

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Leonard Green
Clerk

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FILED
U.S. DISTRICT COURT
MIDDLE DISTRICT OF TENN

Filed: February 08, 2008

FEB 11 2008

DEPUTY CLERK

Mr. Michael W. Kirk
Cooper & Kirk
1523 New Hampshire Avenue, N.W.
Washington, DC 20036

Ms. Martha M. Lafferty
Disability Law & Advocacy Center of Tennessee
2416 21st Avenue, S.
Suite 100
P.O. Box 121257
Nashville, TN 37212

Re: No 07-6163,07-6325
Lakersko Brown, et al v. Tennessee Department of Financ, et al
Originating Case No. 00-00665

Dear Counsel,

The Court issued the enclosed order today in these appeals.

Sincerely yours,

s/Mary Patterson
Case Manager
Direct Dial No. 513-564-7033
Fax No. 513-564-7094
CA06-Team3@ca6.uscourts.gov

cc: Honorable Robert L. Echols
Mr. Keith Throckmorton

Enclosure

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LAKERSKO BROWN; KATIE BLACKBURN;)
MATTHEW MCGOWAN; SHALYN KIKER, as)
class representatives; DISABILITY LAW AND)
ADVOCACY CENTER OF TENNESSEE,)

Plaintiffs-Appellees,)

v)

TENNESSEE DEPARTMENT OF FINANCE)
AND ADMINISTRATION; M. D. GOETZ, JR., in)
his official capacity as Commissioner of the)
Department of Finance and Administration,)

Defendants-Appellants.)

FILED

FEB 08 2008

LEONARD GREEN, Clerk

ORDER

Before: GUY, SUHRHEINRICH, and McKEAGUE, Circuit Judges.

In this class action challenging the state’s provision of Medicaid services for the mentally retarded, the defendants appeal the denial of their motion filed pursuant to Fed. R. Civ. P. 60(b) to vacate an agreed order approving an agreement settling the class claims. (Case No. 07- 6163). They filed a second notice of appeal to “clarify that they appeal as a matter of right pursuant to 28 U.S.C. §§ 1291 and 1292(a)(1).” (Case No. 07-6325). The plaintiffs move to dismiss the appeals for lack of jurisdiction. The defendants oppose the motion to dismiss

The plaintiffs argue that the order denying the motion to vacate the agreed order approving the settlement is not a final, appealable order. The agreed order was entered after the district court held a hearing and concluded that the settlement was fair, adequate, and reasonable. The district court did not di

Appeal # 07-6163 is still pending in the Sixth Circuit.

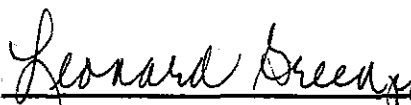
jurisdiction “for all purposes” under the settlement

A TRUE COPY
Attest:
LEONARD GREEN, Clerk
Deputy Clerk

agreement. As such, the agreed order approving the settlement is the functional equivalent of a consent decree. "A consent decree is essentially a settlement agreement subject to continued judicial policing." *Williams v Vukovich*, 720 F.2d 909, 920 (6th Cir. 1983); *see also Biodiversity Assoc. v. Cables*, 357 F.3d 1152, 1169 (10th Cir.) (noting that a settlement agreement to enforce statutory directives is equivalent to a consent decree), *cert. denied*, 543 U.S. 817 (2004). The prospective requirements of the settlement agreement approved by the agreed order operate as an injunction, and the order denying the motion to terminate the agreed order is appealable as an order refusing to vacate an injunction under 28 U.S.C. § 1292(a)(1). *See Jeff D. v. Kempthorne*, 365 F.3d 844, 580 (9th Cir. 2004); *Armco, Inc. v. United Steelworkers of Am.*, 280 F.3d 669, 677-78 (6th Cir. 2002); *Sweeton v Brown*, 27 F.3d 1162, 1166 (6th Cir. 1994) (en banc), *cert. denied*, 513 U.S. 1158 (1995).

The plaintiffs' motion to dismiss is **DENIED**. Case No. 07-6325 is dismissed as duplicative of Case No. 07-6163.

ENTERED BY ORDER OF THE COURT



Clerk