

E. R. v. McDonnell



JI-CO-001-006

FILED
UNITED STATES DISTRICT COURT
DENVER, COLO.

SEP 15 1995

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

JAMES R. MANSPEAKER
CLERK

Civil Action No. 94-N-2816

E.R., a minor, by and through his Next Friend, L.R.; A.W., a minor, by and through her Next Friend, J.W.; on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

BARBARA McDONNELL, Executive Director of the Department of Human Services for the State of Colorado; F. JERALD ADAMEK, Director of the Division of Youth Services for the State of Colorado; VELVIA GARNER, Director of the Phillip B. Gilliam Youth Services Center; all in their official capacity; and SCHOOL DISTRICT NO. 1, COUNTY OF DENVER, STATE OF COLORADO,

Defendants.

ORDER APPROVING CLASS ACTION SETTLEMENT

The matter is before the Court on the parties' joint Motion For Approval Of Settlement Agreement and Memorandum Of Agreement To Amend Settlement Agreement (hereinafter "Agreement") submitted in the above captioned case. Because this case involves a certified plaintiff class, the Court must approve any resolution of the outstanding class claims under Rule 23(e) of the Federal Rules of Civil Procedure. The Court has jurisdiction under 28 U.S.C. § 1331.

INTRODUCTION

The Agreement filed in this case would settle a class action lawsuit against Barbara McDonnell, F. Jerald Adamek and Velvia Garner ("State Defendants") and School District

No. 1, County of Denver, State of Colorado ("DPS Defendant"). This action challenges the conditions of confinement for children at the Phillip B. Gilliam Youth Services Center ("Gilliam"), in Denver, Colorado, and the policies and practices of State Defendants in confining juveniles therein. In return for final closure of this case, the defendants have agreed to make improvements and to undertake certain other changes at Gilliam to ensure that conditions of confinement at those facilities meet constitutional standards.

The parties submitted their joint motion for approval of the Agreement on June 15, 1995. Notice of the Agreement was prepared by the Clerk of the District Court. Defendants properly posted a copy of that Notice. Members of the class had thirty (30) days after such posting within which to submit to the Court, through counsel for the plaintiffs, any objections or inquiries they had. Following the expiration of the time for submitting objections, the Court held a hearing to consider approval of the Agreement.

Prior to the hearing on September 1, 1995, the Court reviewed the proposed Agreement. Appearing at the hearing on behalf of the plaintiff class were their attorneys of record, David H. Miller, Susan L. Burrell and Frank N. Dubofsky. The defendants were represented by their counsel of record, Thomas S. Parchman, Assistant Attorney General, on behalf of State Defendants, and Michael Jackson, on behalf of the DPS Defendants. Also present at the hearing were State Defendants F. Jerald Adamek and Velvia Garner. Ms. Sharon Johnson appeared for the DPS Defendants.

APPLICABLE STANDARD OF REVIEW

Rule 23(e) of the Federal Rules of Civil Procedure provides that a class action "shall not be dismissed or compromised without the approval of the court." In addition, notice of

any proposed settlement must be given to all the class members "in such manner as the court directs." The purpose of these requirements is to protect class members whose rights "may not have been given adequate consideration during the settlement negotiations." In re New Mexico Natural Gas Antitrust Litigation, 607 F. Supp. 1491, 1497 (D. Colo. 1984). To be approved by the Court, a class action settlement must be fair, adequate and reasonable to the class as a whole. Id. (discussing factors a court may weigh in making this determination). See, Officers for Justice v. Civil Service Commission, 688 F.2d 615 (9th Cir. 1982). A settlement hearing, however, is not a substitute for a trial. The Court's role is more limited. As explained by the Ninth Circuit Court of Appeals:

[T]he court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole is fair, reasonable and adequate to all concerned. Therefore, the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits.

...
The proposed settlement is not to be judged against hypothetical or speculative measure of what might have been achieved by the negotiators.

Officers for Justice, 688 F.2d at 625.

A consensual resolution of a dispute is always preferred. Such consensus can only be founded upon compromise. Thus, the fact that the Agreement reached does not address each and every issue raised in the Complaint does not in and of itself give cause to question the fairness of the Agreement or the process involved in reaching it.

With these standards in mind, the Court will assess adequacy of notice and the fairness of the Agreement in that order.

ADEQUACY OF NOTICE

Pursuant to Federal Rules of Civil Procedure, Rule 23(e), within fourteen (14) days after the Court's approval of the Notice to the class, the defendants posted that Notice in conspicuous places in living, school, and visiting areas in Gilliam at places described on their certificates of service. Additionally, counsel for the plaintiff class members in their juvenile cases were provided notice of the Agreement and copies of the Agreement were also posted within the juvenile courts of Denver, Colorado, both at Gilliam and at the City and County Building, 1437 Bannock Street, Denver, CO 80202. Members of the class had thirty (30) days after such posting within which to submit to counsel for the plaintiffs any objections or inquiries they may have had. The Court finds that no objections were filed with the Court or forwarded to counsel. The written and oral certifications of counsel addressing these issues are accepted by the Court.

The Court finds that adequate notice of the settlement and the hearing has been provided to the plaintiff class and that no objections to the settlement are before the Court.

TERMS OF SETTLEMENT

The Court accepts the Agreement as negotiated and written, without modification or exception. By its comments hereafter and by those comments made at the final settlement hearing the Court does not intend to modify the terms of the Agreement.

The Agreement submitted in this case is a comprehensive agreement contemplating the final closure of this matter. In return for the immediate dissolution of all previous orders of the Court in this action, defendants have agreed to make improvements and undertake other steps no later than ninety (90) days from the date that the Agreement is signed by the Court,

unless otherwise specified in the Agreement. The parties acknowledge the Court must approve this Agreement before its substantive terms as stated therein become an effective and binding order of court.

After this Court Order, the Court's jurisdiction shall be limited to ensuring that defendants have fulfilled the obligations undertaken in the Agreement. If plaintiffs have reasonable cause to believe that defendants have failed to perform any obligation undertaken in the Agreement, after providing defendants with notice and opportunity to immediately correct the non-compliance, they may apply to the Court for a hearing regarding defendants' compliance. The Court may refer the matter to a Magistrate-Judge for informal resolution or recommendation. At any hearing regarding the issue of defendants' compliance with the terms of this Agreement, plaintiffs shall have the burden of proving that defendants have failed to comply. If, after hearing, the Court finds that defendants have failed to comply, the sole remedies available to the Court shall be an order directing specific performance of the agreements herein, and, if appropriate under applicable legal principles, the issuance of contempt for failure to comply with the Court's order of specific performance. Isolated or minor incidents of noncompliance will not be regarded as a failure to comply with this Agreement for purposes of any enforcement action.

For the reasons discussed below, the Court finds that the resolution of this proceeding as set forth in the Agreement is in the best interests of the class members.

This proceeding was initiated as a civil rights action challenging the conditions of confinement for juveniles at the Phillip B. Gilliam Youth Services Center in Denver, Colorado ("Gilliam") and the policies and practices of defendants in confining children therein.

The Agreement addresses many of the concerns identified by the plaintiffs. Among other things, the State Defendants have agreed to enforce compliance with all policies and procedures in the Division of Youth Services Policies and Procedures Manual and the Gilliam Implementing Procedures Manual and any addenda thereto, and to: confine no more than seventy-eight (78) youths in Gilliam; adhere to a classification system to meet the individual needs of confined youths; provide a staffing ratio of a least one (1) child careworker per nine (9) youths during waking hours, and one (1) child careworker per sixteen (16) youths during sleeping hours; provide each child a bed off the floor; allow youths certain personal items; cease the use of lockdowns, except as needed in emergencies; provide all treatment and service programs to any youths detained for more than fourteen (14) days; assure immediate access to toilet facilities upon request; correct all deficiencies identified as health or sanitation priority items; provide medical and dental screening upon admission by a medical professional or qualified health trained staff; provide adequate medical and mental health services; implement and enforce policies for monitoring youths on suicide status or in seclusion rooms; implement and enforce policies regarding the limited use of seclusion rooms and holding of due process hearings; prohibit the practice of restraining youths to fixed objects; enforce existing policies and procedures regarding the other use of mechanical restraints; provide youths with reasonable access to their attorneys and courts; provide on-site social services programs and counseling; provide training to staff; require the DPS Defendant to provide all youths with an education program, including special education; and require the State Defendants, in consultation with the DPS Defendant, to maintain a library.

The parties agree that pursuant to 42 U.S.C. § 1988, 29 U.S.C. 794a, and the

Individuals with Disabilities Education Act State Defendants were to pay, and have already paid, plaintiffs' attorneys' fees and costs of \$80,000.00, and the DPS Defendants were to pay, and have already paid, plaintiffs' attorneys' fees and costs of \$14,000.00, for work performed as of the date of the signing of the Agreement.

Additionally, the parties already have filed with the Court their Memorandum Of Agreement To Amend Settlement Agreement. That Memorandum previously has been approved by the Court. It, however, along with the Court's findings referenced therein, will become effective if and only if H.R. 667, Title III "Stop Turning Out Prisoners Act" is enacted by Congress.

CONCLUSION

The Agreement provides a significant benefit to the plaintiff class and remedies a substantial portion of the plaintiffs' claims. The Court finds and concludes that the terms and conditions of the Agreement are fair, adequate and reasonable, and in the best interests of the plaintiff class as a whole. The Court further finds that the plaintiff class members have received adequate notice of the Agreement, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure. Accordingly, the Agreement is APPROVED in its entirety and without modification in conformance with Rule 23(e) of the Federal Rules of Civil Procedure.

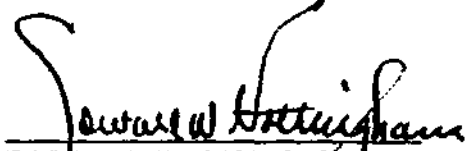
It is therefore ORDERED: the Settlement Agreement and the Memorandum of Agreement to Amend Settlement Agreement are approved pursuant to Rule 23(e) of the Federal Rules of Civil Procedure.

This Order terminates the litigation between the parties on the merits and leaves nothing to be done but to ensure performance by the parties as they have agreed. The Court

retains jurisdiction over the defendants for three years for the limited purpose of monitoring compliance and ensuring they have fulfilled their obligations under the Agreement, as set forth above, but such reservation shall not affect the finality of this Order which is hereby entered on the merits under Rule 41(a)(2) of the Federal Rules of Civil Procedure.

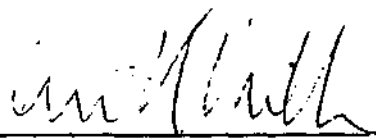
Dated at Denver, Colorado, this 15 day of September, 1995, nunc pro tunc,
September 1, 1995.

BY THE COURT:


EDWARD W. NOTTINGHAM
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

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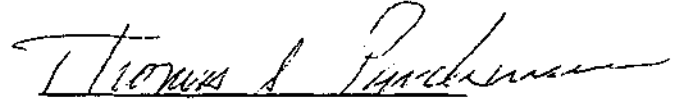
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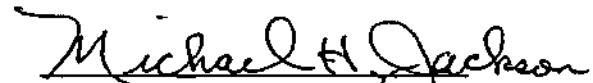
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 94 N 2816

CERTIFICATE OF MAILING

I hereby certify that a copy of the Order Approving Class Action Settlement signed by Judge Edward W. Nottingham on September 15, 1995, was mailed to the following on September 18, 1995:

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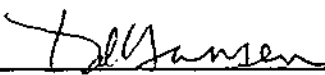
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Magistrate Judge Donald E. Abram

JAMES R. MANSPEAKER, CLERK

By 
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