

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROBERT S.	:	CIVIL ACTION
	:	
V.	:	
	:	
CITY OF PHILADELPHIA, et al.	:	NO. 97-6710

MEMORANDUM AND ORDER

Norma L. Shapiro, S.J.

March 17, 2000

I. Introduction

Plaintiff Robert S. ("Robert") brought suit against the Stetson School, Inc. ("Stetson"), Richard Robinson, Dave LaPrad, Ray Williams, Mike Williams, and Robert Martin (collectively, the "Stetson defendants") for physical and psychological abuse in violation of his constitutional rights under 42 U.S.C. § 1983. Plaintiff also brought various state law tort claims against the individual Stetson defendants, as well as § 1983 claims against the City of Philadelphia, the Philadelphia Department of Human Services ("DHS"), and various DHS officials, and state law tort claims against the DHS officials.

On December 16, 1993, the Philadelphia Court of Common Pleas awarded DHS custody of Robert, who was 13 at the time. Robert's mother consented to this custody award. In May, 1995, DHS, with the mother's consent, placed Robert at the Stetson School in Barre, Massachusetts. Robert had been both a victim and a perpetrator of sexual abuse. Stetson is a non-profit charitable organization that specializes in the treatment and education of

sex offenders. Robert alleges that during his time at Stetson, former staff member defendants Dave LaPrad, Mike Williams, Ray Williams and Robert Martin subjected him to physical and psychological abuse in violation of the school's anti-horseplay policy, and severely disrupted his treatment.

It is a requisite for 42 U.S.C. § 1983 liability that the defendant acted under color of state law. Because there were disputed issues of fact on this jurisdictional issue,¹ the court severed it and heard evidence and oral argument on whether Stetson was acting under color of state law. See Imperiale v. Hahnemann University, 776 F. Supp. 189 (E.D. Pa. 1991), aff'd., 966 F.2d 125 (3d Cir. 1992).

The court makes the following findings of fact:

II. Findings of Fact

1. Robert was committed to DHS after having been adjudicated dependent by the Philadelphia Court of Common Pleas; the adjudication was not contested by Robert's mother.

2. DHS decided that Robert needed a placement dealing with sexual offender type behavior; Robert was placed at Stetson. Although DHS had the authority to determine Robert's placement,

¹The Stetson defendants had filed an earlier motion for summary judgment and raised the state actor question there. Judge Gawthrop denied summary judgment because of genuine issues of material fact. Because we have now held an evidentiary hearing, those factual issues are resolved and we can now determine whether Stetson is a state actor.

the decision was made after consultation with Robert's mother; she did not object to the placement.

3. DHS entered into a contract with Stetson pursuant to the Pennsylvania Child Protective Services Law, 23 Pa.C.S.A. § 6301 et seq. Under the DHS contract, Stetson has full discretion over the applicants it chooses to admit, and is not required to accept every referral by DHS.

4. Robert, like other Stetson students, had an "individual service plan" and "individual education plan" created by Stetson employees. These plans are approved by the state, as is the case with all private schools.

5. DHS was Robert's legal guardian while he attended Stetson, and could have removed Robert from Stetson at any time. As Robert's guardian, DHS had the authority to approve Stetson modifications to Robert's visiting privileges. DHS paid Stetson for Robert's care, treatment and education.

6. At the request of Robert's mother, DHS removed plaintiff from Stetson in March, 1997; Robert's mother picked Robert up and brought him home.

7. Stetson is a non-profit residential treatment facility in Barre, Massachusetts; it was privately incorporated under Massachusetts General Law Chapter 180 as a non-profit organization in 1977. In addition to payments by students,

Stetson relies on grants, charitable contributions and private bank loans to cover its costs.

8. At all times relevant to this action, Stetson has specialized in the treatment and education of sex offenders in conformity with the school's stated charitable purposes as set forth in its Articles of Incorporation.

9. Stetson is licensed by the Massachusetts Office for Children and the Massachusetts Department of Education to provide residential treatment, clinical services and special education services to juvenile sex offenders.

10. Stetson is governed by a 21-member Board of Trustees, who are elected by a Board of Corporators. The Board of Trustees elects its officers. None of its officers, members of the Board of Trustees, or members of the Board of Corporators are federal, state or local employees, or are appointed by any government entity.

11. All of the individual Stetson defendants and the Stetson employees who investigated the complaints of Robert were privately employed by Stetson at the times relevant to this action and did not work for any government entity.

12. Stetson's principle competitors in the treatment and education of sex offenders are other private schools.

13. The educational and therapeutic philosophy of Stetson was created and is enforced by Stetson; the same is true of Stetson's code of ethics and student rules.

14. Stetson determines its own hiring criteria and makes its own hiring, firing, and discipline decisions.

III. Discussion

Robert claims relief under 42 U.S.C. § 1983 for violations of his constitutional rights, protected against state infringement by the 14th Amendment. To recover under a section 1983 claim, Robert must prove that the Stetson defendants were acting under color of state law.

The requirement under section 1983 that the challenged activity must be done "under color of state law" is synonymous with the Fourteenth Amendment's "state action" requirement. To satisfy that requirement, a plaintiff must show that the alleged constitutional violation is "fairly attributable to the state." Community Medical Center v. Emergency Medical Services of Northeastern Pennsylvania, Inc., 712 F.2d 878, 879 (3d Cir. 1983)(citation omitted).

The Supreme Court has adopted three principle modes of analysis to determine if an otherwise private entity is a state actor; the facts of the case determine which test is appropriate. Under the "symbiotic relationship test," the court must find that

the state has so insinuated itself with the entity that it is a joint participant in the offending actions. See Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961). The "close nexus" test asks whether the state can be responsible for the specific conduct of which the plaintiff complains. See Blum v. Yaretsky, 457 U.S. 991, 1004. The "public function" analysis asks whether the function performed is "traditionally the exclusive prerogative of the State." Jackson v. Metropolitan Edison Co., 419 U.S. 345 (1974).

A. Symbiotic Relationship Test

Burton established the symbiotic relationship test in holding the Wilmington Parking Authority constitutionally accountable for racial discrimination by one of its lessees; it relied on the fact that the state, by collecting rent from the lessee, profited from the lessee's discriminatory conduct. See Burton, 365 U.S. at 724. Here, plaintiff does not allege that either the City of Philadelphia or the Commonwealth of Massachusetts profited from Stetson's unlawful conduct. The Burton holding has been limited by decisions that neither extensive financial assistance nor routine state regulation is enough to constitute a "symbiotic relationship." See Rendell-Baker v. Kohn, 457 U.S. 830, 842 - 843 (1982); Blum v. Yaretsky, 457 U.S. 991, 1004 (1982).

B. Close Nexus Test

Plaintiff does not argue that either the City of Philadelphia or the Commonwealth of Massachusetts is directly responsible for the alleged physical and psychological abuse by Stetson employees. There is no allegation that either has exercised coercive power, or provided "such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the state." Blum, 457 U.S. 991, 1004 (plaintiffs failed to establish state action in nursing homes' decisions to discharge or transfer medicaid patients to lower care levels). Plaintiff's claim is that the City of Philadelphia and DHS are liable under section 1983 for failing to supervise Robert adequately while at Stetson; plaintiff criticizes DHS' lack of contact with Stetson while the alleged unlawful acts were occurring. There is no close nexus establishing state action.

C. Public Function Test

There are three traditional situations where the public function analysis applies: when the government attempts to avoid its constitutional obligations by transferring a particular function to a private entity; when a private actor exercises powers (such as the supervision of public elections) that are almost invariably exercised by government; and, in the First Amendment context, to determine whether private property is used for a traditionally public purpose. See Community Medical Center

v. Emergency Medical Services of Northeastern Pennsylvania, Inc.,
712 F.2d 878, 881 - 882 (3d Cir. 1983).

Plaintiff argues that DHS transferred its responsibility to care for a dependent child to Stetson, a private entity. Plaintiff also argues that Stetson had significant authority, through the consent of DHS, to restrict Robert's rights in much the same way a prison restricts the rights of its inmates. In other words, according to plaintiff, Stetson became a state actor by assuming two traditionally public roles: caring for, educating, and treating a child (a role DHS was obligated to provide when it was awarded custody of Robert) and imprisoning him.

In Rendell-Baker v. Kohn, 457 U.S. 830 (1982), the Supreme Court considered whether a private school educating students referred to it by the state was a state actor. Former employees of the New Perspectives School, a private non-profit institution in Brookline, Massachusetts for students with drug and alcohol abuse, behavior problems, or other special needs, brought an action under section 1983. See id. at 832. Plaintiffs claimed that the school discharged them in violation of their rights under the First, Fifth and Fourteenth amendments. The New Perspectives School educated children for whom the public school system would otherwise have been responsible; it received over

ninety percent of its funds from the state. See id. at 840 - 843.

The Rendell-Baker court recognized that the education of maladjusted high school students was a public function, but that was insufficient to make the private school a state actor. Plaintiff must show the function of the entity at issue was "traditionally the exclusive prerogative of the State." Id. at 842. Massachusetts had only recently decided to provide education for those students inadequately served by public schools, so the Court could not say that the New Perspectives School was carrying out a traditional government function.

The school's substantial reliance on state funds for its income did not make it a state actor, nor did extensive state regulation of the school. See id. at 840 - 841. The Court found the specific conduct in question - personnel decisions - was not compelled or in any way influenced by any state regulation. See id. at 841. Finally, because the school's fiscal relationship with the state was similar to that between any private contractor doing government work, no symbiotic relationship existed. See id. at 843.

As with the school in Rendell-Baker, Stetson is not carrying out a function that is traditionally the exclusive prerogative of the state. The testimony of Richard Robinson, Stetson's president, made clear that the specialized care and treatment of

sexually abusive children is traditionally left to private schools like Stetson; Stetson's competitors are other private schools. Robert Joiner, Robert's social worker at DHS, acknowledged that he had no expertise in treating sexual abusers and was not aware of any DHS facility for doing so. The role of Stetson is distinguishable from that of a physician contracting with the state to provide health care to prisoners. See West v. Atkins, 487 U.S. 42 (1988) (contract physicians for prison health care are state actors). The education, care and treatment of child sexual abusers, unlike inmate health care, are not traditional state functions.

Plaintiff claims that the various performance standards imposed on Stetson by Pennsylvania law and the DHS contract with Stetson strengthen Stetson's link to the state.² Rendell-Baker made it clear that strict regulation, even if "extensive and detailed," is not enough to convert a private entity to a state actor; there must be some element of direct state involvement in the challenged action. Rendell-Baker, 457 U.S. at 831.³

²Defendants dispute the relevance of one of the regulations cited by plaintiff, the Philadelphia DHS FY 1998 Performance Standards for Placement Care Services, attached as Exhibit A to plaintiff's supplemental trial memorandum concerning Stetson's status as a state actor. We agree with defendants that a 1998 contract addendum, absent evidence that the addendum was in effect during the time period at issue in this action, is irrelevant.

³The only direct state involvement was an investigation of the incident by the Commonwealth of Massachusetts after Robert
(continued...)

Plaintiff, pointing to the highly regimented nature of life at Stetson, emphasizes restrictions on visitation and telephone use. Plaintiff also proved that Stetson contacts the police when a child leaves the premises without permission. There are obviously significant limitations on the freedom of students enrolled at Stetson, as in any school setting, but the nature of those limitations and the relationship between DHS and Stetson do not establish that Stetson is fulfilling the traditional public function of incarcerating criminals.

DHS was awarded custody of Robert after he had been adjudicated a dependent, but there is no evidence that he was ever adjudicated a criminal or juvenile delinquent, or that a court "sentenced" him to Stetson. After evaluating Robert's sexual acting-out behavior, DHS decided to place Robert at Stetson; this decision was made with the advice and support of Robert's mother. Many of the restrictions Stetson imposed on its students are no greater than those any strict private boarding school would impose. These limitations on freedom are not enough to make Stetson the equivalent of a prison.

Plaintiff relies extensively on the opinion of the Tenth Circuit Court of Appeals in Milonas v. Williams, 691 F.2d 931

³(...continued)
made his allegations and left Stetson. The Commonwealth concluded that Stetson had responded appropriately. Stetson had conducted its own internal investigation; it disciplined several of the employees involved and terminated defendants Raymond Williams, Robert Martin and David LaPrad.

(10th Cir. 1982), holding that the Provo Canyon School for Boys, a privately owned and operated school that educates teenage boys with severe physical, psychological or emotional problems, was a state actor. See Milonas, 691 F.2d at 935. Milonas plaintiffs were involuntarily committed to the Provo Canyon School by juvenile courts; they represented a class of "all juveniles who have been, are now, or in the future will be placed at the Provo Canyon School." Id. at 936. Not all boys at Provo Canyon were placed there by juvenile courts, but the district court described Provo Canyon as a "correctional and detention facility." Id. at 935 - 936.

The Milonas court, affirming the district court's ruling that the owners and operators of the Provo Canyon School were acting under color of state law, held that "the state has so insinuated itself with the Provo Canyon School as to be considered a joint participant in the offending actions." Id. at 940. The court found that the involuntary placement of many class members by juvenile courts or other state agencies, combined with the excessive state funding and regulation, was enough to create a "sufficiently close nexus" between the state the school authorities. Id. at 940. The Milonas court distinguished Rendell-Baker because it involved employee discharges without significant participation by state officials in the school's personnel decisions, Milonas, 691 F.2d at 940,

while the Milonas plaintiffs were students, and the state officials were "aware of, and approved of" some of the challenged practices. Id.

That holding of the Tenth Circuit Court of Appeals is not controlling in this court, but Milonas can be factually distinguished. Stetson is not a prison or a juvenile detention facility, and the students are not locked down, in contrast to the Provo Canyon School. The prison-like aspect of the Provo Canyon School, in both the way the school is run and the way children are placed there, is not comparable to Stetson. Here, Robert was never adjudicated a juvenile delinquent, or ordered to attend Stetson by any court. Richard Robinson, Stetson president, recalled only one instance of a court order placing a child at Stetson. In that case, Stetson objected to the placement after determining the child was an inappropriate candidate; Stetson's objection prevailed.

The link between the state and the challenged conduct is significantly weaker here. The specific conduct at issue - physical and psychological abuse from employee horseplay - was not compelled or in any way influenced by any state regulation. There was clearly no direct state involvement in the challenged action as required by Rendell-Baker, 457 U.S. at 841.⁴

⁴The Rendell-Baker Court found no direct involvement even though Massachusetts investigated the challenged action (plaintiff's termination) and concluded it was satisfied with the (continued...)

The Milonas court also believed it could distinguish Rendell-Baker because different due process standards applied to employees as plaintiffs (Rendell-Baker) and students as plaintiffs (Milonas). This court disagrees on the relevance of that distinction in the state action context. Whether or not a defendant is acting under color of state law must be determined first to establish a right to due process at all; without state action, no process would be due; even with state action different process might be due different classes of individuals in different situations.

Neither a symbiotic relationship, close nexus or public function create state action on the facts here. Plaintiff cannot recover against the Stetson defendants under section 1983.

Any facts in this Discussion section not found in the Facts section are incorporated by reference therein.

IV. Conclusions of Law

1. Stetson was not acting under color of state law as required by 42 U.S.C. § 1983.

2. Plaintiff's section 1983 claim against defendant Stetson School, Inc. fails for lack of state action.

⁴(...continued)
school's explanation for that action. Massachusetts conducted a similar post-incident investigation here and concluded Stetson acted appropriately.

3. Because the Stetson School, Inc. is not a state actor, plaintiff's section 1983 claims against Stetson employees also fail for lack of state action.

4. This opinion does not address any of plaintiff's remaining state law tort claims against individual defendants.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROBERT S.	:	CIVIL ACTION
	:	
V.	:	
	:	
CITY OF PHILADELPHIA, et al.	:	NO. 97-6710

ORDER

AND NOW, this 17th day of March, 2000, upon consideration of the Stetson defendants' trial memorandum regarding the state actor issue, plaintiff's memorandum of law regarding the Stetson School as a state actor, plaintiff's supplemental trial memorandum concerning Stetson School's status as a state actor, the Stetson defendants' reply thereto, and after an evidentiary hearing at which counsel for all parties were present, it **ORDERED** that all plaintiff's claims against defendant Stetson School, Inc., Richard Robinson, Dave LaPrade, Ray Williams, Mike Williams, and Robert Martin brought under 42 U.S.C. § 1983 are **DISMISSED** for lack of state action.

S.J.