

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
)	
vs.)	Case No. 06-CV-673-GKF-FHM
)	
STATE OF OKLAHOMA; et al.)	
)	
Defendants.)	

**DEFENDANTS’ MOTION TO DISMISS
AND BRIEF IN SUPPORT**

In accordance with the Consent Decree [Dkt. # 258] entered by Court on September 9, 2008, and this Court’s September 21, 2011, Order and Opinion [Dkt. # 271], Defendants request this Court dismiss this case with prejudice. In support of this motion, Defendants show the Court as follows:

STATEMENT OF THE CASE

Plaintiff filed this action regarding the conditions of confinement at the L.E. Rader Center (Rader). See Consent Decree at ¶ 1. [Dkt. 258]; see also Amended Complaint at ¶ 1, 5, 15 & 17. [Dkt. 65]. After extensive litigation, Plaintiff, the State of Oklahoma and the Office of Juvenile Affairs, entered into a three (3) year consent decree. See Consent Decree at ¶ 114. [Dkt. 258]. The consent decree is a final order. (See Plaintiff’s Motion to Enforce, at p. 1, citing to F.R.Civ.P. 60(b)(5) - Grounds for Relief From a Final Order or Proceeding) [Dkt. 260]. The parties to the Consent Decree agreed, and this Court ordered that the Consent Decree would terminate three (3) years from the date it was ordered by the Court (September 9, 2008). See Consent Decree at ¶ 114. [Dkt. 258]. On September 21, 2011, this Court denied Plaintiff’s Emergency Motion to Enforce Consent Decree and Motion to Modify Consent Decree, finding that the Consent Decree expired by

its own terms on September 9, 2011 and that the decree did “not extend federal oversight to youth transferred from Rader to other OJA facilities, or to youth in those pre-existing separate juvenile facilities, either before or after the stated termination date.” [Dkt. # 271].

The Consent Decree also provided:

Dismissal of All Defendants Upon completion of this Consent Decree as discussed in paragraph [114], the parties will jointly move, pursuant to Fed. R. Civ. P. 41(a)(2), for entry of an order dismissing this action with prejudice as to all Defendants named in the complaint or subsequently added thereto. See Consent Decree at ¶ 115. [Dkt. 258].

After receiving the Court’s Order and Opinion, counsel for Defendants contacted Plaintiff to discuss the Joint Stipulation of Dismissal with Prejudice contemplated by the Consent Decree. While Plaintiff is not willing to sign off on a Joint Stipulation of Dismissal, counsel for Defendants is authorized to state that in light of the Court’s Order and Opinion [Dkt. # 271], Plaintiff takes no position with regard to this Court entering an order dismissing this case with prejudice and does not plan to file a brief in response to this Motion.

Pursuant to the terms of the Consent Decree, Defendants move this Court to dismiss this case as originally contemplated by the decree.

ARGUMENTS AND AUTHORITIES

The Court should exercise its authority under F.R.Cv.P. 60(b)(5) as well as the Prison Litigation Reform Act (PLRA), 18 U.S.C. § 3626(b) to dismiss this case. This case and the Consent Decree related to the conditions of youth at Rader. The terms of the Consent Decree lapsed on September 9, 2011. Prior to its lapse, OJA ceased using Rader to house any youth under its care. The facility is in the process of being permanently closed. This Court denied Plaintiff’s effort to extend the

Consent Decree, finding the Consent Decree expired on September 9, 2011 and it did “not extend federal oversight to youth transferred from Rader to other OJA facilities, or to youth in those pre-existing separate juvenile facilities, either before or after the stated termination date.” [Dkt. # 271].

F.R.Cv.P. 60(b)(5) permits this Court to relieve a party from a final judgment “when the judgment has been satisfied.” Defendants have satisfied the final judgment. Plaintiff takes no position with regard to this Motion. It is time for this case to be dismissed with prejudice, as envisioned by the Consent Decree. [Dkt. # 258, ¶ 115].

CONCLUSION

All Defendants therefore request this Court dismiss this case with prejudice.

Respectfully submitted,

s/ Kindanne C. Jones

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CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2011, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to all counsel who are presently receiving any and all said filings in this case, including but not limited to:

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s/ Kindanne C. Jones

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