of any such potential interference.

2. Burford

It is undisputed that the KidCare initiative is complex and involves matters of great public concern. Here again, though, the record does not provide sufficient information to permit a determination of whether, and to what extent, exercising jurisdiction over this action would be disruptive of the State's effort to restructure and reform the delivery of mental health care services to children.

C. Exhaustion of Administrative Remedies

DCF contends that plaintiffs' pendent state claims must be dismissed for failure to exhaust administrative remedies. However, it is not clear that the plaintiffs have an administrative remedy available to them. Accepting the allegations of the complaint as true, plaintiffs cannot obtain an administrative hearing because of the pendency of state proceedings involving the services provided to them by DCF. In light of this, the pendent state claims cannot be dismissed for failure to exhaust administrative remedies.

D. Damages Under the ADA and the Rehabilitation Act⁵

⁵It appears from plaintiffs' complaint that they may originally have sought damages under the ADA, the Rehabilitation Act, and the state law claims. However, in their opposition to the motion to dismiss, plaintiffs' response is limited to defendants' arguments concerning the
(continued...)

1. ADA

A private plaintiff suing a government entity under the ADA may recover money damages only if the violation is motivated by "discriminatory animus or ill will based on [the plaintiff's] disability." Garcia v. S.U.N.Y. Health Sciences Center, 280 F.3d 98, 111-112 (2d Cir. 2001). To establish discriminatory animus or ill will, plaintiffs "may rely on a burden-shifting technique similar to that adopted in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-805 (1973), or a motivating-factor analysis similar to that set out in Price Waterhouse v. Hopkins, 490 U.S. 228 (1989)." Garcia, 280 F.3d at 112.

Plaintiffs do not specifically allege that DCF's failure to provide them with community-based placements is motivated by discriminatory animus or ill will based on their disabilities. They argue, however, that such an inference is permissible because DCF's failure to accommodate them violates state law and therefore has no legitimate purpose. On the present state of the pleadings, it is not clear beyond doubt that no such inference can be drawn. Accordingly, plaintiffs' claims for damages under the ADA cannot be dismissed.

2. Rehabilitation Act

A state is not subject to liability for damages under the

⁵(...continued)
ADA and the Rehabilitation Act. Accordingly, any claim for damages under the pendent state law claims is deemed abandoned.

Rehabilitation Act unless it clearly waives its sovereign immunity. Garcia, 280 F.3d at 114. Plaintiffs neither allege in their complaint nor argue in their opposition that the State has expressly waived its immunity. Therefore, the claim for damages under the Rehabilitation Act must be dismissed.

III. Conclusion

The motion to dismiss is hereby granted as to the claim for damages under the Rehabilitation Act but otherwise denied.

So ordered.

Dated at Hartford, Connecticut this 24th day of March 2003.

Robert N. Chatigny
United States District Judge