

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

FILED
KENNETH J. MURPHY
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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION DAYTON

UNITED STATES OF AMERICA,)
Plaintiff,)
)
v.)
)
OPERATION RESCUE NATIONAL, et al.)
)
Defendants.)
_____)

Civil Action No.
3-98-113

Judge Walter Rice

CONSENT DECREE

I. INTRODUCTION

A. This civil action was instituted by the United States of America, Plaintiff, on March 23, 1998, pursuant to the Freedom of Access to Clinic Entrances Act of 1994, 18 U.S.C. § 248 (the "Access Act"). The United States sought injunctive relief and civil penalties, as well as statutory damages for persons aggrieved under 18 U.S.C. § 248 (C) (2) (B). The United States brought this action because it had reasonable cause to believe that the Women's Medical Center of Cincinnati, the Women's Medical Center of Kettering and Dayton Women's Services had been injured by conduct constituting a violation of the Access Act.

B. In this action, the United States alleged that Defendant Alaw engaged in conduct prohibited by the Access Act at the Women's Medical Center of Cincinnati, located at 3219 Jefferson Avenue, Cincinnati, Ohio; the Women's Medical Center of Kettering, located at 1401 East Stroop Street, Kettering, Ohio; and the Dayton Women's Center, located at 1829 North Main Street,

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Dayton, Ohio, which are clinics within the jurisdiction of this Court. Defendant Alaw denies that she engaged in any conduct prohibited by the Access Act at the Kettering clinic on July 15, 1997. Earlier in this litigation, the United States amended its Complaint to limit its claims against Defendant Alaw to those regarding her conduct at the Cincinnati and Kettering clinics. Subsequently, the Parties stipulated to dismiss, with prejudice, the United States' claims against Defendant Alaw regarding her conduct at the Cincinnati clinic.

C. This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1345 and 18 U.S.C. § 248(c)(2).

D. Venue is appropriate pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2).

E. In entering into this Consent Decree, Defendant Alaw does not admit any violation of law, and this Consent Decree may not be used as evidence of liability under the Access Act.

F. Any violation of the provisions of this Consent Decree does not create a private right of action. This Consent Decree is enforceable only by the Parties to this Consent Decree.

G. By the terms of this Consent Decree, the Parties have reached a full and complete settlement of the civil claims and all potential criminal claims or exposure arising out of Defendant's conduct at issue in the underlying case. The provisions set forth below in this Consent Decree will remain in full force and effect and be enforceable by the Court regardless

of the outcome of any prospective litigation involving any non-parties.

H. The provisions of this Consent Decree are a lawful, fair and reasonable resolution of the claims and issues raised in this case.

I. This Consent Decree resolves all of the United States' underlying claims in this action, including claims for injunctive relief in this action.

J. The Parties reserve the right to withdraw their Consent to this agreement in the event that this Consent Decree is not approved by the Court in its entirety.

K. This Consent Decree shall be effective in the judicial district of the Southern District of Ohio.

II. DEFINITIONS

As used in this Consent Decree, the following definitions shall apply:

A. "Interfere with" means to restrict a person's freedom of movement, in accordance with the definition set forth in the Access Act, 18 U.S.C. § 248(e).

B. "Physical obstruction" means to render impassible or unreasonably difficult or hazardous ingress or egress, in accordance with § 248(e).

C. "Intent" means intending to perform the act and aware of its natural and probable consequences.

D. "Attempt" means that the Defendant 1) intended to engage in the prohibited conduct, and 2) did one or more overt acts that was a substantial step toward engaging in the substantive

prohibited conduct. The defendant's conduct must go beyond mere preparation, and must provide strong, objective corroboration of the defendant's intent to engage in the prohibited conduct. A substantial step beyond mere preparation is enough.

E. "Reproductive health services" means reproductive health services provided in a hospital, clinic, physician's office, or other facility, and includes medical, surgical, counseling, or referral services relating to the human reproductive system, including services relating to pregnancy or the termination of pregnancy, in accordance with the definition set forth in the Access Act, 18 U.S.C. § 248(e).

F. "Clinic" means any facility that provides reproductive health services, in accordance with the definition set forth in the Access Act, 18 U.S.C. § 248(e).

G. "Defendant" includes the Defendant and any person or entity acting as the agent, principal or employee of the Defendant.

III. OBLIGATIONS AND RESPONSIBILITIES

By agreement of the parties:

A. Defendant shall not, by physical obstruction, intentionally interfere, or attempt to interfere, with any person because that person is or has been obtaining or providing, or is seeking to obtain or provide, reproductive health services. Examples of acts of physical obstruction include but are not limited to sitting, standing, lying or kneeling in such a way as to interfere with access to and/or egress from the clinics, or by

using any physical object that interferes with access to and/or egress from the clinics;

B. The areas in which the prohibited conduct as defined in Paragraph A, above, may not occur include but are not limited to any clinic building, property, steps, stairways or parking lot and any exterior passageways leading to the clinic; and

C. Defendant shall not direct, aid or abet in any manner, or act in concert with, others to take any of the actions described in paragraphs A and B, above.

IV. ENFORCEMENT

A. The Court shall retain jurisdiction under this Consent Decree and may order such relief as necessary to ensure full compliance.

B. The United States Marshal Service is empowered to enforce this Order. The Marshal's office shall:

1. In circumstances that show good cause to believe that this Order is being violated, communicate any and all terms of the Order to persons at or near clinic property by verbal means;
2. Immediately report to the United States' Attorney for the Southern District of Ohio, who will then immediately report to the Court, remaining plaintiff's counsel, counsel for the clinics and defendant's counsel, events and circumstances that show good cause to believe that there have been violations of the terms of this Order.

3. Keep such logs and records as necessary to record the events and circumstances that show good cause to believe that there have been violations of the terms of this Order. Such logs and records must be provided to counsel for the parties concurrent with any report to the Court in accordance with paragraph 2, above.

C. Nothing in this Consent Decree prevents any party hereto from seeking relief or modification of same should the Sixth Circuit Court of Appeals or the United States Supreme Court subsequently find the Freedom of Access to Clinic Entrances Act, 18 U.S.C. § 248, to be unconstitutional on its face.

Walter Herbert Gue
Chief Judge, United States District Court

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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION DAYTON

AGREED TO BY PLAINTIFF THE UNITED STATES OF AMERICA

Date: 5/30/00

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AGREED TO BY *Thomas W. Condit*
Attorney for Defendant

Date: 5/31/2000

AGREED TO BY *Chival A. Alaw*
Defendant

Date: June 5, 2000

ADDENDUM

The clinics at issue in this case - the Women's Medical Center of Cincinnati, the Women's Medical Center of Kettering, and the Dayton Women's Center - having been notified of this Consent Decree, hereby state that they will not bring any action against Defendant based on the conduct at issue in this case, which occurred at the clinics during the week of July 13, 1997.

Alphonse Gerhardstein

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