

2020 WL 1862309

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United States Court of Appeals, Sixth Circuit.

Melissa BUCK, et al., Plaintiffs-Appellees,
v.

Robert GORDON, in his official capacity as
Director of the Michigan Department of Health
and Human Services, et al.,
Defendants-Appellants,

Alex M. Azar, II, in his official capacity as the
Secretary of the United States Department of
Health and Human Services, et al., Defendants.

No. 19-2185

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Attorneys and Law Firms

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Appellees

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Cromwell, New York, NY, Leslie Jill Cooper, American
Civil Liberties Union, New York, NY, for Proposed
Intervenors

Before: NORRIS, SUTTON, and BUSH, Circuit Judges.

ORDER

*1 Robert Gordon, Joo Yeun Chang, and Dana Nessel—in their official capacities as Director of the Michigan Department of Health and Human Services, the Executive Director of the Michigan Children’s Services Agency, and the Attorney General of Michigan—(“the State”) appeal an interlocutory order granting a preliminary injunction to Plaintiff St. Vincent Catholic

Charities that prohibits the State from terminating, suspending, or failing to renew its contracts for child placement services or otherwise taking any action interfering with its free exercise of its religious beliefs. Non-parties Kristy and Dana Dumont move to intervene. The State did not respond. But St. Vincent, along with plaintiffs Melissa Buck, Chad Buck, and Shamber Flore (collectively, “St. Vincent”), suggest staying the Dumonts’ request pending the outcome of the Dumonts’ related appeal and, alternatively, oppose intervention. The Dumonts reply. The State moves to voluntarily dismiss the appeal without costs assigned to either party. St. Vincent opposes dismissal. The State replies.

Courts “have broad discretion to grant voluntary motions to dismiss.” *Am. Auto. Mfrs. v. Comm’r, Mass. Dep’t of Envtl. Prot.*, 31 F.3d 18, 22 (1st Cir. 1994). We generally grant motions to voluntarily dismiss, *see Twp. of Benton v. Cty. of Berrien*, 570 F.2d 114, 118–19 (6th Cir. 1978), provided that circumstances do not dictate otherwise. We will deny voluntary dismissal if it is sought to evade appellate review. *See Khouzam v. Ashcroft*, 361 F.3d 161, 168 (2d Cir. 2004). We will deny voluntary dismissal if a party is trying to avoid having a particular panel decide the merits of the appeal. *In re Nexium Antitrust Litig.*, 778 F.3d 1, 2 (1st Cir. 2015). We also eschew dismissal if we have invested substantial time in the case and a decision on the merits is imminent or dismissal will needlessly delay consideration by the court. *See id.* We may deny voluntary dismissal if lower courts would benefit from our immediate consideration of the issue. *Cf. Khouzam*, 361 F.3d at 168 (denying dismissal after the court expressed doubts as to the movant’s position during oral argument and noted that the case involved “an issue of public importance.”).

The circumstances here support dismissal. The State appealed the grant of a preliminary injunction; thus, even if we consider the merits of the appeal, it will not end the litigation. *See Am. Auto Mfrs.*, 31 F.3d at 23 (citation omitted) (granting voluntary dismissal of a preliminary injunction appeal because dismissal “w[ould] not shelter the ... claims from scrutiny,” but instead “w[ould] simply ... accept[] [appellant’s] decision to let those claims be finally adjudicated before bringing them to this court.”). Religious freedom is indisputably of public importance. But, because a stay of the injunction has been denied by both the district court and our court, it will remain in effect pending disposition of the matter. Thus, St. Vincent will remain protected if the district court grants the State’s request to certify a question to the Michigan Supreme Court, causing a delay. The appeal has not been briefed, oral argument has not been conducted, and a decision is

not imminent. Although neither the district court nor this court's unpublished orders denying a stay are binding, both signal to other courts that St. Vincent's position has a likelihood of success on appeal. There are similar cases pending, but they, too, are all in their infancy. The Dumonts do have an outstanding motion to intervene. But they did not oppose dismissal. If they prevail in their related appeal challenging the denial of intervention below, they will be permitted to intervene below. And, regardless, they are participating below as *amici*.

*2 The State suggests that costs should not be assigned to either party. Although St. Vincent notes that it has already

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expended costs on appeal and takes issue with the State's litigation practice, it does not suggest alternative terms.

The motion to voluntarily dismiss is **GRANTED**. The motion to intervene is **DENIED AS MOOT**.

All Citations

Not Reported in Fed. Rptr., 2020 WL 1862309