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Poe v. Lynchburg Settlement Order

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

Clerk's Office U.S. Dist. Court
AT LYNCHBURG, VA.

FILED

Civ. O. B. #38, p. 90

Lynchburg Division

MAR 6 1985

JOYCE F. WITT, Clerk

By: *Robert H. Turpin*
Deputy Clerk

JAMES POE, et al.,

Plaintiffs,

v.

CIVIL ACTION NO. 80-0172(L)

LYNCHBURG TRAINING SCHOOL
AND HOSPITAL, et al.,

Defendants.

ORDER

On motion of the parties, by counsel, to approve a compromise of this class action, and upon consideration of the arguments of counsel and the papers and pleadings in this case, and there being no objection expressed thereto, it is hereby ordered, adjudged and decreed that the Settlement Agreement attached to this Order be and it hereby is approved. It is further ordered, adjudged and decreed that this action be, and it hereby is dismissed with prejudice as to those members of the class certified by the Court in an Order entered this date.

James C. Turpin
United States District Judge

Dated: 5 March 1985

Seen and Agreed To:

Mary Yancey Spencer
Mary Yancey Spencer
Counsel for the Defendants

Patricia A. Brannan
Patricia A. Brannan
Counsel for the Plaintiffs

A TRUE COPY, TESTE:
Joyce F. Witt, Clerk

By: *Robert H. Turpin*
Deputy Clerk

MAR 16, 1985

JOYCE F. WITT, Clerk
By: *Silvana H. Day*
Deputy Clerk

SETTLEMENT AGREEMENT

WHEREAS there is currently pending in the United States District Court for the Western District of Virginia an action captioned James Poe, et al. on behalf of themselves and all other persons similarly situated, plaintiffs, v. Lynchburg Training School and Hospital, et al. defendants, Civil Action No. 80-0172;

WHEREAS this action was brought as a class action on behalf of all men and women who have been involuntarily sterilized at governmental institutions in Virginia under color of state law (hereinafter "sterilized class"), but no class has yet been certified in Civil Action No. 80-0172;

WHEREAS named plaintiffs under the pseudonyms James Poe, Judith Doe, and Laura Roe, and named plaintiff Mary Lou Adams, are desirous of settling this litigation upon the terms and conditions set forth below;

WHEREAS two other persons involuntarily sterilized since 1960 now known to counsel for plaintiffs in Civil Action No. 80-0172, and whose identities are revealed to the court and counsel for the Commonwealth in sealed affidavits, do wish reversal operations and do not now consent to settlement of this litigation upon the terms and conditions set forth below, and one of these persons requests appointment of counsel to represent her separate interests in the fairness hearing required by Rule 23(e), Fed. R. Civ. P., before this settlement can be approved by the court;

WHEREAS counsel for plaintiffs believes that the settlement as a whole is in the best interests of the "sterilized class" as

a whole, but may or may not be in the best interests of the two individuals identified above as desiring reversal operations and others who are identified by the court at the fairness hearing, one of whom desires separate representation because of her divergent interests from the remainder of the class;

WHEREAS the Commonwealth of Virginia believes that any settlement must include, as a condition precedent, a court-approved class certification of a "sterilized class";

WHEREAS all other issues between the parties have been resolved except the availability of reversal operations to the two individuals identified above as desiring reversal operations.

NOW THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, the parties hereto agree as follows:

1. Counsel for plaintiffs and counsel for the Commonwealth will submit the settlement agreement herein to the court with a joint request for a class certification hearing and a fairness hearing on the terms of the settlement, pursuant to Rule 23(c) & (e), Fed. R. Civ. P.

2. The Commonwealth will undertake a media campaign of broadcasting public service announcements on radio and television stations. The Commonwealth will produce the public service announcements, in the format previously agreed to and attached herein as Exhibit A, at state facilities and at the Commonwealth's cost and will manage the distribution of the tapes to radio and television stations. The Commonwealth agrees to use

its best efforts to ensure that the public service announcement is broadcast by radio and television stations the following number of times in these specific market areas: five times in one month in each of the market areas of Washington, D.C. and Harrisonburg and eight times in one month in each of the market areas of Roanoke, Richmond, Norfolk, and the southwest corner of Virginia. As part of its best efforts, the Commonwealth agrees to do the following: (1) The Commonwealth will send a letter to one or more radio and television stations in each market area in the agreed format of the proposed letter from Dr. Bevilacqua, as amended to request the specific number of showings desired in the particular market area; (2) the Commonwealth will follow up this letter with letter or telephone contacts to verify that the first letter has been received, and (3) the Commonwealth agrees that at the end of two months, it will contact the stations; ascertain how often the broadcast was played; and notify counsel for plaintiffs of the same. The Commonwealth does not guarantee that the public service announcements will be shown a minimum number of times.

3. The Commonwealth will maintain the existing toll-free sterilization hotline and a contact person designated by the Commonwealth for six months from the date the public service announcements are distributed. This toll-free number will be featured prominently in the public service announcements. The hotline will be answered during business hours and the caller's name and dates and place of hospitalization will be obtained; assurances of confidentiality of the answers will be given. The

Commonwealth will determine whether the caller was sterilized at a government institution in Virginia. Once a caller has been identified as having been sterilized, he or she will be referred to a designated staff member at the appropriate state facility for consultation. After hours, a telephone answering machine will be available to take calls on the hotline.

4. The Commonwealth will send to all community services boards a notice of the availability of board services to sterilized persons and will request that the boards post such a notice. The Commonwealth also agrees to let the medical society know in advance of the media campaign contemplated herein and to make available a list of medical authorities regarding sterilizations. A sample notice to the medical society, with authorities, is attached.

5. The Commonwealth represents that psychological counseling is a "core service" that is required to be provided by all community services boards under Va. Code § 37.1-194. The Commonwealth further represents that any person who wishes post-sterilization counseling is eligible for such counseling and will be charged for such counseling based on their ability to pay. As part of its training program for community services boards the Commonwealth will provide training in counseling for persons who are sterilized.

6. This settlement is a class settlement under Rule 23(e), Fed. R. Civ. P., which requires court approval.

7. Upon approval of this settlement by the court, counsel for plaintiffs will dismiss this action with prejudice as to

those members of the class certified by the court and upon whose behalf settlement is approved by the court.

8. Counsel for all parties will cooperate in the preparation and release of a joint press release at the time of settlement.

9. It is agreed that each side will pay its own costs and attorneys' fees in this litigation.

IN WITNESS WHEREOF, the parties, by counsel, have executed this settlement agreement individually as by their duly-authorized representatives as of the date hereinafter written.

Mary Hancey Spence

MARY HANCEY SPENCE
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