



MR-TN-001-003

FILED BY *MM* D.C.

97 JAN -7 AM 7:16

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

ROBERT R. DITROLIO
CLERK OF COURT
WESTERN DISTRICT OF TENNESSEE

PEOPLE FIRST OF TENNESSEE,
on behalf of its members,
et al.

JUDGMENT IN A CIVIL CASE

VS.

THE ARLINGTON DEVELOPMENTAL
INVESTIGATION, et al.

CASE NO: 92-2213-M1/V

PARENT GUARDIAN ASSOCIATION OF
THE ARLINGTON DEVELOPMENTAL
CENTER

CERTIFIED TRUE COPY
ROBERT R. DITROLIO
U.S. DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE

BY *F. Hernandez*
DEPUTY CLERK

DECISION BY COURT. This action came to consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS SO ORDERED AND ADJUDGED that in accordance with the Order Approving Settlement of Class Action entered on January 6, 1997, the Court approves the proposed settlement and enters judgment in accordance with the settlement agreement. The Court shall retain jurisdiction over the parties, including all members of the settlement class, and the administration and enforcement of the settlement agreement.

APPROVED:

Jon P. McCalla

JON PHIPPS MCCALLA
UNITED STATES DISTRICT COURT

JAN. 6, 1997

Date

ROBERT R. DITROLIO

Clerk of Court

Wendy Blackledge-Ellis

(By) Deputy Clerk

FILED BY *M. D.G.*

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

97 JAN -7 AM 7:16

RECEIVED
CLERK'S OFFICE

PEOPLE FIRST OF TENNESSEE,
on behalf of its members,
et al.,

Plaintiffs,

v.

THE ARLINGTON DEVELOPMENTAL
CENTER, et al.,

Defendants,

PARENT GUARDIAN ASSOCIATION OF
OF ARLINGTON DEVELOPMENTAL
CENTER,

Intervenor.

No. 92-2213 M1/V

CERTIFIED TRUE COPY
ROBERT R. DI TROLIO
U.S. DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE

BY *[Signature]*
DEPUTY CLERK

ORDER APPROVING SETTLEMENT OF CLASS ACTION

This matter is before the Court on plaintiffs' and defendants' Proposed Stipulation and Order of Compromise and Dismissal, filed July 29, 1996, and plaintiffs' Motion for Final Approval of the Proposed Settlement Agreement, filed September 13, 1996. For the reasons set forth below, the proposed settlement of the class action is APPROVED.

BACKGROUND

This case was originally filed on December 12, 1991, by five Arlington Development Center ("ADC") residents and by People First of Tennessee. The case was transferred to this Court on March 5, 1992. Plaintiffs alleged that the conditions at

Arlington Developmental Center violated the constitutional and statutory rights of the Arlington residents and those at risk of placement there. Plaintiffs sought injunctive and declaratory relief from the conditions at ADC.

On January 26, 1993, the Court dismissed plaintiffs' statutory claims and certain of their First and Fourteenth Amendment claims and granted the Parent Guardian Association's motion to intervene. The remaining First Amendment claims asserted that the defendants violated the plaintiffs' rights to freedom of expression and association by preventing Arlington residents from associating with others, and by preventing the residents from communicating with others of their choice.

Meanwhile, in January, 1992, the United States filed an action against the State of Tennessee under 42 U.S.C. § 1997 et seq., alleging that the state had failed to provide humane conditions and adequate treatment at Arlington Developmental Center. United States v. Tennessee, Civ. No. 92-2062. Each of the parties to the present action were parties to that case. After a lengthy trial, this Court entered judgment against the defendants finding that the conditions at ADC violated the residents' due process rights.

On September 27, 1995, the Court granted plaintiffs' motion for class certification, defining the class as: "all persons who after December 12, 1989, have resided or are residing at the Arlington Developmental Center, all persons who have been transferred to other facilities but who remain the defendants' responsibility, and all persons at risk of being placed in the ~~custody~~ ~~of~~ ~~the~~ ~~state~~ ~~of~~ ~~Tennessee~~ ~~in~~ ~~the~~ ~~future~~ ~~as~~ ~~a~~ ~~result~~ ~~of~~ ~~the~~ ~~Court's~~ ~~decision~~ ~~in~~ ~~United~~ ~~States~~ ~~v.~~ ~~Tennessee~~, Civ. No. 92-2062. on plaintiff's claims under the Fourteenth Amendment relating to care, services, abuse, and neglect in light of the Court's decision in United States v. Tennessee, Civ. No. 92-2062.

As a result of the September 27, 1995 Order, the only ~~issues~~ ~~to~~ ~~be~~ ~~tried~~ ~~at~~ ~~the~~ ~~trial~~ ~~set~~ ~~for~~ ~~July~~ ~~29~~ ~~1996~~ ~~is~~ ~~the~~ ~~issue~~ ~~of~~ ~~damages~~ ~~to~~ ~~be~~ ~~paid~~ ~~by~~ ~~order~~ ~~dated~~ ~~January~~ ~~11~~ ~~1990~~; the Court set a trial for these issues to begin on July 29, 1996. On July 29, 1996, however, plaintiffs and defendants filed a proposed stipulation and order of compromise and dismissal under Federal Rule of Civil Procedure 23(e). Parent Guardian Association, the intervenor, opposes the proposed settlement.

The proposed settlement agreement provides:

1. The plaintiffs and defendants acknowledge that past violations of the residents' First Amendment rights did occur. Plaintiff/residents were prevented from

communicating, associating and assembling with persons of their choice.

2. According to the proposed settlement, the Defendants will protect the rights of the Plaintiff/residents by:
 - (a) developing a policy to enable residents to communicate, associate, and assemble with others of their choice both publicly and privately;
 - (b) telling the staff of the Arlington Developmental Center and agencies who work with the Center about the policy so that staff will not discourage residents from exercising their right to freely communicate, associate and assemble with others of their choice;
 - (c) establishing a process to discipline staff members who violate the right of residents to freely communicate, associate and assemble with others; and
 - (d) allowing advocates, religious organizations, and community organizations reasonable opportunity to communicate with residents and allowing residents the opportunity to participate in community activities.

DISCUSSION

Federal Rule of Civil Procedure 23(e) provides that a class action cannot be settled without court approval.⁽¹⁾ "Three steps are required [for approving a class action settlement]: 1) the court must preliminarily approve the proposed settlement; 2) members of the class must be given notice of the proposed settlement; and 3) a hearing must be held to determine whether the proposed settlement is fair, reasonable and adequate." Reed v. Rhodes, 869 F. Supp. 1274, 1278 (N.D. Ohio 1994) (citing Williams v. Vukovich, 720 F.2d 909, 921-22 (6th Cir. 1983)).

By Order dated August 15, 1996, this Court preliminarily approved the proposed settlement agreement. In that same Order, the Court ordered counsel for the plaintiffs and defendants to mail notice to all class members and other interested parties by Friday, August 30, 1996, at 5:00 p.m. That notice also advised all parties interested in commenting on or objecting to the settlement to submit comments by September 20, 1996, at 5:00 p.m. Likewise, the notice advised all those wishing to participate in the hearing to notify the Court by September 20, 1996, at 5:00 p.m.

⁽¹⁾ Federal Rule of Civil Procedure 23(e) provides:

A class action shall not be dismissed or compromised without the approval of the court, and the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

On September 27, 1996, the Court held a hearing so that any class member or family member, guardian, or next friend of a class member could comment on the proposed settlement. At that hearing, the Court heard testimony from interested parties and accepted written comments from members of the intervenor.

A court should approve a settlement if it is fundamentally "fair, adequate and reasonable, as well as consistent with the public interest." Balley v. Great Lakes Canning, Inc., 908 F.2d 38, 42 (6th Cir. 1990) (citing United States v. Jones & Laughlin Steel Corp., 804 F.2d 348, 351 (6th Cir. 1986)). In determining whether the proposed settlement is "fundamentally fair, adequate, and reasonable," the court should consider the following factors:

1. Plaintiffs likelihood of success on the merits balanced against the relief offered by the proposed settlement agreement;
2. The complexity, expense, and likely duration of the litigation;
3. The stage of the proceedings and the amount of discovery;
4. The judgment of experienced trial counsel;
5. The nature of the negotiations;
6. The concerns and comments of the class members and other interested parties; and
7. The public interest.

Bronson v. Board of Education, 604 F. Supp. 68, 74-82 (S.D. Ohio 1984) (citing Vukovich, 720 F.2d at 922); accord Granada Investments, Inc. v. DWG Corp., 962 F.2d 1203, 1205 (6th Cir.

1992) (holding that a court should balance "the likelihood of success on the merits, the risk associated with and the expense and complexity of litigation, and the objections raised by class members"). Applying these factors to the present case, the Court finds that the proposed settlement is fundamentally fair, adequate, and reasonable.

1. Plaintiff's likelihood of success on the merits balanced against the relief offered by the proposed settlement agreement.

In their suit, plaintiffs seek to establish that the defendants have deprived the residents of Arlington Developmental Corporation of their First Amendment rights and seek injunctive and declaratory relief against any such future infringements. In the proposed settlement, the defendants stipulate to past First Amendment violations and agree to institute a plan to ensure that no such violations occur in the future. Thus, even if the plaintiffs were to succeed at trial, the plaintiffs could not conceivably obtain more relief than that offered in the proposed settlement. In going to trial, however, the plaintiffs would run the inescapable risk of obtaining no relief. Accordingly, the Court finds that this factor weighs in favor of approving the settlement.

2. The complexity, expense and likely duration of the litigation.

This case was originally filed in December 1991, and has involved costly, time-consuming litigation. Although the trial of the alleged First Amendment violations is estimated to last only one to one and one-half days, if the court were to find a First Amendment violation, remedial hearings would have to be held and appeals could be taken prior to any resolution of the alleged violations. Consequently, the relief sought by the plaintiffs could be delayed significantly. In contrast, the settlement agreement allows the plaintiffs to enjoy the benefits of the agreement almost immediately. Accordingly, the Court finds that this factor also weighs in favor of approving the settlement.

3. The stage of the proceedings and the amount of discovery completed.

The purpose of considering the stage of the proceedings and the amount of discovery taken is to ensure that plaintiffs had access to sufficient material to evaluate the case and to assess the adequacy of the settlement proposal with an informed judgment of the strengths and weaknesses of their position. See In re General Motors Corp., 846 F. Supp. 330, 334-35 (E.D. Pa. 1993). As noted above, this case was originally filed almost five years ago. Thus, this is not a settlement that was reached in the

early stages of litigation without significant consideration or deliberation. In contrast, significant amounts of discovery have occurred and a related trial has exposed the conditions existing at Arlington Developmental Center. As a result, the parties have been able to make an informed decision about the alleged First Amendment violations and the merits of the proposed settlement. Given the amount of information available to the parties, the Court concludes that this factor weighs in favor of the proposed settlement.

4. The opinion of counsel

In appraising the fairness of a proposed settlement, the view of experienced counsel favoring a settlement is entitled to significant weight. Thompson v. Midwest Found. Indep. Physicians Ass'n, 124 F.R.D. 154, 159 (S.D. Ohio 1988); Bronson, 604 F. Supp. at 73 (holding that "when significant discovery has been completed, the Court should defer to the judgment of trial counsel who has reviewed the strength of his case"). As noted above, a significant amount of discovery has taken place in this case. In addition, counsel has benefitted from the discovery and trial conducted in United States v. Tennessee. Thus, counsel for both sides was able to fully evaluate the strengths and weaknesses of their respective cases. See Bronson, 604 F. Supp. at 73. Consequently, the Court finds that the extensive

discovery conducted in this case and other information available to the parties warrants placing great weight on the opinion of counsel that the settlement is fair, adequate, and reasonable.

5. The nature of the negotiations

There is no indication that the proposed settlement is the product of collusion. Instead, the settlement was the product of "intense, arms-length negotiations between the parties," Brenson, 604 F. Supp. at 78, after almost five years of litigation. Counsel for the intervenor asserts that the agreement is the product of collusion on the grounds that there is no evidence of any First Amendment violations. In approving a settlement decree, however, "[t]he Court has no occasion to determine the merits of the controversy or the factual underpinning of the legal authorities advanced by the parties." Vukovich, 720 F.2d at 921. The only question before the Court is whether the settlement agreement is fair, adequate, and reasonable. Id. Moreover, even assuming that there were no First Amendment violations, this does not change the fact that the agreement is fair, adequate, and reasonable. The settlement provides the plaintiff class with the full range of protection sought in their complaint. It is difficult to see how this agreement is the result of collusion when the plaintiff class gets everything it wanted and the opposing parties include the

state of Tennessee and various state agencies. This Court notes that there is little doubt that the state of Tennessee is quite capable of protecting itself and its agencies.

Finally, requiring the plaintiffs to prove the existence of the First Amendment violations before settlement would undermine the overriding public policy interest in favor of settlement. See Schaeffer v. Tannian, 1995 WL 871134 at *5 (E.D. Mich. 1995) ("The policy in federal court favoring the voluntary resolution of litigation through settlement is particularly strong in the class action context."). The entire point of a settlement is to resolve the case in a manner acceptable to the parties without an actual in-court determination of liability. Accordingly, the Court finds that the intervenor's objections do not merit a finding that the settlement is not fair, adequate, and reasonable.

6. The concerns and comments of class members and other interested parties.

The Court must also consider any objections to the proposed settlement. Stotts v. Memphis Fire Dep't, 679 F.2d 541, 554 (6th Cir. 1982), rev'd on other grounds sub nom, Firefighters Local Union No. 1784 v. Stotts, 467 U.S. 561 (1984); Bronson, 604 F. Supp. at 78. Although the Court must consider any objections made, the fact that there are objections does not mean that the

settlement cannot be approved. Stotts, 679 F.2d at 554. The ultimate issue remains whether the proposed settlement is fair, adequate, and reasonable.

In this case, the Court has received comments from a number of members of the Parent Guardian Association ("PGA") and from ComCare Inc., a court appointed guardian for a number of ADC residents.^[2] After careful consideration of all the views expressed both in writing and at the hearing, the Court finds that the settlement is fair, adequate, and reasonable.

One major area of concern voiced by the intervenor is that there was no evidence of any First Amendment infringement. As discussed above, this argument does not prevent the court from approving the settlement.

A second area of concern raised by PGA and ComCare is that the settlement will interfere with the parents' and guardians' rights to represent and speak for their children and wards. The settlement, however, does not strip the parents and guardians of their duties and responsibilities to their children and wards at the Arlington Developmental Center. Instead, the settlement merely provides safeguards to the ADC residents that their First

[2] By Order dated November 6, 1996, the Court agreed to consider comments submitted by ComCare, Inc., even though the comments were received after the deadline for submitting such comments.

Amendment rights will not be violated by the staff at ADC. The parents and guardians will retain their voice and ability to influence the care of their children and/or wards -- within constitutional constraints of course.

A third area of concern is that the settlement will allow third parties, including advocates, religious organizations, and community organizations, unfettered access to the residents of Arlington Developmental Center. Again, such a concern is overstated. The settlement merely provides that the ADC will allow such parties "reasonable opportunity to communicate with residents." Reasonable opportunity does not mean unfettered access. Instead, the use of the term "reasonable opportunity" recognizes that a policy protecting the First Amendment rights of the Arlington residents cannot be rigidly fixed; rather, it must remain flexible to accommodate the unique needs of the residents while at the same time protecting their First Amendment rights.

A final area of concern surrounds the wording of the settlement decree. In particular, concerns were raised as to the meaning of "discourage" in paragraph 2(b) of the proposed settlement agreement. Once again, a settlement of this kind cannot be reduced to specific and exacting standards. The unique challenges facing both the residents and the staff of ADC require that such a policy remain somewhat flexible.

In sum, although the Court recognizes the thoughtful and heartfelt concern expressed by the parents and guardians of the residents of Arlington Developmental Center, the Court nonetheless finds that the objections raised do not warrant a finding that the settlement is not fair, adequate, and reasonable to the plaintiff class.

7. The public interest

Finally, the Court must consider whether the settlement is in the public interest. Vukovich, 720 F.2d at 923. There is little doubt that the proposed agreement is in the public interest. Not only does the settlement agreement bring an end to nearly 5 years of litigation, but, more importantly, it improves the quality of services provided to the residents of the Arlington Development Center by guaranteeing protection of their constitutional rights under the First Amendment.

CONCLUSION

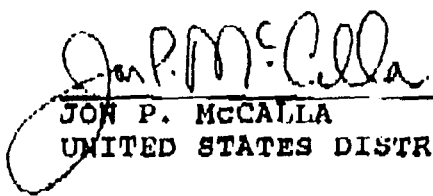
Having examined and weighed the above factors, the Court concludes that the proposed settlement agreement is fair, adequate, and reasonable. Accordingly, the Court APPROVES the proposed settlement and directs that a judgment, in accordance with the settlement agreement, be entered by the clerk. The Court shall RETAIN jurisdiction over the parties, including all

FROM :

PHONE NO. :

members of the settlement class, and the administration and enforcement of the settlement agreement.

IT IS SO ORDERED this 6 day of January 1997.



JON P. McCALLA
UNITED STATES DISTRICT JUDGE