

94-7173

United States Court of Appeals

for the Second Circuit

RUTH A. GRANATO, Individually and on behalf of all other persons
similarly situated

Plaintiff-Appellant,

MARY JO BANE, as Commissioner of the New York State Department of Social
Services, DONALD W. VOGEL, Jr., as Acting Commissioner of the Cortland
County Department of Social Services, and CORTLAND COUNTY, NEW
YORK,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

BRIEF TO THE DEFENDANT-APPELLEE CORTLAND COUNTY

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UNITED STATES COURT OF APPEALS
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RUTH A. GRANATO, Individually
and on behalf of all other persons similarly situated,

Plaintiff-Appellant,

- v -

MARY JO BANE, as Commissioner of the New York State
Department of Social Services, DONALD W. YAGER, JR., as
Acting Commissioner of the Cortland County Department of
Social Services, and CORTLAND COUNTY, NEW YORK,

Defendant-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT

BRIEF FOR DEFENDANT-RESPONDENT CORTLAND COUNTY

STATEMENT OF ISSUES

There are three issues presented for review as to the defendant Cortland County. The first issue is the same for all defendants and is whether they are entitled to summary judgment because they did not act improperly in respect of the application of various Medicaid regulations to Mrs. Granato's case.

The second and third issues are unique to Cortland County but are moot if this Court affirms Judge Scullin's decision on

the Medicaid issue. These secondary issues are whether Cortland County is entitled to summary judgment on claimant's 5 1983 claim because no cognizable harm has befallen her by actions of Cortland County and whether the presence of both Cortland County and the Cortland County Department of Social Services as defendants is mere surplusage thereby permitting Cortland County to be dropped as a defendant pursuant to Rule 21. The District Court did not reach these issues because it properly granted summary judgment on the main claim.

STATEMENT OF THE CASE

This case is a claim for declaratory and injunctive relief as against all defendants and for money damages as against Cortland County under 42 U.S.C. 1983.

The United States District Court for the Northern District of New York, Hon. Frederick J. Scullin, Jr., granted summary judgment pursuant to Fed.R.Civ.P. 56 to all defendants holding that plaintiff was not entitled to relief because none of the defendants improperly applied the Medicaid regulations in issue.

Upon plaintiff's motion for reargument and reconsideration, the Court adhered to the earlier determination in its entirety.

Judgment was therefore granted to defendants and the Complaint was dismissed.

The facts are not in serious dispute. The plaintiff was the recipient of home health care benefits as administered by the Cortland County Department of Social Services. The Cortland County Department of Social Services is a separately named defendant in this action. In October, 1988 Mrs. Granato attempted suicide and was hospitalized at the Cortland Memorial Hospital. Upon her medical discharge from the hospital, the County Department of Social Services did not immediately resume home health care, taking the position that Mrs. Granato's well-being required that she remain in the hospital where, in point

of fact, she received a level of care higher than the level of care which she was receiving in her home. The County Department of Social **Services** set forth its position clearly and unequivocally, albeit in an incorrect form, with prompt notification to Mrs. Granato.

As was her right, Mrs. Granato challenged the County Department of Social Services' determination and the New York State Department of Social Services conducted a fair hearing at which time it was determined that while the form of the notice was improper, all of the required information for the County's actions was properly set forth. The New York State Department of Social Services did, however, disagree with the County Department of Social Services' determination and directed that Mrs. Granato's home health care be immediately restored, which was done.

Mrs. Granato then brought this action seeking various forms of relief including an injunction, declaratory judgment and money damages in the amount of \$25,000.00. The only claim asserted against Cortland County, as separate and distinct from the Cortland County Department of Social Services, is the claim for money damages in the amount of \$25,000.00.

Both Cortland County and its Department of Social Services are named in this action. Cortland County joined in the summary judgment motions of the other defendants, which motions were granted. This appeal is from that determination.

The District Court did not reach the requests for alternative relief by Cortland County: summary judgment on the ground that Cortland County took no action as separate and distinct from that of the separately named Cortland County Department of Social Services and for an Order under Rule 21 dropping Cortland County as a party defendant.

Cortland County requests that the grant of summary judgment on the merits to all defendants be affirmed in accordance with the positions taken by the State of New York and the Cortland County Department of Social Services. However, should this Court conclude otherwise, it should nevertheless dismiss Cortland County as a defendant since the only action alleged to have been taken was by the County Department of Social Services and not by the County per se. In the alternative, the Court should direct the removal of Cortland County as a defendant since plaintiff's interests are adequately protected by means of her prosecution of the County and State Departments of Social Services.

ARGUMENT SUMMARY

The District Court correctly granted summary judgment to all defendants. The Court correctly held that none of the agencies involved have "acted" in any way detrimental to plaintiff and for the reasons set forth in the briefs filed by the other respondents, there should be an affirmance.

Cortland County is also entitled to summary judgment because it did nothing separate or distinct from the Department of Social Services which is also a defendant in this action.

Even absent summary judgment, Cortland County should be dropped as a defendant pursuant to Rule 21 because its involvement is as a non-essential party and is mere surplusage to the speedy and definitive resolution of the matters in controversy.

P O I N T I

SUMMARY JUDGMENT WAS PROPERLY GRANTED
ON THE MERITS TO ALL DEFENDANTS.

Rather than repeat the arguments advanced by the other respondents, Cortland County simply joins in their arguments in support of Judge Scullin's granting of summary judgment herein.

As the District Court pointed out, the respondents have not "acted" in the sense that they violated the pertinent Medicaid regulations. Thus, while the increase in benefit level to plaintiff may not be what she wanted, it does not represent a deprivation of Constitutional rights as would be required to state a claim under 42 U.S.C. S 1983.

There should be an affirmance.

P O I N T I I

**CORTLAND COUNTY SHOULD BE GRANTED
SUMMARY JUDGMENT AS THERE IS NO
MATERIAL ISSUE OF FACT REQUIRING
RESOLUTION AT TRIAL.**

Summary judgment was properly granted because there is no genuine issue of fact and the defendants have demonstrated their entitlement to judgment as a matter of law. Federal Rule of Civil Procedure Rule 56(c). In this particular case, the County believes that the State of New York's entitlement to summary judgment is well documented which, in turn, justifies a grant of summary judgment to the defendant County. However, even if the Court does not wish to affirm summary judgment on that basis, because there is no independent basis for any liability on the part of Cortland County, as separate and distinct from the Cortland County Department of Social Services, Cortland County's continued involvement in this case represents mere surplusage resulting in additional expense, confusion, and unnecessary protraction of the proceedings.

The only allegations of fact sufficient to give rise to any basis for liability are as against the Cortland County Department of Social Services. There are no allegations that any other agency of Cortland County had any involvement in this case whatsoever. While there is no basis in law or fact for the plaintiff's claim against the Cortland County Department of

Social Services, that is even less true of Cortland County itself.

It has been held that there is no genuine issue of material fact existing "unless there is sufficient evidence favoring the non-moving party for a jury to return a verdict for that party". Anderson v. Liberty Lobby, 477 U.S. 242, 249; 106 S.Ct. 2505, 2511; 91 L.Ed.2d 202 (1986); Coleman v. Ramada Hotel Operating Company, 933 F.2d 470 (7th Cir., 1991). The Court should not be reluctant to grant summary judgment in a proper case and clearly this is such a case. Celotex Corp. v. Cateret, 477 U.S. 317, 323-24; 106 S.Ct. 2548, 2533, 91 L.Ed.2d 265 (1986).

A Motion for summary judgment should be granted when to do so will help the Court to avoid "protracted, expensive, and harassing trials". Meiri v. Dacon, 759 F.2d 989, 998 (2nd Cir., 1985), Cert. Den. 474 U.S. 829 106 S.Ct. 91, 88 L.Ed.2d 74 (1985); see also Whitter v. Abell-Howe, 765 F.Supp. 1144 (W.D. N.Y., 1991); and Wright, Miller and Kane, Federal Practice and Procedure, Civil 2nd, S1688.

P O I N T I I I

IF THE COURT DETERMINES THAT SUMMARY
JUDGMENT IS NOT APPROPRIATE, CORTLAND
COUNTY SHOULD STILL BE DROPPED AS A
PARTY PURSUANT TO RULE 21.

In point of fact, Cortland County and the Cortland County Department of Social Services are one and the same insofar as plaintiff is concerned. Only surplusage with the concomitant expenditure of resources by all parties results from the same party being essentially sued twice in the same litigation. Thus, it is entirely appropriate that Cortland County be dropped as a defendant in this action.

So long as the defendant to be dropped is not indispensable, it is clearly permissible to do so in the furtherance of justice. In re: Joint Eastern and Southern Districts Asbestos Litigation, 124 F.R.D. 538, 541-542 (1989), aff'd 899 F.2d 1281 (2nd Cir.) Cert. Den. 498 U.S. 920; Krueger v. Cartwright, 996 F.2d 928 (7th Cir. 1993). Such a motion is, of course, addressed to the sound discretion of the Court. It is properly applied when issue has been joined but trial has not commenced and where there is no basis for keeping a particular defendant in a case, especially where no prejudice will result to any other party. DuPont Glove Forgan, Inc. v. Arnold Bernhardt and Co., Inc., 73 F.R.D. 313 (N.Y. 1976).

Clearly, the Court's discretion should be exercised to eliminate what amounts to one-half of the same entity from this litigation. This will serve to streamline the litigation and make the trial that much less confusing. Wright, Miller, Kane, supra, Civil, 2d, 52727.

C O N C L U S I O N

There should be an affirmance of the granting of summary judgment to all defendants. There is no claim stated on which material or triable issues of fact exist.

However, should the Court conclude that such facts do exist, a separate but equally dispositive basis for granting summary judgment to Cortland County is present. The Cortland County Department of Social Services will remain as a defendant and it will be its actions, not those of the County itself, that will be in issue.

Finally, if summary judgment is not granted to the County, it should be dropped as a defendant because it is not an indispensable party and its involvement in this litigation duplicates unnecessarily that of the County Department of Social Services.

Respectfully submitted,

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