

<b>City of New York v Maul</b>
2006 NY Slip Op 30700(U)
January 3, 2006
Supreme Court, New York County
Docket Number: 400207/04
Judge: Doris Ling-Cohan
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14.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 62

-----X  
THE CITY OF NEW YORK, E.V., J.O. , A.J., T.B., T.V.,  
S.V. and K.D., by WILLIAM C. BELL, Commissioner  
of the New York City Administration for Children's  
Services,

Plaintiffs,

Index No.

-against-

400207/04

THOMAS A. MAUL, as Commissioner of the New York  
State Office of Mental Retardation and Developmental  
Disabilities,

Defendant.

-----X  
DORIS LING-COHAN, J. :

Defendant moves to dismiss those portions of the complaint which require the New York State Office of Mental Retardation and Developmental Disabilities (OMRDD) to immediately place individual plaintiff children in appropriate OMRDD facilities, and require that OMRDD reimburse plaintiffs for any costs, including statutory interest, associated with caring for children currently placed in City facilities.

In this action, plaintiffs are the City of New York (City), the Commissioner of the New York City Administration for Children's Services (ACS) and seven mentally retarded individuals living in City facilities. Defendant Thomas Maul is the Commissioner of OMRDD. Plaintiffs seek declaratory relief and specific performance on behalf of mentally retarded children who have resided for long periods of time in diagnostic reception centers run by City as part of its foster care program, while awaiting transfer to State facilities. The complaint alleges that for over fifteen (15) years OMRDD has failed to provide placement and services to mentally retarded and developmentally disabled children. In 1986, City filed City v Webb, Index No.

40313/86, in an effort to compel the State to meet its statutory responsibilities to these children. That case resulted in a stipulation and court order in which OMRDD agreed to place 200 individuals per year for 4 years. According to plaintiffs, OMRDD has failed to timely or fully comply with the stipulation.

The complaint states four causes of action. First, OMRDD is alleged to have violated its duty under the Mental Hygiene Law (MHL) to provide care and treatment to mentally retarded and developmentally disabled persons, by failing to place, treat and care for them. Second, OMRDD's failure to timely place the named plaintiffs allegedly violates their rights under the MHL to receive care and treatment suited to their needs. Third, OMRDD is alleged to have violated the MHL for its failure to formulate a comprehensive five-year plan, to submit a three-year capital plan, and to issue reports pursuant to the MHL. Fourth, OMRDD's failure to make Home and Community Based Waiver services available to City foster children is alleged to violate the MHL, section 366 of the Social Service Law (SSL), the federal Medicaid statute and regulations, and allegedly is contrary to the State's application to the Medicaid program.

The complaint seeks an order and judgment: 1) declaring that OMRDD'S failure to plan, place, treat and care for the individually named plaintiffs, and all other mentally retarded and developmentally disabled persons properly referred to by the City, violates the MHL, SSL and the New York Family Court Act; 2) requiring OMRDD to place the named plaintiffs immediately in appropriate facilities; 3) requiring OMRDD to establish procedures to ensure the prompt placement in appropriate facilities of the named plaintiffs, all mentally retarded and developmentally disabled children currently awaiting appropriate placements with OMRDD and all other mentally retarded and/or developmentally disabled children to whom City may in the

future refer; 4) ordering OMRDD to develop a comprehensive plan for services to mentally retarded and developmentally disabled children; 5) ordering OMRDD to provide Home and Community Based Services and other community-based services promptly to City foster care children to the same extent such services are provided to other children; and 6) ordering OMRDD to reimburse ACS for any costs, including statutory interest, associated with caring for and providing for children currently placed in City facilities who should be placed in OMRDD facilities.

Before this Court is defendant's motion to dismiss portions of the relief sought based upon a failure to state a cause of action. Specifically, defendant seeks dismissal of the relief that OMRDD must immediately provide facilities for the seven named plaintiffs. Defendant contends that there is no New York law which creates the right to be placed in an OMRDD facility or to be placed in an OMRDD facility by a specific time. According to defendant, it is City which is primarily responsible for the care and treatment of children in its custody who have mental retardation and developmental disabilities.

Defendant refers to a Court of Appeals case, Savastano v. Prevost, 66 NY2d 47 (1985), which held that plaintiffs were not entitled to mandamus to compel their transfer to an OMRDD facility, because there was no clear right to such a transfer. Defendant argues that plaintiffs have no legal right to demand immediate placement with a State agency like OMRDD.

Defendant also seeks dismissal of the portion of plaintiffs' claim which seeks reimbursement on the grounds of subject matter jurisdiction and failure to state a cause of action. Defendant states that plaintiffs are seeking a money claim and that all money claims against the State must be brought before the Court of Claims. According to defendant, the Court of Claims

has exclusive jurisdiction over claims for money damages against the State of New York and State officers acting in their official capacity. Alternatively, defendant argues that even if this court had jurisdiction over the claim for damages, defendant argues that this court should dismiss this claim on the ground that plaintiffs have no right to reimbursement based upon OMRDD's failure to provide such services.

In opposition to the motion, plaintiffs assert that both the City and the State share a responsibility for the care and treatment of mentally retarded and developmentally disabled children. Plaintiffs state that the seven individual plaintiffs have already been accepted by OMRDD, but have been placed on a waiting list due to a lack of facilities. The delay has lasted for years and this allegedly is due to the abuse of OMRDD's discretion. Plaintiffs contend that OMRDD is the agency primarily responsible for providing such long-term services to the mentally retarded and developmentally disabled.

As for the reimbursement, plaintiffs argue that it is not seeking consequential damages that would have resulted from tort or contract claims, but is seeking incidental damages based on declaratory relief. They assert that this court is the proper forum for said relief. Plaintiffs are challenging arbitrary and capricious agency action, and they argue that reimbursement constitutes equitable relief.

The case law indicates that defendant is correct in that the subject children in City facilities have no absolute right to demand immediate placement by the State in OMRDD. See Savastano v Prevost, id. The Court of Appeals in Savastano found that mandamus did not lie to compel the immediate transfer of patients who were mentally retarded from a State psychiatric center to an appropriate OMRDD facility. Rather than dismissing the case, however, the

Savastano court remanded the case for a determination by the trial court of whether the failure of the Commissioner to transfer the patients constituted an abuse of discretion. The court had recognized that the Legislature provided for the exercise of considerable discretion by the Commissioner of OMRDD in the timing of admissions to OMRDD facilities.

In City v Webb, the court was confronted with the same issue. After examining the holding of Savastano, the Webb court found that OMRDD was vested with limited and not absolute discretion as to the acceptance of mentally retarded children in its residential facilities. [See City v Webb, Sup Ct, NY County, November 10, 1986, Cotton, J., Index No. 40313/86; Exh. C, Notice of Motion]. The MHL provides that the Legislature intended to promote City-State cooperation and shared responsibility. The Webb court found that from an overview of the relevant statutes, the State through OMRDD bore substantial and perhaps the ultimate responsibility for the care, treatment and rehabilitation of the mentally retarded throughout the state. The Webb court eventually approved a stipulation which provided for the transfer of children to the OMRDD facilities. [See Exh. D, Notice of Motion]. The stipulation was executed in May 1, 1991 and was to remain in effect until April 15, 1996, although it was partially extended to October 31, 1997. [See Exh. Ex, Notice of Motion].

While there is no right to immediate transfer, plaintiffs could prevail in their action if they can establish that the Commissioner has abused his discretion in failing to transfer the children. Savastano, *supra* at 50. Thus, it would be premature to dismiss this relief at this time.

With respect to the portion of plaintiffs' claim which seeks reimbursement, plaintiffs make a distinction between consequential damages, generally for causes of action sounding in tort or in contract, which are within the jurisdiction of Court of Claims, and incidental monetary

relief which is justiciable in this court. Plaintiffs rely on Gross v Perales, 72 NY2d 231(1988), in which the City sued to challenge a State official's arbitrary and capricious actions. The Court of Appeals held that the case was properly brought in the Supreme Court rather than the Court of Claims, because the reimbursement to the City automatically and necessarily arose from the annulment of agency action.

Here, plaintiffs are bringing a declaratory judgment action and the reimbursement allegedly is incurred by the maintenance of children in City facilities while they should have been transferred to State facilities. Thus, the money sought herein is incidental to declaratory relief. See City of New York v New York State Dept of Correctional Services, 237 AD2d 160 (1<sup>st</sup> Dept 1997). This Court is the proper forum to obtain such relief.

Accordingly, it would be premature at this time on a motion to dismiss, in which the standard is to view the pleadings liberally, to dismiss the requested relief on the ground of failure to state a cause of action. See Campaign for Fiscal Equity, Inc. v State of New York, 86 NY 307, 317-18 (1995). Plaintiffs should have an opportunity to prove whether the Commissioner of OMRDD has abused his discretion.

Accordingly, it is

ORDERED that defendant's motion to dismiss is denied.

DATED:

1/3/06

**FILED**  
JAN 10 2006  
COUNTY CLERK'S OFFICE  
NEW YORK  
Hon. Doris Ling-Cohan,