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52,220 N LOU ALEKSICH, JR., Clerk
By: ~~CATLEA A. BEUTERDAM~~
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

SHIRLEY SMALL, et. al.,
Plaintiffs,

CV 96-49-H-CCL

-v-

ORDER

STATE OF MONTANA, et. al.,
Defendants.

This matter came on for hearing on November 21, 1996 on Defendants' motions for partial judgment on the pleadings and to deny class certification. In their motion for partial judgment on the pleadings, Defendants move the court to declare that Plaintiffs are not and will not be entitled to an order of the court: (1) declaring unlawful the issuance of bonds and the mortgage loan transaction between Defendants to finance the reconstruction of the Montana State Hospital (MHS); (2) enjoining the Montana Health Facility Authority (HFA) from issuing bonds to finance said reconstruction; (3) enjoining the HFA and the Department of Public Health and Human Services (DPHHS) from entering into a mortgage loans agreement to finance said reconstruction; or (4) directing DPHHS to make any modification

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in its existing system or mental health services that would constitute a fundamental alteration of the nature of the service, program or activity provided. Having heard the arguments of the parties and thoroughly reviewed the court record, the court is prepared to rule on Defendants' motions.

The standard of review for determining a motion for judgment on the pleadings is whether it is clearly established that there are no issues of material fact, and the moving party is entitled to judgment as a matter of law. Bacley v. CMC Real Estate Corp., 923 F.2d 758, 760 (9th Cir. 1991); McGlinchy v. Shell Chemical co., 845 F.3d 802, 810 (9th Cir. 1988). Applying this standard to the issues raised in Defendants' motion, and assuming Plaintiffs' material facts as true, Plaintiffs are not entitled to an order from this court declaring that the issuance of the bonds or the loan agreement are illegal. Neither are they entitled to injunctive relief enjoining Defendants from issuing the bonds or entering into the loan agreement. Plaintiffs' argument that the financial scheme eventually will cause the decisionmakers involved in Plaintiffs' assessments and treatment to act illegally is purely speculative and unsupported by the alleged facts. Material facts are not in issue. The court will not presume that state officials will act illegally.

Plaintiffs may, if they show that they are entitled to the type of placement and treatment requested and that DPHHS policies and procedures are in violation of federal law, be entitled to an order directing DPHHS to make modifications in its existing system of mental health services. This issue involves fact questions that must be determined at trial following discovery by the parties. Defendants are not now entitled to judgment on this claim. Accordingly,

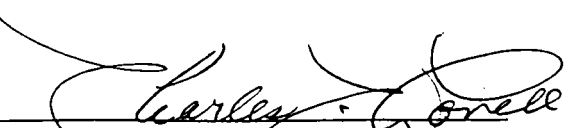
IT IS HEREBY ORDERED that Defendants' motion for partial judgment on the pleadings is GRANTED in part and DENIED in part as discussed herein.

IT IS FURTHER ORDERED that judgment on the pleadings shall enter that Plaintiffs are not entitled herein to an order declaring illegal the issuance of bonds or the mortgage loan transaction; nor does this case entitle Plaintiffs to any injunctive relief as to the bonds, the loan agreement or other instruments, or construction of the building.

IT IS FURTHER ORDERED that the issue of class certification is reserved for future determination.

The clerk is directed forthwith to notify the parties of entry of this order.

Done and dated this 25th day of November, 1996.



CHARLES G. LOVELL
United States District Judge

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LOU ALEKSICH, JR. CL

United States District Court

By GAYLE A. REUTERDAHL
Deputy

DISTRICT OF MONTANA, HELENA DIVISION

SHIRLEY SMALL, et al

JUDGMENT IN A CIVIL CASE

v.

STATE OF MONTANA, et al

CASE NUMBER: CV 96-49-H-CCL

- Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.
- Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that Plaintiffs are not entitled herein to an order declaring illegal the issuance of bonds or the mortgage loan transaction: nor does this case entitle Plaintiffs to any injunctive relief as to the bonds, the loan agreement or other instruments, or construction of the building.

COURT
November 25, 1966
Date

u A l e k s i c h , J r :
Clerk

Gayle A Reuterdaahl
(By) Deputy Clerk