

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

Robert K., Freddie G., Tyrone J., )  
Henry E., Donald S., Dennis C., )  
Ansell M., and Bobby L., )

Plaintiffs, )

vs. )

Robert E. Bell, in his official and )  
individual capacities, Karl V. )  
Daskocil, in his official and indi- )  
vidual capacities, Herbert D. Smith )  
in his official and individual )  
capacities, William S. Hall, in his )  
official and individual capacities, )  
Racine D. Brown, in his official )  
and individual capacities, the )  
South Carolina Department of Mental )  
Health; C.M. Tucker, Jr., Carol )  
Garvin, Willie G. Boulware, Elaine )  
T. Freeman, E. A. Hall, C. Alex )  
Harvin, Jr., and Bernard Warshaw, )  
Commission Members, in their )  
official and individual capacities, )

Defendants. )

Civil Action No. 83-287-0

MICROFILMED

FILED

APR 30 1984

JOHN W. WILLIAMS, CLERK  
COLUMBIA, S. C.

CONSENT ORDER

The plaintiffs and defendants William S. Hall, in his official and individual capacities; the South Carolina Department of Mental Health; and C. M. Tucker, Jr., Carol Garvin, William G. Boulware, Elaine T. Freeman, E. A. Hall, C. Alex Harvin, Jr., and Bernard Warshaw, Commission Members, in their official and individual capacities, have entered into certain agreements and request this Court to issue its Order confirming their agreements.

The above-named defendants specifically deny any wrongdoing and additionally deny and dispute the allegations made by these plaintiffs in this lawsuit. However, both plaintiffs and defendants, named above, in an effort to improve the services offered by the Department of Mental Health, have entered into these agreements, which, as hereinafter expressed, shall be the Order of this Court disposing of all issues, including the claims for injunctive and declaratory relief, and excepting the right of the plaintiffs to pursue monetary damages against the defendants Karl V. Doscocil, Herbert D. Smith, Robert E. Bell and Racine D. Brown. The Court will, in addition, retain jurisdiction for the purposes hereafter set forth, and for the purpose of determining what attorney's fees, if any, should be awarded to the counsel for plaintiffs. Except as provided herein, the defendants identified in the first paragraph of this Order are, in effect, dismissed from this action, which shall go forward as a damage suit against the defendants Karl V. Doscocil, Herbert D. Smith, Robert E. Bell and Racine D. Brown.

Nothing herein shall be construed as an admission or a finding that any of the defendants named herein have denied or violated any rights of any of the plaintiffs, and the plaintiffs agree that this Order will not be used in any capacity, evidentiary or otherwise, against any of the defendants in this civil action.

The defendants whose counsel have consented to this Order have also agreed to concede that the plaintiffs are entitled to institute this action and obtain the relief granted herein on their own behalf and on behalf of other persons similarly situated in the State of South Carolina, pursuant to Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure, and that any member of the class as described in the Complaint and in this Order shall be entitled to enforce the terms hereof.

The defendant Commissioner of Mental Health, in his official capacity, agrees to continue to follow and maintain existing policies and directives relating to patient restraint and seclusion, and to further amplify and extend certain policies to clarify their application to Department of Youth Services students committed to the Department of Mental Health, as herein provided. In order to accomplish this goal, the Commissioner, in his official capacity, has consented to this Order, and agrees to effectuate policies containing the following guidelines:

1. Commingling: No later than twelve (12) months from the date hereof, children 17 and under should be separated sight and sound from adults. Department of Youth Services clients over the age of 17 should be placed in such facilities

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as Department of Mental Health officials deem most appropriate to all concerned. Department officials shall develop policy to determine appropriateness of such placements of the latter category of children by ~~April 1, 1984~~ <sup>September 1, 1984</sup>, and submit such policy to the parties and the court for review by this date. No other special category will be provided for children transferred to adult courts for criminal processing, inasmuch as such children are normally incarcerated within the Department of Youth Services until they reach age 17.

Children ages 16 and over may consent to placement in any non-forensic adult unit. For purposes of this Order, a non-forensic adult unit shall mean any unit of the South Carolina Department of Mental Health which is not devoted to the confinement of criminal detainees or offenders.

2. Four-Point Restraints: Four-point restraints of patients 17 and under should be used only as a last resort to prevent harm or physical danger to self or others. Under no circumstances shall restraints be applied to enhance security of the facility, to prevent escape, or to punish the patient. Restraints shall be used no longer than the condition prevails, and the use of restraints beyond a period of four (4) hours must be approved by the facility Superintendent, or, in his absence, by his designee, after considering all the relevant circumstances.

Approval of this official shall be verified in writing, if restraint continues beyond a period of eight (8) hours. The patient will be the subject of observation during the period of restraint, and the need for restraint shall be re-evaluated at 15-minute intervals. The use and duration of such four-point restraints shall be reported to the facility Superintendent and the Departmental attorney assigned Patient Rights responsibilities within 24 hours.

3. Seclusion: Seclusion of patients 17 and under should be used only when the patient is dangerous to himself or to others, or to prevent an imminent and substantial disruption of the therapeutic setting of the facility. Seclusion may continue for no longer than the condition justifying seclusion prevails. Seclusion shall be permitted only as a therapeutic management technique, and shall not be used as punishment or as a disciplinary measure.

While in seclusion, patients 17 and under should be re-evaluated every 15 minutes. Where appropriate, reading materials and exercise should be available. No special diet or extraordinary sensory or physical deprivations should be imposed in addition to the seclusion of the child.

Use of seclusion beyond a period of eight (8) hours must be approved in writing by the facility Superintendent, or in his absence, by his designee, after considering all the relevant circumstances.

Nothing herein shall preclude the use of brief periods of "time out," with appropriate observation, not to exceed thirty (30) minutes.

4. Use of Drugs: For patients 17 and under, drugs should be used for therapeutic reasons only, and there should be no aversive use of drugs or other injections. This Order may be modified by the Court only upon a clear showing by the Department that developing medical standards of treatment allow such a use of medication as medically acceptable for certain therapeutic purposes. Depressants shall not be used to enhance security or prohibit escape.

5. Treatment of Department of Youth Services Clients: Patients referred to the Department of Mental Health by the Department of Youth Services, by the Probate Court, and those children accused or convicted of criminal activity who are referred to the Department of Mental Health will be diagnosed and evaluated with regard to mental and emotional problems; the Department of Mental Health shall develop criteria for performing these functions, which criteria are not limited to completing competency evaluations. In this connection, a DYS client shall be evaluated for determination of whether or not such child is more appropriately a client of the Department of Mental Health, and the criteria developed for these determinations shall be more inclusive than exclusive.

While within the custody of the Department of Mental Health, DYS high security clients will be afforded education programs comparable to those offered to other children 17 years and under. All children shall be placed in the least restrictive environment appropriate under the circumstances, consistent with the treatment of children who are not DYS clients, and consistent with security requirements of the Department of Mental Health and the Department of Youth Services. The Department of Mental Health shall develop criteria for determining such levels of restrictiveness, and concomitant security requirements for such children.

Any criteria to be developed in conjunction with the terms of the foregoing section of this Order, Section Five (5), shall be developed no later than ~~April 1, 1984~~ <sup>September 1, 1984</sup>, and submitted to the parties and this Court for review by that date.

Accordingly, except as to the relief granted and matters retained hereinabove, it is

ORDERED that the within action is dismissed with prejudice as to William S. Hall, in his individual capacity; the South Carolina Department of Mental Health; C. M. Tucker, Jr., Carol Garvin, William G. Boulware, Elaine T. Freeman, E. A. Hall, C. Alex Harvin, Jr., and Bernard Warshaw, Commission Members, in their official and individual capacities, and

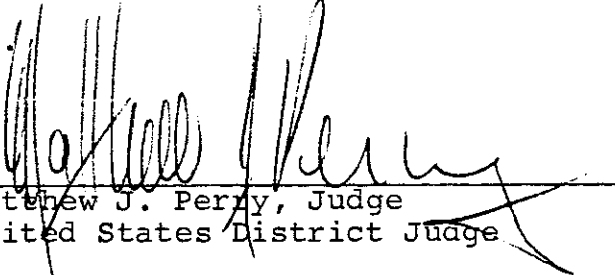
IT IS FURTHER ORDERED that, unless otherwise specified, the terms of this Order shall be immediately effective, and

IT IS FURTHER ORDERED that the within action is dismissed with prejudice as to the defendant Hall, in his official capacity, except that the Court maintains jurisdiction to enforce the provisions hereof.

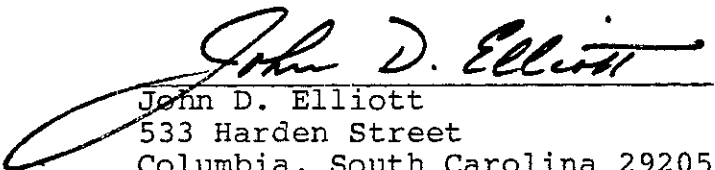
IT IS SO ORDERED.


Columbia, South Carolina

~~December~~ April 30, 1984.

  
Matthew J. Perry, Judge  
United States District Judge

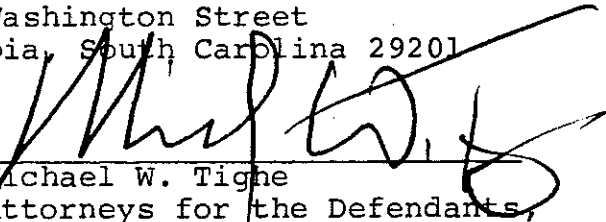
WE CONSENT:

  
John D. Elliott  
533 Harden Street  
Columbia, South Carolina 29205  
Attorney for Plaintiffs

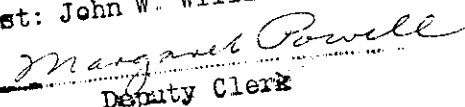
  
Douglas K. Kotti  
1712 Main Street  
Columbia, South Carolina 29201  
Guardian Ad Litem  
for Minor Plaintiffs

CALLISON TIGHE RUSH  
ROBINSON & ANASTASION  
1208 Washington Street  
Columbia, South Carolina 29201

By:

  
Michael W. Tighe  
Attorneys for the Defendants,  
William S. Hall, in his  
official and individual  
capacities; the South Carolina  
Department of Mental Health;  
and C. M. Tucker, Jr., Carol  
Garvin, William G. Boulware,  
Elaine T. Freeman, E. A. Hall,  
C. Alex Harvin, Jr., and  
Bernard Warshaw, Commission  
Members, in their official  
and individual capacities

A TRUE COPY  
Attest: John W. Williams, Clerk

By:   
Margaret Powell  
Deputy Clerk