

VIRGINIA: IN THE CIRCUIT COURT OF GILES COUNTY

GILES COUNTY DEPARTMENT OF SOCIAL SERVICES

Plaintiff,

v.

Case No.:CL22000 _____

**NELSON SMITH, IN HIS CAPACITY AS COMMISSIONER OF THE
VIRGINIA DEPARTMENT OF BEHAVIORAL HEALTH AND
DEVELOPMENT SERVICES**

**JAIME M. BAMFORD, IN HER CAPACITY AS DIRECTOR OF
COMMONWEALTH CENTER FOR CHILDREN AND ADOLESCENTS**

Defendants

**COMPLAINT AND PETITION FOR
DECLARATORY, INJUNCTIVE, AND MANDAMUS RELIEF**

COMES NOW the Plaintiff, the Giles County Department of Social Services, by counsel, and states the following in support of its Complaint for Declaratory, Injunctive, and Mandamus Relief:

I. PARTIES

1. The Giles County Department of Social Services is the public welfare agency for Giles County, Virginia and as such is responsible for the care and custody of children committed and/or entrusted to its care pursuant to Virginia law.

2. The Department of Behavioral Health and Developmental Services (the "Department") is an agency of the executive branch of the Commonwealth of Virginia. The Department operates and allocates funding for "state facilities," as that term is defined in Virginia Code § 37.2-100, *q.v.*, "facility," and as that

term is used in Subsection B of Virginia Code §16.1-340.1:1. Among other state facilities, the Department operates the Commonwealth Center for Children & Adolescents in Staunton, Virginia, (the Center) which is a “mental health facility” as defined in Virginia Code § 16.1-336. The Center is required by law to admit and treat juvenile respondents of temporary detention orders and emergency custody orders. The Center is frequently designated in temporary detention orders as the state facility that is required to treat juvenile respondents, including persons in the care and custody of the Plaintiff.

II. FACTS

3. The Department and the Center have engaged in a recurring pattern of violations of provisions in the Code of Virginia that prohibit state facilities, under any circumstances, from failing or refusing to admit, detain, and treat a respondent of a judicial order providing for the provision mental health services of juveniles subject to temporary detention orders.

4. Such provisions of the Code of Virginia include, but are not limited to, the following: (1) with respect to temporary detention orders for juveniles, Va. Code § 16.1-340.1:1(B) (“Under no circumstances shall a state facility fail or refuse to admit a minor who meets the criteria for temporary detention pursuant to § 16.1-340.1 unless an alternative facility that is able to provide temporary detention and appropriate care agrees to accept the minor for

temporary detention.”); (2) with respect to emergency custody orders for juveniles, Va. Code § 16.1-340(B) (requiring that the person designated by the community services board serving the area “shall” perform an evaluation to assess the need for hospitalization or treatment). These provisions are hereinafter collectively called the “**Mandatory Admission Provisions.**”

5. The Department’s and Center’s violation of Virginia’s Mandatory Admission Provisions constitutes a clear and present danger to the juveniles who are the subject of the temporary detention orders and other persons who may be harmed by the actions of such juveniles who are not admitted for treatment as ordered.

6. The Department’s violations of the Virginia’s Mandatory Admission Provisions include, but are not limited to, the following events:

a. On February 21, 2022 at 2:07 am, a temporary detention order (the Order) was issued for a minor child whose initials are S. E. S. E. is in the care and custody of the Plaintiff as the result of a permanent entrustment agreement executed on January 13, 2022, pursuant to Virginia Code § 16.1-277.01 The Order required the Chesterfield County Police Department to transport S. E., a minor, to Tucker Pavilion in Richmond, Virginia for medical evaluation and to Commonwealth for mental health treatment.

b. S. E. was medically cleared shortly after the issuance of the Order however Commonwealth asserted that it had no beds available and refused to accept S. E. as a patient.

c. As a result of The Center's failure and refusal to provide the services required by law, S. E. suffered a mental health crisis without any care, other than supervision by a Chesterfield County police officer and was held in the Chippenham Hospital Emergency Room for the entire duration of the Order.

d. Katie Poff, (Poff) a family services specialist employed by Giles DSS and who is the child's foster care worker was notified on the evening of February 24, 2022 that S. E. had been accepted to Commonwealth but that a bed was not yet available and would not likely be available until the morning of February 25, 2022. Poff spoke with Michelle Morris Freeman at Commonwealth and was advised that S. E. could be admitted after 8:00 am on February 25, 2022. An email confirming this representation is attached hereto as Exhibit A.

e. Despite such representation S. E. was not admitted to Commonwealth and the Plaintiff was advised on the afternoon of February 25, 2022 by Chippenham ER that the plaintiff needed to pick up S. E. from the Chippenham ER. Poff and a co-worker left Giles County at 3:12 pm and

transported the child back to Giles County without the child receiving any mental health treatment.

f. Counsel for Commonwealth asserted that Commonwealth was holding a bed for S. E. all day on February 25, 2022 but refused to accept her for admission after the expiration of the ORDER despite that fact that S. E. received no mental health treatment during the time she was held under the Order.

7. The Department's failures and refusals to carry out its duties under state law have created a mental health crisis for respondents. The Department's failures and refusals have also endangered the public by subjecting the members of the public to behaviors of respondents caused by their untreated mental health issues. This particular respondent has previously assaulted employees of the Plaintiff and residents of the residential facility at which she was housed in Chesterfield County prior to the issuance of the Order.

III. JURISDICTION AND VENUE

8. This Court has jurisdiction over the subject matter of this case pursuant to §§ 8.01-184 and 17.1-513 of the Code of the Virginia.

9. This Court has personal jurisdiction over the parties.

10. Venue in this Court is proper pursuant to § 8.01-261 of the Code of Virginia.

COUNTS

Count I: Violation of the State's Mandatory Admission Provisions.

The Mandatory Admission Provisions prohibit a state facility, medical facility, and mental health facility, from failing or refusing, under any circumstances, to admit, treat, evaluate, or detain the respondent of a temporary detention order.

The Department has violated these provisions. The Department is responsible for ensuring that each facility is adequately staffed and funded to carry out these obligations under state law; and it has failed to do so.

Count II. Civil Contempt of Judicial Orders. The Department has committed contempt of the judicial orders (the temporary detention orders) requiring the Department to provide care, evaluation, and treatment for the respondents.

IV. PRAYER FOR RELIEF

WHEREFORE, the Giles County Department of Social Services hereby moves this Court to:

1. Declare that the Department's failure and/or refusal to admit, evaluate, or treat the respondents is unlawful;

2. Issue temporary and permanent injunctions against the Department and the Center, enforcing the provisions of state law that the Department shall "under no circumstances" "fail or refuse" to admit a minor subject to a

temporary detention order, “unless an alternative facility that is able to provide temporary detention and appropriate care agrees to accept the minor for temporary detention” (see Mandatory Admission Provisions cited in ¶ II(4));

3. Issue a writ of mandamus requiring the Department to admit, treat, and evaluate respondents of all mental health orders, and otherwise comply with every judicial order providing for mental health services of a respondent when a facility of the Department is designated as the facility for temporary detention; and

4. Grant such other further relief as the Court may deem appropriate.

5. The Plaintiff alleges that an emergency exists and requests that this proceeding be expedited on the docket of this Court.

GILES COUNTY DEPARTMENT OF
SOCIAL SERVICES

BY COUNSEL

Richard L. Chidester
County Attorney for Giles County
315 N. Main Street
Pearisburg, VA 24134
Phone (540) 921-2525, ext 1117
Fax (540) 921-1329
Email: rchidester@gilescounty.org
VSB #22185



Richard L. Chidester, Counsel for Giles DSS