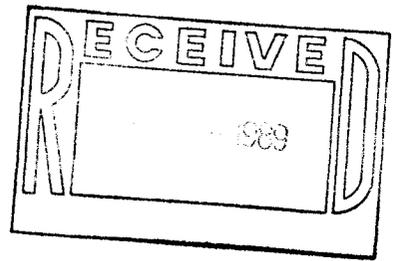


IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA



LaShawn A., et. al,
Plaintiffs,
v.
Marion Barry, Jr., et. al,
Defendant

Civil Action No. 89-1754
(T.F.H.)

MOTION OF THE NATIONAL ASSOCIATION OF SOCIAL WORKERS,
METROPOLITAN WASHINGTON CHAPTER, FOR LEAVE TO
PARTICIPATE AS AMICUS CURIAE

The National Association of Social Workers, Metropolitan
Washington Chapter, hereby petitions the court for leave to
participate in this action amicus curiae, for the reasons set
forth in the attached memorandum.

Respectfully submitted,

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10/30/89
Date

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LaShawn A., et. al,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 89-1754
)	(T.F.H.)
Marion Barry, Jr., et. al,)	
)	
Defendant)	
)	

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE
MOTION OF THE NATIONAL ASSOCIATION OF SOCIAL WORKERS,
METROPOLITAN WASHINGTON CHAPTER, FOR LEAVE TO
PARTICIPATE AS AMICUS CURIAE

The National Association of Social Workers, Metropolitan Washington Chapter, is a professional association representing approximately 2,400 licensed professional social workers in the District of Columbia. The Metropolitan Washington Chapter is part of the National Association of Social Workers (NASW), which has more than 123,000 members nationwide. NASW is the largest and most broadly based organization of social workers in America.

Social work practitioners are dedicated to helping and advocating for the least fortunate and most vulnerable members of our society. Among these are children, and particularly children from broken homes, children who are have been abused or neglected, children who have lost their parents through court action or otherwise and have become dependent upon state agencies for their protection.

One of the primary purposes of the National Association of Social Workers is to "promote the quality and effectiveness of social work practice in the United States of America."¹ NASW concerns itself with the education and training of social workers, the obligations of social workers to the clients they serve and to their profession, and the duty of social workers towards the public.

In furtherance of this objective, NASW publishes standards for social work practice in a number of professional settings. One of these publications, "NASW Standards for Social Work Practice in Child Protection," is attached to this Memorandum as Appendix A. As that pamphlet makes abundantly clear, the objective of social work practice in this area is geared towards "the specific goal of enhancing the safety and well-being of the child."² Forty specific standards are then enumerated, setting forth in detail the particular ethical and competency standards expected of case workers, supervisors and agency administrators.

NASW is dedicated to upholding these standards in any agency setting in which professional social workers are employed to deal with problems of child abuse and neglect. In the District of Columbia, the main agency dealing with these issues is the District of Columbia Department of Human Services, and the main responsibility for maintaining NASW standards lodges with the

¹ Bylaws of the National Association of Social Workers, Purposes Section (Article II).

² "NASW Standards for Social Work Practice in Child Protection" (hereinafter "Standards"), Appendix A, p. 1.

Metropolitan Washington Chapter of NASW, which seeks therefore to enter this case as amicus curiae.

In recent years, as available funds have dried up, as social programs have been cut back by governments trying to balance budgets, and as conditions for the poor have deteriorated because of housing shortages, a drug epidemic, and the deterioration of family and community structure, the ability of social workers to perform their duties in a professional, effective and caring manner has been seriously compromised.

Nowhere is the threatened breakdown in the provision of competent social work services more serious than in the District of Columbia. Conditions that currently prevail in the Department of Human Services prevent social workers from rendering skilled care in a professional manner. These conditions are well known to the members and leadership of the Metropolitan Washington Chapter of NASW.

The Chapter seeks to participate as amicus in order to provide what assistance it can to the Court in understanding the nature of the issues being presented, the impact of the described conditions on the children most at risk, and the devastating effect of inadequate resources on the ability of social workers to perform their duties in a professional manner. The Chapter is also concerned about the risk to social workers themselves and to the profession of which they are part. Those risks range from serious morale problems, as social workers see their ability to provide effective assistance buried in overwhelming case loads

and inadequate support, to fears of personal liability for the almost inevitable damage or injury to children for whom they are responsible.

In addition to providing help to the Court in understanding the depth of the problems raised in the Complaint, the Chapter believes it can be helpful to the Court when it comes to fashioning relief. Through the national resources of NASW, the Chapter can provide the Court with information on what proper social service programs look like and how they work. The availability of financial resources, while important, will not alone solve the problems. Also needed are better organization, recruiting, training, supervision, and a higher level of professionalism among everyone involved. NASW, through the Metropolitan Washington Chapter, is prepared to work with the Court to design remedies that are effective.

Current Conditions in the District of Columbia Department of Human Resources Frustrate Attempts to Provide Competent Professional Social Work Services

The Complaint lists numerous failures on the part of the Defendants to provide and maintain conditions that permit social workers to practice their profession in a safe and effective manner. Some of these allegations are admitted by Defendants. Others, although denied by Defendants, are well known to the Chapter and to its members who work for the Department of Human Services. Among the conditions most harmful to the ability to provide proper social services are:

1. Shortage of staff. Approximately one third of the full-time social worker positions with the Child and Family Services Division are unfilled and have been for at least a year and a half. (Complaint, par. 121. Admitted in Answer.)

2. Dangerously high case loads. As a result of staff shortages and poor organization, social workers are carrying case loads far in excess of the number recommended as safe. Average case loads for individual case workers in the Continuing Services Branch, for example, are 56 families and 125 children. One unit of four workers in this Branch is responsible for 440 families with a total of more than 900 children. (Complaint, par. 122. Admitted in Answer.) The Child Welfare League of America, a national association of child welfare agencies, recommends that social workers in protective services positions be responsible for no more than 17 families at a time, no more than 30 families with children in foster care.³ The NASW's own standards set forth "reasonable" work loads of 20 to 25 families per worker.⁴

3. Supervision is inadequate. Not only do supervisor-worker ratios exceed minimal professional standards,⁵ but--because of an acute shortage of trained social workers--many supervisors end up carrying heavy caseloads of their own. (Complaint, par. 125.)

³ "Standards for Services for Abused or Neglected Children and Their Families," Child Welfare League of America, 1989, p. 51.

⁴ "Standards," Appendix A, Standard 9.

⁵ The recommended standard is five to seven workers per supervisor. See NASW "Standards" (Appendix A), Standard 9.

4. Training is inadequate. Newly hired social workers are thrown into the breach with little or no training, and ongoing workers receive little or no continuing training. (Complaint, par. 124.)

5. Support is inadequate. Equipment necessary to carrying out social work functions--such as automobiles for visiting clients--are in short supply or unavailable.⁶ (Complaint, par. 98.)

6. The system is breaking down. As a result of short staff, unconscionably heavy caseloads, lack of training, inadequate supervision, and lack of necessary equipment, there are very large backlogs in carrying out the mandates of D.C. law. (Complaint, pars. 98 and 99.⁷)

7. Morale is plummeting. The conditions described above have created severe problems of morale for social workers employed by the defendants, and many have complained to District authorities in writing. (See, for example, Complaint, pars. 123 and 125.) NASW Metropolitan Washington Chapter brought these

⁶ NASW "Standards" require "access to transportation 100 percent of the time to ensure that child protective staff can keep in regular contact with their clients and with community agencies." (Appendix A, Standard 8).

⁷ Although Defendants characterize their response to this allegation as a denial, the language they use can be taken as an admission. In response to the allegation that the "foster care program was seriously out of compliance with D.C. Law 2-22, the Prevention of Child Abuse and Neglect Act of 1977, which requires neglect reports to be investigated with[in (sic)] 24 hours of receipt," the Defendants respond that "[T]here are many investigations which remain in compliance with the 24-hour response mandate ...", thereby admitting that there are others which do not comply. (Answer, par. 99).

conditions to the attention of the District Government through testimony in hearings before the Council of the District of Columbia's Committee on Human Services in October of 1988.*

8. The children are in danger. The conditions enumerated above have created a situation "detrimental to the safety and well-being of children and the preservation of families," in the words of the Chair of the Mayor's Committee on Child Abuse and Neglect. (Complaint, par. 123).

As a result, professional social workers employed by the Department of Human Services are caught in a cruel dilemma: if they continue to try to function as best they can under these conditions, they risk violating the law and their own code of professional ethics. If they quit--as many have done--they exacerbate the problems for their colleagues and leave unprotected the children they are supposed to be serving.

Social Workers Are Concerned About Their Legal Responsibilities

The risk of a social worker's being sued and held liable for injuries inflicted on a child in foster care under his or her supervision is more than hypothetical. Two U.S. Circuit Courts of Appeal have ruled that social workers can be held personally liable in a 42 U.S.C. section 1983 action: Doe v. New York City Department of Social Services, 649 F 2d 134, 709 F 2d 782 (on remand) (CA 2, 1981), cert den. sub nom Catholic Home Bureau v.

* This testimony, together with contemporaneous press reports and a letter from a social worker employed by DHS detailing the problems, is attached as Appendix B.

Doe, 464 U.S. 864, 78 L Ed 2d 171, 104 S Ct 195 (1983); and Taylor ex rel. Walker v. Ledbetter, 818 F 2d 791 (CA 11, 1987), cert den. 103 L Ed 2d 808 (1989). As the Court in the Ledbetter case wrote,

The liberty interests in this case are the right to be free from the infliction of unnecessary pain, as that interest is protected by the fifth and fourteenth amendments, and the fundamental right to physical safety as protected by the fourteenth amendment. 818 F 2d at 794.

In both of these cases the Courts relied on Supreme Court decisions that held state authorities liable for failing to provide proper medical care to prisoners, Estelle v. Gamble, 429 U.S. 97, 97 S Ct 285, 50 L Ed 2d 251 (1976), and for failure to provide reasonable care to an involuntarily committed mentally retarded person, Youngberg v. Romeo, 457 U.S. 307, 73 L Ed 2d 28, 102 S Ct 2452 (1982). States and state agents may not be liable for ordinary negligence, the Courts said, but they can be held accountable at least for "deliberate indifference" or "gross negligence." The Court in Doe cited the Supreme Court's statement in Romeo that mentally retarded persons confined to institutions are "entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish." 709 F 2d at 790. By analogy, then, children in foster care are entitled to more considerate treatment than prisoners.

The Supreme Court denied certiorari in both those cases. In the only case involving the legal liability of social workers to reach the Supreme Court so far, DeShaney v. Winnebago County

Department of Social Services, 489 U.S. ___, 103 L. Ed 2d 249 (February 22, 1989), the Court, in a 6-3 decision, held that a state department of social services, and named social workers employed by the department, could not be held liable in damages for failing to remove a child from the custody of an abusive parent. But the Court indicated that it might rule differently in the case of a child in foster care, where the state had already removed the child from its natural parents and placed that child with foster parents, thus creating "an affirmative duty to protect" the child from abuse by the foster parents.*

What standards, then, will courts apply to states and agents of states (including social workers) when children in foster care are abused or injured?

In Ledbetter the Court, en banc, overturned a ruling of a panel of the Court that the case be dismissed for failure to state a claim. It held that the mere allegation by the plaintiff that officials were "grossly negligent" or "deliberately indifferent" to the rights of the child was enough to get the case to a jury. Note that there was no allegation that the caseworker caused the injury; only that he failed to prevent the injury inflicted by the foster parent. Yet the Court found that the caseworker, the caseworker's supervisor, the Director of the State of Georgia's Division of Family and Children's services, and the Commissioner of the Department of Human Resources could all be held liable in damages for the injury to the child because

* DeShaney, fn. 9, 103 L Ed 2d 262.

they knew, or should have known, that the foster parents "were legally and morally unfit" to take care of the child.

It is doubtful that a social worker, sued under such a theory of liability, could successfully defend on the ground of inadequate supervision, too large a caseload, or the unavailability of a vehicle. Thus by virtue of the conditions that prevail within the D.C. Department of Human Services, social workers are being exposed to the very real danger of being sued personally for conditions of neglect brought about by Defendant's mismanagement or negligence.

Social Workers Are Concerned About Upholding The Ethical Obligations of Their Profession

Even without the threat of suit, however, the conditions that prevail at the D.C. Department of Human Services make it virtually impossible for social workers employed there to live up to the ethical obligations of their profession. The National Association of Social Workers has developed a Code of Ethics that

is intended to serve as a guide to the everyday conduct of members of the social work profession and as a basis for the adjudication of issues in ethics when the conduct of social workers is alleged to deviate from the standards expressed or implied in this code.¹⁰

Social workers in child protective services are specifically enjoined to observe the standards of ethical conduct set forth in

¹⁰ Preamble, Code of Ethics of the National Association of Social Workers as adopted by the 1979 NASW Delegate Assembly, effective July 1, 1980.

the Code.¹¹ The NASW Code of Ethics, a copy of which is attached to this Memorandum as Appendix C, enjoins social workers to "act in accordance with the highest standards of professional integrity." Among these standards are the following:

"The social worker's primary responsibility is to clients." (II. F)

"The social worker should retain ultimate responsibility for the quality and extent of the service that individual assumes, assigns, or performs." (I. C(1))

"The social worker should act to prevent practices that are inhumane or discriminatory against any person or group of persons." (I. C(2))

"The social worker should be alert to and resist the influences and pressures that interfere with the exercise of professional discretion and impartial judgement required for the performance of professional functions." (I. D(1))

"The social worker should act to prevent the unauthorized and unqualified practice of social work." (V. M(3))

The NASW Code of Ethics, like similar codes in other professions, emphasizes the responsibility of each social worker for his or her performance, and stresses the social worker's primary responsibility to the clients he or she serves. Current conditions at the D.C. Department of Human Services prevent social workers employed there from carrying out these professional mandates. To continue to serve under these conditions means that social workers must daily violate their obligations to their clients and to their profession.

Aside from the possibility of being charged with unethical behavior--always of great concern to every professional person --

¹¹ "Standards," Appendix A, Standard 1.

social workers know only too well the consequences to the public, and especially to the children for whose personal welfare they are responsible, of not scrupulously following these standards. What is at stake here is no less than the physical safety and mental health of children committed to the care of the District of Columbia.

The NASW Metropolitan Washington Chapter seeks to join this suit as amicus so that the Court may know of the personal anguish and professional anxiety that social workers employed by the District feel as a result of the conditions complained of, and so that the Court may know of the standards of competent care established, and followed elsewhere, in the social work profession.

Conclusion

Current conditions in the District of Columbia Department of Human Services create serious risk of harm to the children with whose care the Department is charged. In addition, these conditions make it impossible for social workers employed by the Department to carry out their professional responsibilities in conformity with their legal and ethical obligations. In considering the merits of this case, and the relief to be granted, the Metropolitan Washington Chapter of the National Association of Social Workers believes it can assist the Court in understanding the important issues at stake and in finding solutions to the problems presented.

Respectfully submitted,



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10/30/89

Date

CERTIFICATE OF SERVICE

I hereby certify that copies of this Motion and the attached Memorandum of Points and Authorities have been mailed this 30th day of October, 1989, to Robin Alexander-Smith, Esq., Office of the Corporation Counsel, District Building, Washington, D.C. 20004, Attorney for Defendants; Christopher T. Dunn, Esq. and Marcia Robinson Lowry, Esq., American Civil Liberties Union, 132 West 43rd Street, New York, New York 10036, and Elizabeth Symonds, Esq., and Arthur B. Spitzer, Esq., American Civil Liberties Union Fund of the National Capital Area, 1400 20th Street, N.W., Washington, D.C. 20036, Attorneys for Plaintiffs.



Lawrence H. Mirel

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LaShawn A., et. al,)
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)

ORDER

Having considered the Motion of the National Association of Social Workers, Metropolitan Washington Chapter, for leave to participate in this matter amicus curiae, and the Memorandum of Points and Authorities in support thereof, and being convinced of the value of such participation, it is by the Court this ____ day of _____, 1989

ORDERED that said Motion is granted, and that the National Association of Social Workers, Metropolitan Washington Chapter, shall be allowed to participate in this case amicus curiae.

UNITED STATES DISTRICT JUDGE

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