

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA, WASHINGTON DIVISION

NIAL RUTH COX,

Plaintiff,

v.

A.M. STANTON, M.D.; ALLIE STANTON, M.D.,
Chief of Staff at Washington County
Hospital (1964-1965); WASHINGTON COUNTY
HOSPITAL; SHELTON OWENS HOWLAND, Wash-
ington County Department of Social Ser-
vices; URSULA B. SPRUILL, Director of
Washington County Department of Social
Services (1964-1965); JERRY A. SMITH,
Director of Washington County Department
of Social Services; A. WILLIAM SAFRIET;
J.W.R. NORTON, M.D.; ROBERT S. WEATHERS;
SAM O. CORNWELL, M.D.; R. EUGENE BROWN,
T. WADE BRUTON, EUGENE HARGROVE, M.D.,
JACOB KOOMEN, M.D. and JAMES F. ELLIOTT,
M.D., members of 1964-1965 Eugenics
Board of North Carolina; SUE CASEBOLT,
Executive Secretary, 1964-1965 Eugenics
Board of North Carolina; JACQUELINE
WESCOTT, ROBERT MORGAN, JACOB KOOMEN,
M.D., N.P. ZARZAR, M.D. and ROBERT
ROLLINS, M.D., members of Eugenics
Board of North Carolina; JUNE STALLINGS,
Executive Secretary, Eugenics Board of
North Carolina,

CIVIL ACTION NO.

Defendants.

COMPLAINT

PRELIMINARY STATEMENT

Plaintiff seeks to have this court declare unconstitu-
tional on its face and as applied those sections of Chapter
35, Article 7 of the General Statutes of North Carolina which
provide for the "Sterilization of Persons Mentally Defective"
(Sterilization Statute). This statute is challenged on the
grounds that it conflicts with the thirteenth and fourteenth
amendments to the Constitution of the United States, and with
the first, fourth, fifth, eighth and ninth amendments as made
applicable to the states by the fourteenth amendment. Plain-

tiff, who was sterilized pursuant to this statute, contends that she has been deprived of substantive and procedural due process and equal protection of the laws, that her privacy has been invaded, that the statute is impermissibly vague and that she has been the victim of cruel and unusual punishment. Plaintiff contends further that she was required to submit to an operation of sterilization especially because she is a black woman, who at the time of the operation was a minor and a member of a welfare family.

In addition to a declaration that the North Carolina Sterilization Statute is unconstitutional, plaintiff seeks damages in the amount of \$1,000,000 for the physical and emotional injuries she has sustained due to the operation of sterilization performed on her.

JURISDICTION

1. This action for declaratory relief and damages arises under the thirteenth and fourteenth amendments to the Constitution of the United States, the first, fourth, fifth, eighth and ninth amendments as made applicable to the states by the fourteenth amendment, and 42 U.S.C. Sections 1983 and 1985. The matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars. Jurisdiction is conferred on this court by 28 U.S.C. Sections 1331, 1332, and 1343. Declaratory relief is sought pursuant to 28 U.S.C. Sections 2201 and 2202.

PARTIES

2. Plaintiff, Nial Ruth Cox, is a citizen of the United States and a resident of Roosevelt, New York. Plaintiff is a black woman, born on September 26, 1946. Since November 22,

1968, she has been employed by Hempstead General Hospital in Hempstead, New York as a nurse's aide.

3. In seeking a declaratory judgment, plaintiff brings this action on her own behalf and on behalf of all other persons similarly situated pursuant to Rule 23 (a), (b) (2) of the Federal Rules of Civil Procedure. The class which plaintiff represents is composed of all other persons who have been, or may hereafter be, subject to the compulsory sterilization procedures complained of herein. The class is so numerous that joinder of all members is impracticable; there are questions of law and fact common to the class; the claims of the plaintiff are typical of the claims of the class; plaintiff will fairly and adequately protect the interest of the class and the defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate declaratory relief with ^{respect to} the class as a whole.

4. Defendant A.M. Stanton, M.D., is a medical doctor who has resided in Plymouth, North Carolina since before February 10, 1965, on which date he performed an operation of sterilization on plaintiff, Nial Ruth Cox.

5. Defendant, Allie Stanton, M.D., was Chief of Staff of Washington County (North Carolina) Hospital in 1964-1965. In that capacity, he was responsible for supervising all medical procedures, including the sterilization operation performed on plaintiff on February 10, 1965. He is a resident of Plymouth, North Carolina.

6. Defendant Washington County Hospital, located in Plymouth, North Carolina, permitted use of its facilities for performance of the operation of sterilization on plaintiff on February 10, 1965.

7. Defendant Shelton Owens Howland, on information and belief, was at all times pertinent hereto a Washington County

Department of Social Services caseworker assigned, as part of her official duties, to the family of Devora Cox, plaintiff's mother, who was then, and remains, a welfare recipient. Defendant Howland is sued both individually and in her official capacity. She is now a resident of Hapicamp, California.

8. Defendant Ursula B. Spruill was Director of the Washington County Department of Social Services, before and at the time plaintiff was sterilized. Defendant Spruill has been a resident of Plymouth, North Carolina at all times pertinent hereto. She is sued both individually and in her official capacity.

9. Defendant Jerry A. Smith, a resident of Plymouth, North Carolina, is Director of the Washington County Department of Social Services. He is sued in his official capacity and as a representative of all other administrators, officers and agents of the Washington County Department of Social Services charged with participation in the implementation of the Sterilization Statute.

10. Defendants A. William Safriet, a resident of Cary, North Carolina; J.W.R. Norton, M.D., a resident of Raleigh, North Carolina; and Sam O. Cornwell, M.D., a resident of Morganton, North Carolina, signed the Order for Operation of Sterilization on plaintiff Nial Ruth Cox, at issue in this case. They are sued individually and in the official capacities in which they signed that order.

11. Defendants R. Eugene Brown, T. Wade Bruton, Eugene Hargrove, M.D., and Jacob Koomen, M.D., residents of Raleigh, North Carolina, and James F. Elliott, M.D., a resident of Butner, North Carolina, were members in 1964-1965 of the

Eugenics Board of North Carolina, established pursuant to North Carolina General Statutes Chap. 35, Art. 7, §§35-40. They are sued individually and in their official capacities as members of the state agency responsible for implementation of the Sterilization Statute.

12. Defendant Sue Casebolt was Executive Secretary of the Eugenics Board of North Carolina in 1964-1965. She is a resident of Butner, North Carolina. She is sued individually and in her official capacity as executive officer of the state agency responsible for implementation of the Sterilization Statute.

13. Defendant Jacqueline Wescott, a resident of Durham, North Carolina, and defendants Robert Morgan, Jacob Koomen, M.D., N.P. Zarzar, M.D., and Robert Rollins, M.D., residents of Raleigh, North Carolina are the current members of the Eugenics Board of North Carolina, established pursuant to North Carolina General Statutes, Chap. 35, Art. 7, §§35-40. They are sued in their official capacities and as representatives of all other administrators, officers and agents of institutions or instrumentalities of the State of North Carolina charged with participation in the implementation of the Sterilization Statute.

14. Defendant June Stallings is the current Executive Secretary of the Eugenics Board of North Carolina. She is a resident of Raleigh, North Carolina. She is sued in her official capacity and as a representative of all other administrators, officers and agents of institutions or instrumentalities of the State of North Carolina charged with participation in the implementation of the Sterilization Statute.

STATEMENT OF CLAIM

15. North Carolina has had at all times relevant to this suit a Sterilization Statute which provides for the "Sterilization of Persons Mentally Defective." North Carolina General Statutes, Chap. 35, Art. 7, §§35-36 through 35-57 [referred to hereinafter as "Sterilization Statute"; the provisions in effect at all times pertinent to the claims made herein are those / ^{which} appear in Volume 2A of the General Statutes of North Carolina, 1966 Replacement Volume; subsequent minor amendments are shown in the 1971 Cumulative Supplement to Volume 2A]. The Sterilization Statute authorizes sterilization only of "mentally diseased or feebleminded" persons.

16. Throughout most of plaintiff's life, including during 1964, her mother, Devora Cox, was unable to work and received welfare assistance for her family. On information and belief, in 1964 and 1965, plaintiff's family was visited periodically by defendant Howland in her official capacity as a welfare caseworker for Washington County, assigned to the Cox family.

17. On September 26, 1964, plaintiff's eighteenth birthday, her mother stopped receiving welfare benefits for plaintiff, pursuant to North Carolina General Statutes, Chap. 108, Art. 3 (part 2), §108-49.

18. On November 24, 1964, plaintiff, who was and remains unmarried, gave birth to a daughter. At the time her daughter was conceived, plaintiff had neither knowledge of, access to nor money for birth control devices. Nor was plaintiff able to obtain an abortion: an abortion would have been illegal under North Carolina law; plaintiff lacked resources to travel to a jurisdiction where abortions were legal; plaintiff's personal moral and philosophical beliefs precluded her from entertaining the idea of obtaining an abortion.

19. Throughout plaintiff's last months of pregnancy and immediately after the birth of plaintiff's daughter, despite the fact that plaintiff's mother was receiving no government assistance for plaintiff or her baby, defendant Howland, on information and belief, told plaintiff that she would have to submit to an operation of temporary sterilization or else her mother, brothers and sisters would be eliminated from the welfare rolls. On information and belief, defendant Howland repeatedly threatened both plaintiff and her mother that the family would be denied future welfare benefits because of plaintiff's immorality, unless plaintiff's mother agreed to an operation of sterilization on plaintiff.

20. On information and belief, on December 31, 1964, defendant Spruill petitioned the Eugenics Board of North Carolina for an operation of sterilization on plaintiff.

21. On information and belief, under threat of removal from the welfare rolls, plaintiff's mother, Devora Cox, was coerced by defendant Howland into agreeing to an operation of temporary sterilization on plaintiff, who was then age 18. The Sterilization Statute provided at that time that if the patient is under the age of 21 and parental consent is obtained, neither notice nor opportunity to be heard is due to the patient. At no point prior to the Order of Sterilization was plaintiff's consent to the operation sought or obtained. Plaintiff is not now and never has been mentally defective or incompetent.

22. At no time prior to the sterilization order was plaintiff examined or tested by a psychiatrist, psychologist or other qualified person to determine whether she was mentally defective. At no time was her consent to the operation sought or obtained. At no time was plaintiff or her mother

told that the operation would make it impossible for plaintiff ever to bear children in the future.

23. On information and belief, the Eugenics Board did not hold a hearing on defendant Spruill's petition. If and when the Eugenics Board considered defendant Spruill's petition, neither plaintiff Cox nor her mother was present or represented. Neither plaintiff nor her mother was accorded at any other time an opportunity to be heard with respect to the petition.

24. On January 28, 1965, defendants Safriet, Norton, Weathers and Cornwell signed an Order for Operation of Sterilization upon plaintiff Nial Ruth Cox. On information and belief, of these four signatories, only one, defendant Norton, was then a member of the Eugenics Board.

25. On information and belief, defendants Safriet, Norton, Weathers and Cornwell ordered the sterilization of Nial Ruth Cox in the absence of any evidence that plaintiff was "mentally diseased or feeble minded" or that an operation of sterilization "would be for the best interest of the mental, moral or physical improvement of plaintiff and/or for the public good."

26. On January 28, 1965, defendant Spruill signed a Letter of Authorization for Operation of Sterilization addressed to defendant Stanton.

27. Neither plaintiff nor her mother received a copy of the Order for Operation of Sterilization or the Letter of Authorization to defendant A.M. Stanton. Neither was informed of any right to challenge the Order that plaintiff be sterilized.

28. On February 10, 1965, defendant A.M. Stanton per-

formed an irreversible bilateral partial salpingectomy sterilization on plaintiff. On information and belief, the Eugenics Board had advised defendant A.M. Stanton to perform a tubal ligation, an operative procedure that may be reversible.

29. On February 16, 1965, defendant A.M. Stanton filed a progress report in which he referred to plaintiff as an "18 year old mentally deficient Negro girl." On information and belief, this reference to mental deficiency was not based on any verification made at any time prior to the operation by any physician, psychiatrist or psychologist who had examined plaintiff to determine her mental status.

30. Plaintiff's mother, Devora Cox, was pregnant with her ninth child at approximately the same time that plaintiff was pregnant. After the birth of plaintiff's youngest sibling, in contrast to the treatment accorded plaintiff, plaintiff's mother was ordered by representatives of the Washington County Department of Social Services to be fitted by local medical authorities with an intra-uterine contraceptive device. On information and belief, plaintiff's mother was not ordered to be sterilized because her adult status would have required a less summary procedure to establish her status as a "mentally defective" person.

31. From February 10, 1965, until the fall of 1970, plaintiff did not know that the sterilization operation performed on her was irreversible. At no time prior to or after the operation did defendant A.M. Stanton tell plaintiff that as a result of the operation he performed on her she would be unable to bear children. Neither plaintiff nor her mother received plaintiff's hospital records regarding plaintiff's

February 10, 1965 operation, In the fall of 1970, after repeated requests from plaintiff and her New York gynecologists, F. Peter Herzberg, M.D., and Herbert H. Keyser, M.D., defendant A.M. Stanton forwarded copies of the hospital records regarding plaintiff's 1965 operation to Drs. Herzberg and Keyser in New York.

32. During the fall of 1970, Dr. Herzberg informed plaintiff that the operation performed on her on February 10, 1965 made it impossible for her to bear children.

33. Since the date of the sterilization operation, and continuing to the present, plaintiff Cox has suffered severe physical disabilities as an immediate consequence of the sterilization operation. She has suffered and continues to suffer frequent migraine headaches, backaches, erratic and painful menstruation, weakness in her legs and inability to control her bladder. Before the operation, plaintiff was in excellent health. Now she is under constant medical attention. In the summer of 1972, a New York gynecologist, recommended that she have a hysterectomy in order to alleviate the pain and distress which followed the sterilization operation and which have become more acute with the passage of time.

34. Since the fall of 1970 when plaintiff was first informed that she had been permanently sterilized she has suffered severe depression. She became engaged in December, 1969, to a man who, when told by her that she was unable to bear children, broke the engagement. Plaintiff wants to get married and experience the happiness of family life. She wants her daughter to have a father. The reluctance of men to marry women who are unable to bear children makes it

unlikely that plaintiff can anticipate marrying.

35. Plaintiff wishes to raise more children and is particularly anxious that her daughter, who has already expressed her own desires for a brother or sister, not be an only child. Plaintiff has attempted through a New York adoption agency to adopt a two-year old boy, but was discouraged from formally applying on the ground that her unmarried status would be viewed in an unfavorable light.

36. The Eugenics Board had consistently refused to release any information it has concerning plaintiff to her or her attorneys.

37. On information and belief, over the years, the Eugenics Board has increasingly relied on consent to the operation of sterilization from persons other than the one sterilized, in order to avoid the hearing procedures required by the Sterilization Statute.

38. On information and belief, over the years, the Sterilization Statute has been applied discriminatorily on the basis of sex, race, age, marital status, class or welfare status, and the "legitimacy" of children of the person to be sterilized. In recent years, the Eugenics Board's reliance on these factors has increased.

39. On information and belief, the Eugenics Board ordered plaintiff sterilized solely or preponderantly because she is a woman, because she is black, because she is poor, because she was under 21 and therefore could be sterilized without notice or opportunity to be heard on the questions of whether she was "mentally defective" and whether her sterilization would be "for the best interest of the mental, moral and physical improvement of plaintiff and/or for the

public good", because she was poor and a member of a family receiving welfare payments, and because she was an unwed mother.

40. Defendants have violated North Carolina law in issuing, or participating in the issuance of, an Order for Operation of Sterilization and performing an operation thereunder without complying with the provisions of the Sterilization Statute.

41. Performance of a sterilization operation not based on protecting plaintiff's life or health nor upon any compelling societal interest was an exercise in malpractice whereby plaintiff has suffered damages set forth in paragraphs 33, 34 and 35.

42. The defendants have deprived plaintiff of the rights, privileges and immunities secured to her by the first, fourth, fifth, eighth, ninth, thirteenth and fourteenth amendments to the United States Constitution under color of statutes, ordinances, regulations and customs of the State of North Carolina in that the North Carolina Sterilization Statute:

(a) serves no rational state purpose and hence is an arbitrary exercise of state power in violation of the due process clause of the fourteenth amendment;

(b) does not provide adequate procedural safeguards for those who are sterilized and thereby deprives persons of their liberty and rights without due process of law, in violation of the fourteenth amendment;

(c) is impermissibly vague in establishing grounds for involuntary sterilization, thus permitting such operations on persons, such as the plaintiff, where involuntary sterilization would violate rights protected by the first, fourth,

fifth, eighth, ninth and fourteenth amendments; as applied, relies on coerced consent and consent by persons other than the one sterilized, in violation of the due process clause of the fourteenth amendment;

(e) denies an eighteen year old person notice and an opportunity to be heard on a matter of vital importance to her life and liberty and arbitrarily ranks her as an infant incapable of granting or withholding consent on her own behalf, in violation of the due process and equal protection clauses of the fourteenth amendment;

(f) unduly interferes with the privacy of individuals by preventing persons from controlling their own reproductive functions, in violation of the ninth and fourteenth amendments;

(g) as applied, invidiously discriminates against women, against black persons and other racial, ethnic and cultural minority groups, against poor people, against welfare recipients, against unmarried persons, against persons under 21 years of age and against unwed mothers and fathers in violation of the thirteenth and fourteenth amendments to the Constitution;

((h) inflicts cruel and unusual punishment on persons sterilized without their consent and without any rational justification in violation of the eighth and fourteenth amendments to the Constitution;

(i) is used as a method of punishing women who bear children out of wedlock, in violation of the first, fourth, fifth, ninth and fourteenth amendments to the Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Cox respectfully prays that this court

1. Issue a declaration that the North Carolina Sterilization Statute violates the first, fourth, fifth, eighth, ninth, thirteenth and fourteenth amendments to the United States Constitution.

2. Issue a declaration that the action of the Eugenics Board declaring plaintiff mentally defective is null and void and order that all records of, and references to, that action be expunged from the files and record of the Eugenics Board, the Washington County Department of Social Services, the Washington County Hospital and all other agencies and institutions of the State of North Carolina.

3. Grant plaintiff damages in the amount of \$1,000,000 for the injury she incurred as a result of defendants' wrongful actions.

4. Order defendants to pay and reimburse plaintiff for court costs and reasonable counsel fees.

5. Grant plaintiff such other and further relief to which she may be entitled.

Respectfully submitted,

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