

Brownley v Doar

2006 NY Slip Op 30540(U)

August 17, 2006

Supreme Court, New York County

Docket Number: 402724/2005

Judge: Karla Moskowitz

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 3

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DORIS BROWNLEY AND JANEEL NELSON on behalf of,
themselves and their minor children and all those who are
similarly situated,

Plaintiffs,

Index No. 402724/2005

-against-

ROBERT DOAR, as Commissioner of the New York State
Office of Temporary and Disability Assistance,
DENYSE ROBERTS, landlord and 2239 CRESTON
AVENUE CO. LLC, landlord,

Defendants.

DECISION and ORDER

FILED

AUG 23 2006

COUNTY CLERK
NEW YORK

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KARLA MOSKOWITZ, J.:

The court consolidates motions 2, 3 and 4 for disposition. This action involves a challenge to rent subsidies for indigent families with children within the City of New York. By these motions, Kimberly Safford, Francine Pisciotta and Maria Rivera (collectively “plaintiffs-intervenors”) seek to intervene in this action and request an injunction to stay their and their children’s imminent eviction from homes where they have resided for many years. Plaintiffs-intervenors are recipients of shelter allowances under Safety Net Assistance (“SNA”) (New York Soc Serv Law § 157-165). Plaintiffs-intervenors claim that the allowances that they receive under SNA are inadequate to keep them in their homes. Plaintiffs also bring this action on behalf of all families with children in New York City who receive SNA and who are faced with eviction because of the inadequacy of the allowances under that program.

I have detailed the history of this litigation many times over in published decisions in this case and in the related case of *Jiggetts v. Grinker*. Therefore, I will repeat only those details as are necessary to a full understanding of this decision.

In 1990, the Court of Appeals held that New York’s Social Services Law § 350(a)(1)

imposed a duty on the State Commissioner of Social Services to establish shelter allowances bearing a reasonable relationship to the cost of housing in New York City. (*See Jiggetts v Grinker*, 75 NY2d 411, 417). This holding arose in the context of the public assistance program known as Aid for Dependent Children (“ADC”). ADC was the State’s promulgation of the Federal Aid to Families with Dependent Children (“AFDC”) program. The Court of Appeals then remanded the case back to this court for a determination as to whether the shelter allowances that the Commissioner had established previously in 1988 were adequate under the statutory standard. (*Id.*).

After a three and one half month trial, this court found that the 1988 shelter allowances did not bear a reasonable relation to the cost of housing in New York City and ordered the Commissioner to “develop and submit to the Secretary of State for promulgation by March 2, 1998 or, on application to the court, by a reasonable date thereafter, a proposed schedule of shelter allowances (for [New York City participants in the AFDC Program] and any successor program).” The Appellate Division affirmed this decision. (*See Jiggetts v Dowling*, 261 AD2d 144 [1st Dept 1999]). On October 14, 1999, the Court of Appeals dismissed the State’s motion for leave to appeal. (*See Jiggetts v Dowling*, 94 NY2d 796 [1999]).

In 1996, Congress replaced the AFDC program with a five-year time-limited program known as Temporary Assistance to Needy Families (“TANF”). In 1997, New York State replaced the ADC program with the Family Assistance (“FA”) program. (*See NY Soc Serv Law* §§ 343-360). This new State-Federal statutory scheme prohibits receipt of funds for more than sixty months during a recipient’s lifetime, regardless of need. (*See 42 U.S.C. § 608(a)(7)[A]*).

For families receiving FA who reach the Federal five-year time limit, the New York State

Legislature enacted the SNA program. (NY Soc Serv Law §§ 157-165). When a family receiving FA reaches the Federal five-year time limit, the family interviews with the requisite local agency. If the family wishes to continue receiving assistance, that agency transfers that family to the SNA program.

Under Social Services Law § 157(1), SNA means:

allowances pursuant to section one hundred thirty-one-a for all support, maintenance and need, and costs of suitable training in a trade to enable a person to become self-supporting, furnished eligible needy persons in accordance with applicable provisions of law, ... to persons or their dependents in their abode or habitation whenever possible ... but does not include ... family assistance or medical assistance for needy persons granted under titles ten and eleven, respectively, or aid to persons receiving federal supplemental security income payments and/or additional state payments.

Pursuant to Social Services Law § 159, “safety net assistance shall be provided in amounts determined in accordance with [A]rticle [F]ive and, where applicable, section one hundred seventeen . . .” (NY Soc Serv Law § 159). The amounts are the same for those families who receive shelter payments pursuant to Social Services Law § 350.

SNA recipients receive shelter allowances up to specific maximum amounts depending on the local social services district. Plaintiffs challenge these shelter allowances.

On March 3, 2003, this Court issued a Decision and Order holding that families with minor children are entitled to an adequate shelter allowance after they transition from the FA to the SNA program. (*See Jiggetts v Dowling*, 196 Misc2d 678 [Sup Ct NY Co 2003] [the “March 3, 2003 *Jiggetts* decision”]). In that decision, I expressly held that SNA recipients had standing to challenge the adequacy of shelter allowances because Social Services Law § 350(a)(1) applied

to SNA recipients.

Shortly after I issued the March 3, 2003 *Jiggetts* decision, the Appellate Division, Second Department, issued two decisions: *McVay v Wing*, 303 AD2d 727 (2d Dept 2003) and *Schubrick v Wing*, 303 AD2d 744 (2d Dept 2003). The Appellate Division, Second Department held that § 350(1)(a) does not apply to families with children in the SNA program:

Now ineligible to receive Family Assistance, [plaintiff] receives Safety Net Assistance instead. Under such a circumstance [plaintiff] may not challenge the adequacy of the housing allowance schedules, or the housing allowance that she receives. (See Social Services Law §159[1][b][i]; *Deleo v Kaladjian*, 215 AD2d 520, 521, 626 NYS2d 555; *Matter of Gautam v Perales*, 179 AD2d 509, 510, 579 NYS2d 26; cf. *Matter of Bernstein v Toia*, 43 NY2d 437, 440, 402 NYS2d 342, 373 NE2d 238).

(*McVay v Wing*, 303 AD2d at 727). *Schubrick* followed *McVay*.

On July 21, 2005, the Appellate Division, First Department overturned that part of the March 3, 2003 *Jiggetts* decision holding that SNA proposed intervenors in *Jiggetts v Dowling* had standing. The Appellate Division, First Department reasoned that, because whether § 350(1)(a) applies to SNA recipients was “beyond the singular dispute already resolved by plaintiffs, namely whether Social Services Law § 350(1)(a) obligates the State . . . to determine shelter allowances for AFDC recipients . . . on a reasonable basis and whether such shelter allowances are adequate.” (*Jiggetts v Dowling*, 21 AD3d 178, 181 [1st Dept 2005]). That court suggested the proposed intervenors who are SNA recipients bring a new action should they face the possibility of eviction. (*Id.*). Accordingly, on August 9, 2005, the named plaintiff, Doris Brownley, and plaintiff Janee Nelson, brought this action by order to show cause and moved for injunctive relief similar to movants in this case. The State Defendant cross-moved to dismiss.

On January 11, 2006, this court granted the motion of plaintiffs Doris Brownley and

Janee Nelson for a preliminary injunction and denied the cross-motion of Robert Doar, as Commissioner of the New York State Office of Temporary and Disability Assistance (the “State Defendant”) to dismiss (the “January 2006 *Brownley* decision”). In the January 2006 *Brownley* decision, I again reiterated my view that SNA recipients had standing in part because Social Services Law § 159 incorporates the adequacy requirement of § 350(a)(1) by reference. In reaching my conclusion, I expressly noted that the Appellate Division, Second Department in *McVay* and *Shubrick* did not have occasion to consider whether Social Services Law § 159 incorporates the adequacy requirement because the parties in those cases did not make that argument. In addition, I also noted that the Appellate Division, First Department left open the question of standing for SNA recipients when it suggested that SNA recipients should bring a separate law suit.

This year, in *Hedgepeth v. Wing*, 29 AD3d 632 (2d Dept 2006), the Appellate Division, Second Department squarely rejected the view that anyone other than FA recipients had standing to challenge the adequacy of shelter allowances:

Although the language of Social Services Law § 350(a)(1) does not expressly limit the right to an “adequate” shelter allowance only to recipients of FA, the nature of the legislation, the history of Social Services Law § 350(1), the amendments to TANF and SNA programs over the last eight years, the inclusion of the “adequacy” mandate in Social Services Law, article 5, title 10, referable to TANF, the omission of similar language from Social Services Law, article 5, title 3, referable to SNA, and the headings in those titles, all underscore the Legislature’s intention that only FA recipients have standing in this regard.

As much as this court disagrees with the conclusion of the Appellate Division, Second Department, without a decision on point from the Appellate Division, First Department, this court is constrained to follow the holding in *Hedgepeth v. Wing*, 29 AD3d 632 (2d Dept 2006). It

follows that: (1) these families may not intervene themselves, (2) they may not join their landlords as defendants and (3) the original plaintiffs do not have standing.

Accordingly, it is

ORDERED THAT the court denies the motions of Kimberly Safford, Francine Pisciotta and Maria Rivera to intervene and for a preliminary injunction and it is further


ORDERED THAT all TROs are continued for 72 hours from service of a copy of this Order with Notice of Entry.

ORDERED THAT the court grants the oral application of the State Defendant to dismiss.

The clerk is directed to enter judgment dismissing this action accordingly.

Dated: August 17, 2006

ENTER:



J.S.C.

FILED
AUG 23 2006
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NEW YORK