

Matter of Holmes v Perales

2004 NY Slip Op 30320(U)

March 29, 2004

Sup Ct, Suffolk County

Docket Number: 88-14477

Judge: Ralph F. Costello

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SHORT FORM ORDER

INDEX No. 88-14477

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 27 - SUFFOLK COUNTY

P R E S E N T :

Hon. RALPH F. COSTELLO
Justice of the Supreme Court

Mot. Seq. # 027 - MG
028 - MG

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In the matter of RENITA HOLMES, KIM NASH, :
PAULINE SALMON, TANYA PEDERSEN, :
and JAMES McDONALD, on behalf of themselves, :
their minor dependent children, and all others :
similarly situated, :
: Plaintiffs, :
DELVA RENNALLS, on behalf of her three :
minor dependent children, :
: Proposed Plaintiff-Intervenor, :
- and - :
SHURENA RANGHELL, on behalf of her three :
minor dependent children, :
: Proposed Plaintiff-Intervenor, :
: :
- against - :
: :
CESAR A. PERALES, as Commissioner of the New :
York State Department of Social Services, and :
WILLIAM BARTSCH, as Commissioner of the :
Suffolk County Department of Social Services, :
: :
: Defendants. :
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Upon the following papers numbered 1 to 41 read on these motions for intervention and preliminary injunction;
Order to Show Cause and supporting papers 1-10; 11-20 ; Notice of Cross Motion and supporting papers _____;
Answering Affidavits and supporting papers 21 - 37 ; Replying Affidavits and supporting papers 38 - 41 ;
Other _____; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that the within two (2) separate orders to show cause by independent proposed plaintiff-intervenors, Delva Rennalls and Shurena Ranghell respectively, are consolidated for determination herein, and are granted. The applicants seek leave to intervene in the above-indexed action as party plaintiffs and on behalf of their eligible minor dependent children; and it is

ORDERED that the movants' request for permission to file the attached proposed summons and verified complaint is granted, and the pleadings are deemed filed and served. Defendants shall have the

opportunity to file responsive pleadings within 20 days of service of the within order with notice of entry thereon; and it is

ORDERED that Rennalls' application for a preliminary injunction pending the hearing and determination of this matter to restrain defendants from denial of the supplemental shelter allowance in the sum of \$950.00, which is alleged to be necessary to retain the movants' occupancy and to prevent the family from eviction, is granted to the following extent. The supplemental shelter sum requested represents the difference paid to movants as public assistance recipients. The amount should reflect the difference between the current standard shelter allowance in the sum of \$412.00 for Rennalls and her three (3) eligible children and the amount contributed by plaintiff. The supplement shall be retroactive and commensurate with actual rent charged by the owner, Frank A. Credidio, for family occupancy of the two-bedroom trailer at 32 Pine Street, Riverhead, New York. The monthly rent is alleged to be \$950.00 without heat, including electricity. In accord with a casual calculation by the court, the monthly difference for supplemental shelter allowance appears to amount to \$538.00 per month. In addition, the supplement requested for arrears during August and September 2003 does not appear to exceed the sum of \$1,076.00, rather than the \$1,270.00 as represented. The lesser amount is approved unless prior to payment a recomputation by the SCDSS demonstrates otherwise; and it is

ORDERED that Ranghell's application for a preliminary injunction to restrain defendants from denial of a supplemental shelter allowance to avoid eviction in the sum of \$412.00, which is the alleged difference between the existing standard shelter allowance for Ranghells' three eligible children and includes \$800.00 contributed by plaintiff from salary for a total of \$1,212.00, is granted as provided herein. The supplemental shelter allowance shall be retroactive in the sum of \$7,000.00 from January 2002 to January 2004 commensurate with actual rent charged by owner, Simon Jorna, also referred to as Sigfridus F. Jorna, for the family occupancy of a three-bedroom house at 774 Flanders Road, Flanders, New York. The rent agreed to in 2004 is \$1,460.00 per month. The monthly difference for supplemental shelter appears to amount to \$248.00 per month. The supplemental allowance for arrears from January 2002 through January 2004 is approximately \$6,200.00 and appears to have been included in the \$7,000.00 retroactive arrears requested by the owner unless prior recomputation by the SCDSS demonstrates otherwise; and it is

ORDERED that the Commissioners of NYSDSS and SCDSS are preliminarily enjoined from the denial of a supplemental shelter allowance or the termination of the existing standard housing allowance to the three eligible children of Delva Rennalls and the three eligible children of Shurena Ranghell. The adult plaintiffs have demonstrated entitlement to public assistance and preliminary restraint pending outcome pursuant to federal law (42 USC 601, *et seq.*), state law (SSL §§131[1], 131-a[1], 350[1][a], 350[1][f], 350[j][3]; 18 NYCRR §§352.1, 352.2, 352.3, 372), NYS Constitution Article 17, and CPLR 6301, *et seq.* Plaintiffs show the likelihood of success on the merits; irreparable injury to the eligible children and entire family; that eviction is inevitable without payment of actual rents charged; that the families are unable to acquire a more cost-efficient alternative; and that the equities favor the families and the taxpayer, who will be subject to harm from loss of shelter and exposure to greater additional expense (*Jiggerts v Grinker*, 75 NY2d 411, 554 NYS2d 92 [1990]; *Golding (Bell) v Dowling*, Index No. 92-6211, Nassau County Supreme Court Order entered July 10, 2002 [J. Marvin E. Segal]); and it is

ORDERED that upon application for a supplemental housing allowance by Delva Rennalls, an inspection by DSS revealed that the trailer residence at 32 Pine Street, Riverhead, New York, occupied by the eligible Rennalls children, has a small 8" by 27" bedroom window located in one bedroom and the second bedroom measures 10' x 11'2," which was concluded to be insufficient sleeping space and lacking emergency egress in violation of New York Property Maintenance Code §§404.41 and 402.10. Absent a significant health and safety hazard, NYSDSS is directed to authorize the SCDSS to verify the accuracy of the supplemental shelter allowance. The amount shall not be less than \$538.00 per month without further court order, and payment to owner is retroactive to January 2003, including arrears not to exceed \$1,076.00 for the months of August and September 2003 unless prior DSS recomputation shows otherwise; and it is

ORDERED that upon application for a supplemental housing allowance by Shurena Ranghell, an inspection by DSS revealed that multiple repairs were required at 774 Flanders Road, Flanders, New York, where eligible Ranghell family resides. The owner was notified October 30, 2003. The nature and scope of the repairs have not been submitted to the court. However, prior to supplemental payment to owner, DSS is directed to conduct a compliance inspection to ensure the health and safety of recipients. Thus, NYSDSS is directed to authorize SCDSS to inspect the premises and verify and recompute the actual supplemental housing allowance permitted. This sum shall not be less than \$248.00 per month without further order of this court, and payment to owner shall be retroactive to January 2002 and include arrears no more than \$7,000.00; and it is

ORDERED that the supplemental shelter payment to Frank A. Credidio, owner of premises located at 32 Pine Street, T-5, Riverhead, New York, presently occupied by the family of Delva Rennalls, plaintiff mother of three qualified dependent children, shall be retroactive from January 2003 to the current rental month in a sum directed upon prior DSS recomputation; and it is

ORDERED that the supplemental shelter payment to Simon Jorna, owner of the premises located at 774 Flanders Road, Flanders, New York, presently occupied by the family of Shurena Ranghell, plaintiff mother of three qualified dependent children, shall be retroactive from January 2002 to current rental month in the sum agreed or directed. The parties agreed to rent in the sum of \$1,500.00 per month during 2002; \$1,560.00 per month during 2003; and to \$1,460.00 per month thereafter. Pending further order, the supplement is reduced by the existing standard shelter allowance, in this case \$412.00 per month and the actual contribution made by plaintiff, whether \$730.00 or \$800.00, upon DSS recomputation prior to payment; and it is

ORDERED that eligibility for the supplemental shelter allowance is conditioned on defendant children's need for public assistance pursuant to SSL §§131-a, 352.3, 350(1)(a) and requires the family applicant have (a) children; (b) at least one of which is a public assistance recipient; (c) who is in jeopardy of losing permanent housing; and (d) is subject to actual rental value in excess of shelter allowance; and the adult applicant is not under sanction which would disqualify the eligible recipients; and it is

ORDERED that there is no authority to decline a supplemental shelter allowance for eligible recipients who satisfy the standards set by law, based on family combinations of both eligible and ineligible members. The evidence demonstrates that the documented fair market rentals requested are commensurate with values in this geographical region for the years 2002 and 2003, as confirmed in publications issued by the Office of Housing and Inter-Governmental Affairs, *Fair Market Rents*, for Suffolk County since 1993, *The Crisis of Homelessness in Suffolk County*, including *Facts About Housing Costs in Nassau-Suffolk*, which reflect the Suffolk County plan.


Delva Rennalls has three minor dependent children, aged 4, 11 and 12, who are recipients of public assistance and eligible for a supplemental shelter allowance commensurate with the fair market value of rents in this county. The children reside since January 2003 with plaintiff in a trailer home owned by Frank A. Credidio at 32 Pine Street, Riverhead. The actual monthly rent alleged is \$950.00. The recipients' grant provides a housing allowance for the three children in the sum of \$412.00. Plaintiff mother is not a qualified recipient of public assistance, or supplemental shelter allowance, and does not have family, friends or employment to supplement the difference between the grant, a shelter allowance and the fair market rent. Plaintiff is in arrears, and the family, including the eligible recipients, is at risk of eviction, which is verified by landlord Credidio. Plaintiff applied for supplement allowance on behalf of the three eligible children. Without authority defendants denied the supplement and the payment of arrears to offset the eviction (18 NYCRR §§352.30[a][e][1], 352.29). This action for intervention and injunctive relief was commenced October 22, 2003 (*Jiggerts v Grinker, supra; Golding (Bell) v Dowling, supra*; Nassau County Supreme Court Order entered July 10, 2002).

Shurena Ranghell has five (5) children, aged 7, 9, 11, 12 and 13. Three of the five infants are eligible for public assistance (ADC, TAP) and a supplemental shelter allowance commensurate with fair market value rent in this region and county. The children have resided with plaintiff mother in a three-bedroom house at 774 Flanders Road, Flanders, New York, since January 2002. The rent was allegedly \$1,500.00 in 2002, \$1,560.00 in 2003, and the landlord agreed to reduce the rent to \$1,460.00 upon payment of arrears in 2004. The three eligible children receive a shelter allowance of \$412.00. Plaintiff mother is employed and earns approximately \$1,100.00 per month. Plaintiff is assessed to pay \$800 toward the current rent and claims she can actually afford only \$730.00. Plaintiff and two children are not eligible for public assistance or a supplemental shelter allowance to satisfy rental at fair market values. Plaintiff is in arrears. The family, particularly the eligible infant recipients, is at risk of eviction as verified by landlord Simon Jorna. Plaintiff applied for supplemental shelter allowance on behalf of the eligible infants. Defendants denied the supplement and the payment of arrears to offset eviction. This action for intervention and injunctive relief commenced October 22, 2003 (*Jiggerts v Grinker, supra; Golding (Bell) v Dowling, supra; Jiggerts v Perales*, 202 AD2d 341, 609 NYS2d 222 [1994]; SSL §350[1]; CPLR 1002, 6301, *et seq.*).

Simply summarized, the infant recipients in each family are eligible for supplemental shelter allowance. Denial based on parental or mixed eligibility is not authorized. The standard shelter allowance afforded by DSS does not satisfy fair rental values. Both shelters are legal. Alternate shelter is much more costly to the family and the taxpayer. Plaintiffs have demonstrated entitlement to

intervention, supplemental allowance subject to recomputation by DSS and to injunctive relief to avoid eviction pending the outcome herein. The families will likely succeed on the merits. Everyone is harmed without a differential supplement to prevent eviction and transitory conditions with compounded problems. Thus on balance, the equities favor relief, are cost efficient and assure accountability pending disposition.

Dated: March 29, 2004

RALPH F. COSTELLO


J.S.C.

____ FINAL DISPOSITION X NON-FINAL DISPOSITION