

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 0000-432355

05/07/2007

HON. KAREN L. O'CONNOR

CLERK OF THE COURT  
L. Owens  
Deputy

CHARLES ARNOLD

EDWARD L MYERS III

v.

STATE OF ARIZONA DEPT OF HEALTH  
SERVICES, et al.

ROBERT J SORCE

DENNIS I WILENCHIK  
ANNE C RONAN  
TIMOTHY A NELSON  
CHARLES L ARNOLD  
BRUCE P WHITE  
STEVEN J SCHWARTZ  
CENTER FOR PUBLIC REPRESENTATI  
22 GREEN ST  
NORTHAMPTON MA 01060

RULING

On April 25, 2007, the Court heard oral argument on “Defendant’s Objection to the Court Monitor’s Findings of Fact and Recommended Decision on the Use of the Good Shepherd Properties by ADHS” and “Arizona Department of Health Services’ Rule 60(c) Motion to Vacate Exit Stipulation, Appendix A, ¶ 127”. At the conclusion of the hearing, the matter was taken under advisement. The Court considered the pleadings and the arguments presented.

The Court finds that an evidentiary hearing is not needed and that neither the “Appointment Order” nor the Arizona Rules of Civil Procedure require it. The facts have been

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fully briefed and argued. There has been no offer of any relevant fact that has not already been addressed in the pleadings.

The issue to determine is whether ADHS's plan for the use of the Good Shepherd properties violates existing court orders. ADHS's plan is to place class members in each of the properties in numbers that exceed the capacity restrictions of the orders. ADHS argues that the Good Shepherd properties are not "residential programs" and therefore not subject to the restrictions. Alternatively, if the Good Shepherd properties are "residential programs" and are subject to the capacity restrictions, then the question becomes whether the orders in Appendix A, paragraph 127 of the Exit Stipulation should be vacated given changed circumstances pursuant to A.R.C.P Rule 60(c)(5). To support their motion, ADHS cites the increase in population and housing costs in Maricopa County and the lack of increase in the Department's current budget to meet the purported changed circumstances.

Related to the issues presented are the four separate agreements, or contracts, the parties previously executed. In 1991, the Implementation Plan was executed and set forth the requirements for residential options for class members. In 1997, the parties affirmed these requirements in the Exit Stipulation, Appendix A. In 1999, these requirements were again affirmed in the Strategic Housing Plan. Most recently, in 2004, the parties agreed to modify the Service Capacity Attachment. These agreements were adopted by the court and made court orders.

As the orders currently stand, there is no disagreement that the Department must comply with the court orders contained in Appendix A, paragraphs 126 and 127 of the Exit Stipulation. Paragraph 127 prohibits the development of "residential programs of more than eight persons or any residential programs in an apartment setting where more than 25% of the apartment units are occupied by class members placed in such a setting by or through DHS." This prohibition applies to all "residential programs" defined in paragraph 126 as "any program for class members that is licensed by, certified by, approved by, or funded by or through, or under contract or subcontract with the state." When read in its entirety, the Implementation Plan supports the conclusion that the Good Shepherd properties is a "residential program" and therefore, ADHS is bound by the capacity limits to which they agreed. The capacity limits preclude the placement of more than three class members in each facility.

To vacate or modify the existing order in Appendix A, paragraph 127, ADHS has the burden to demonstrate that there is a significant change in the facts since the order was entered. In addition, ADHS must present a proposed modification to address the changed circumstances. The proposed modification must be consistent with the purpose of the original order. Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367, (1992).

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ADHS has failed to meet its burden. ADHS affirmed the capacity limits as recently as 2004. The parties could reasonably assume at that time that the population and housing trends would continue prospectively. Further, ADHS provides no acceptable alternative process or safeguard to replace the current order. Finally, ADHS's current budget does not constitute a changed or unforeseen circumstance.

For all of the reasons stated above,

IT IS ORDERED overruling ADHS' objections.

IT IS FURTHER ORDERED adopting the "Court Monitor's Findings of Fact and Recommended Decision on the Use of the Good Shepherd Properties by ADHS".

IT IS FURTHER ORDERED denying "Arizona Department of Health Services' Rule 60(c) Motion to Vacate Exit Stipulation, Appendix A, ¶ 127".

Regarding the "Arizona Department of Health Services' Motion for Leave to Respond to Court Monitor's Affidavit in Support of Court Monitor's Review of the Use of the Good Shepherd Properties", the affidavit was not considered in the Court's rulings. Therefore,

IT IS ORDERED denying the motion.