IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Case No. 14-1082

ROSEMARY SCIARRILLO, by and through her guardians, Joanne St. Amand and Anthony Sciarrillo, et al,

Appellants – Plaintiffs,

v.

CHRISTOPHER CHRISTIE, as Governor of the State of New Jersey, et al,

Appellees – Defendants.

On Appeal from the United States District Court
for the District of New Jersey
D.C. Civil Action No. 2:13-cv-03478 (SRC-CLW)
Stanley R. Chesler, U.S.D.J.)

ADDENDUM TO APPELLANTS' JOINT APPENDIX VOL. I (JA20-JA22)

ON THE BRIEF:

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the decision to close the developmental centers, has in some instances substantially departed from generally accepted professional standards." Indeed, in the nineteen paragraphs of the Complaint reproduced in Plaintiffs' brief, the Court can only find one instance where Plaintiffs allege facts relevant to stating a plausible Youngberg claim. (See Compl. ¶ 89 (describing a physical attack on a Plaintiff by another resident allegedly resulting from "lack of staffing").) But one alleged resident on resident attack does not substantiate a plausible claim for due process violations occurring at two separate state-run facilities that house severely disabled adults.[6]

The Youngberg claim based on current conditions at NJDC and WDC also fails for the distinct reason that the Complaint does not plead facts to indicate that Plaintiffs are in any way involuntarily housed at the two facilities. As stated above, Youngberg rights – *i.e.*, "[t]he affirmative duty to protect" – arise only where the state has taken an "affirmative act of restraining the individual's freedom to act on his own behalf . . . ." See DeShaney, 489 U.S. at 200. Plaintiffs, however, do not argue that Defendants in this case have taken steps to affirmatively confine them to NJDC or WDC. Rather, Plaintiffs argue that they are "totally dependent on the medical and habilitative care provided by the State [at NJDC and WDC], and they cannot decline services at any time without jeopardizing their health, safety, and well-being." (Opp. Br. at 32-33.) To this end, the Third Circuit has indeed recognized, if not held, that otherwise voluntarily committed patients may in certain circumstances "find themselves in a *de facto* involuntary status" for the purposes of Youngberg. See Torisky, 446 F.3d at 447-48 (holding that the trial court erred when it concluded that "the state owes an affirmative due process duty of care to residents of a state institution who are free to leave state custody").

But this case is not one of those circumstances. The Torisky decision, for instance, affirmed an order denying a motion to dismiss where the complaint alleged that the

[6] Paragraph 89 in fact fails to state if the alleged attack took place at NJDC or WDC.

developmentally disabled plaintiffs were, while in state custody, "separated from their guardians . . . by a police blockade" and were "transferred against their will" by state employees who affirmatively utilized "physical and psychological force . . . ." See id. at 448. The Complaint in this case is bereft of facts that reveal similar affirmative acts of physical or mental restraint by the Defendants or their agents. Torisky itself cites to a case from the First Circuit that analyzes and squarely rejects the theory that an institutionalized individual can be *de facto* involuntarily confined because of the profoundness of his disabilities. See id. at 447 (quoting Monahan v. Dorchester Counseling Ctr., Inc., 961 F.2d 987, 992 (1st Cir. 1992)). Much like Plaintiffs here, the plaintiff in Monahan argued that he was "*de facto* a ward of the state" based on, *inter alia*, his "degree of disability" and "the availability of other resources and of . . . guardians . . . ." See 961 F.2d at 992. The First Circuit, however, rebuffed this argument. The court noted that the complaint did not allege that plaintiff was somehow "barred" from leaving the state facility where he was housed. Monahan found that even if the plaintiff's "mental condition . . . made him functionally dependent on his [state] caretakers . . . it was [plaintiff's] own mental condition alone that impinged upon his freedom to leave." As such, "it was not the state that deprived him of that freedom," and the Constitution therefore "did not impose upon [the state] any responsibility for [plaintiff's] safety and well-being." Id. at 992 (citing DeShaney, 489 U.S. at 199-200); see also Randolph v. Cervantes, 130 F.3d 727, 730 (5th Cir. 1997) ("the mere fact that [plaintiff's] mental condition may have made her functionally dependent on [defendants] does not transform her voluntary tenancy at [a state run apartment] into an involuntary confinement"). Identical considerations govern in this case.

Moreover, the facts that have been plead in the Complaint reveal that, far from being *de jure* or *de facto* involuntary committed to NJDC or WDC, it is Plaintiffs sincere desire to remain

at those facilities. (See, e.g., Compl. ¶ 96 ("All Plaintiffs are medically and developmentally most appropriately served at the [NJDC or WDC] instead of any alternative setting.").) Indeed, the relief sought by virtue of the due process claim – as well as all other claims in this case – is an order enjoining the State from moving the Plaintiffs out of NJDC or WDC without their consent. (See Compl. ¶ 176.) It simply cannot be the case that a constitutional right that arises from the state's act of confining an individual at a government facility against his will can be enforced to require the state to keep an individual at a government facility of his choosing. Plaintiffs' due process claim, to the extent that it is based on the living conditions of two state-run facilities where Plaintiffs voluntarily receive state-provided services, fails as a matter of law and is therefore dismissed.[7]

III. Conclusion

For the foregoing reasons, the Court will grant Defendants' motion [Docket Entry 4], and dismiss the Complaint with prejudice. An appropriate Order will be filed herewith.

s/ Stanley R. Chesler
STANLEY R. CHESLER
United States District Judge

Dated: December 13th, 2013

[7] Having found that Plaintiffs fail to state a viable due process claim, the Court need not address Defendant's Burford abstention or Eleventh Amendment immunity arguments. (See Mov. Br. at 26.).

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that the APPELLANTS' ADDENDUM TO JOINT APPENDIX VOL. I, has been filed electronically with the Clerk of Court for the United States Court of Appeals for the Third Circuit using the appellant CM/ECF system. Participants who are registered CM/ECF users will be served by the appellate CM/ECF system.

Date: March 19, 2014

/s/ Thomas B. York
Thomas B. York