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United States District Court, E.D. Pennsylvania.

BABY NEAL, et al., Plaintiffs,
v.
Robert P. CASEY, et al., Defendants.

Civ. A. No. 90-2343. | March 20, 1992.

Opinion

MEMORANDUM

ROBERT F. KELLY, District Judge.

*1 This is a civil rights action brought on behalf of children in Philadelphia who have been placed in the custody of the Philadelphia Department of Human Services (“DHS”) alleging that Defendants by their actions or inactions have denied Plaintiffs their rights by refusing to conform their activities to the requirements of federal law, the United States Constitution, and state law and regulations. Plaintiffs are children who are in the custody of DHS because their parents are unable to care for them or who have been reported to DHS because of allegations that they have been abused or neglected.

Plaintiffs moved for certification of their suit as a class action which was denied by this Court in our Order dated January 6, 1992. Presently before me is Plaintiffs’ Motion for Reconsideration. I find that Plaintiffs’ Motion for Reconsideration is merely a rehash of their original motion for class certification which was carefully considered by me. Accordingly, Plaintiffs’ Motion for Reconsideration is denied.

Plaintiffs, in their present motion, have alternatively moved for certification of subclasses in this action. They propose that the class be divided into various subclasses which, they claim, would cure many of the problems this Court had with certifying one large class. Under Rule 23(c)(1) of Federal Rules of Civil Procedure, it is within the discretion of the court at any time prior to a decision on the merits to amend or modify its determination of whether a class action shall be maintained. Thus, if it should appear as discovery on the merits progresses that proper subclasses can be defined that meet the requirements of Rule 23 of the Federal Rules of Civil Procedure, I would consider a motion to certify subclasses

at that time. Based upon the present record, I am not able to do so.

The present case was brought on behalf of the named Plaintiffs through their Next Friends. I stated in my memorandum denying class certification that “Plaintiffs have failed to establish that the Next Friends have a good faith interest in the named Plaintiffs’ welfare.” Therefore, I found that the Next Friends were not proper representatives of the named Plaintiffs under Rule 17(c) of the Federal Rules of Civil Procedure and disqualified these Next Friends. Plaintiffs have moved for substitution of new next friends. The proposed new next friends are attorneys who have provided legal representation for each of the named Plaintiffs in various legal and social service matters.

“The decision whether to appoint a next friend or guardian *ad litem* rests with the sound discretion of the district court and will not be disturbed unless there has been an abuse of its authority.” *Gardner v. Parson*, 874 F.2d 131, 140 (3d Cir.1989). The court’s duty is to find some way to protect the child’s interests in the litigation. *Id.* Based upon the affidavits submitted by the proposed new next friends, I am satisfied that they meet the requirements of Rule 17(c) and will protect the children’s interests. These new next friends resolve the concerns I had with the original next friends. Accordingly, I grant Plaintiffs’ Motion to Substitute the New Next Friends as the representatives of the named Plaintiff children.

*2 Therefore, I shall enter the following order:

ORDER

AND NOW, this 20th day of March, 1992, upon consideration of the parties’ submissions, it is hereby ORDERED that:

1. Plaintiffs’ Motion for Reconsideration is DENIED;
2. Plaintiffs’ Motion to Certify Subclasses is DENIED;
3. Plaintiffs’ Motion for Substitution of New Next Friends is GRANTED. Nancy Kanter is the new next friend for named plaintiff Baby Neal; Frank Cervone is the new next friend for named plaintiffs Marcella B., Manuel I., Carl I., and Tamara I.; Joan Atlas is the new next friend for named plaintiff Sherry G.; William Sweeney is the new next friend for named plaintiff John W., Jean W., Jacob W., and Jeffrey W.; Sara Nerken is the new next friend for named plaintiff Alicia P.; Anna Schmidt is the

new next friend for named plaintiff Jane L.; and Counsel for Plaintiffs shall apprise this Court as soon as possible of a proper next friend for the “H” children who are also named plaintiffs;

4. Plaintiffs’ Motion for Certification for Interlocutory Appeal Pursuant to 28 U.S.C. Section 1292(b) is

DENIED; and

5. Plaintiffs’ Motion for Entry of Final Judgment Under Rule 54 is DENIED.