UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JUAN F., et al.,	:	
Plaintiffs,	:	
	:	
	:	
v.	:	Civil Action No. 3:89-CV-859 (CFD)
M. JODI RELL, et al.,	:	
Defendants.	:	

RULING ON MOTION TO VACATE

The defendants, the Governor of Connecticut and the Commissioner of the Department of Children and Families ("DCF"), bring this motion to vacate the Consent Decree and Exit Plan under Rule 60(b)(5) of the Federal Rules of Civil Procedure.

Background

This class action was filed in 1989 on behalf of all children in the care, custody, or supervision of the defendants. The suit raised a broad challenge to DCF's management, policies, operations, funding and protocols concerning abused and neglected children. For example, the complaints alleged defendants' failure to place children with their siblings, their failure to recruit an adequate number of foster homes, their failure to provide children with medical, dental and mental health services, and their failure to meet these basic needs because of inadequate staffing and case management systems.

In 1991, the Court entered a consent decree that restructured a large part of DCF and set forth a detailed plan to improve the Department's operation and delivery of services. The Consent Decree was the product of lengthy and extensive negotiations between the parties. Until 2003, DCF's programs and services for members of the Juan F. class were operated and

monitored under the provisions of the Consent Decree. But then, to avoid possible court-ordered receivership of the Department, the parties, with the assistance of the Monitor, engaged in lengthy negotiations to find a solution to remedy the Department's failures to comply with the Consent Decree, and to sketch a path toward termination of court oversight. Their efforts were fruitful and produced an agreement and stipulation, which was entered as an order of the court, providing that the Consent Decree would be subsumed by an Exit Plan and detailed outcome measures ("Outcome Measures" or "OM") covering twenty-two areas of operation. In 2006, after six months of negotiations between the parties, the Court approved modifications to the Exit Plan on Outcome Measure 3, which covers treatment plans for children in DCF's custody, and on Outcome Measure 15, which covers the provision of services to those children such as medical and mental health care. The Revised Exit Plan clarified the scope of those Outcome Measures, and changed the methodology by which they are calculated. Again in 2008, the parties entered into negotiations to address the Department's performance on these two outcome measures. They agreed to a Stipulation, approved by the Court, which detailed steps the Department would take to remedy noncompliance with Outcome Measures 3 and 15.

The Exit Plan specifies how and when the Department can assert full compliance and seek to end the Court's supervision. Once the Defendants have been in sustained compliance with all of the outcome measures for at least two quarters (six months), the Court Monitor will conduct a review of a statistically significant valid sample of cases files. The Court Monitor shall then present findings and recommendations to the District Court. Since 2006, the Defendants have never been in compliance with all 22 Outcome Measures. In the second

quarter of 2010, April to June, the Defendants were in compliance with 16 out of 22.[1]

Discussion

The defendants now bring this motion under Rule 60(b)(5) of the Federal Rules of Civil Procedure. Rule 60(b)(5) provides in relevant part the following:

> (b) On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order or proceeding for the following reasons . . .
>
> (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable . . .

The test for motions under Rule 60(b)(5) articulated by the Supreme Court says that a party may move for modification or termination of a judgment if factual or legal circumstances have changed to such an extent that compliance has become "substantially more onerous," when a decree "proves to be unworkable because of unforeseen obstacles," or "when enforcement of the decree without modification would be detrimental to the public interest." Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367, 384 (1992). These changed circumstance must have been unforeseen. In conducting this analysis, court must apply "a flexible standard that seeks to return control to state and local officials as soon as a violation of federal law has been remedied." Horne v. Flores, 129 S.Ct. 2579, 2595 (2009).

[1]The Court Monitor's published Quarterly Report for the second quarter of 2010 reports the defendants were in compliance with 16 out of the 22 Outcome Measures. The Court Monitor has informed the Court that a revision to his report is forthcoming, and the revised Quarterly Report will show the Department was in fact in compliance with 17 out of 22 Outcome Measures in the last quarter.

The defendants have failed to show any factual or legal circumstances that meet these standards. First, the defendants argue that the progress the state has made over the last two decade constitutes changed factual circumstances that render continuing enforcement of the Consent Decree and Exit Plan inequitable. They argue that although they have yet to satisfy the plain terms of the Exit Plan, which requires compliance in all 22 categories before court oversight may come to an end, they have achieved substantial compliance which meets the basic objectives of the original consent decree. This argument fails for several reasons. The Consent Decree and Exit Plan are negotiated settlements drafted with extensive participation by the defendants. The Exit Plan is not a rigid, prescriptive mandate, but rather a set of targets. The methods of accomplishing them are left up to the state. The parties have a long history of negotiating changes to the original consent decree to make oversight of DCF more productive, and to make the path towards the end of that oversight more clear. As recently as 2008, the defendants agreed to a Stipulation which outlined steps the defendants needed to take to improve their compliance with Outcome Measures 3 and 15. Therefore, the monitoring regime has not suddenly become "substantially more onerous" or "unworkable." Second, the Supreme Court has required that if changed circumstances are to form the basis for a court's decision to vacate an order or decree, those changes must have been unforeseen. That is not the case here. The changes on which the defendants rely were not unforeseen, indeed these changes are the very objective of the entire history of this litigation. The substantial progress the state has made to better fund, staff and operate DCF is to be commended, but it does not make continuing enforcement by this Court of the Exit Plan unworkable or inequitable.

Second, the defendants argue that passage of several federal child welfare laws since the

Consent Decree was entered constitute changed legal circumstances which make continuing enforcement of the Exit Plan inequitable. This argument fails as well. These laws, including the Family Preservation and Support Services Program Act of 1993, the Keeping Children and Families Safe Act of 2003, and the Fair Access to Foster Care Act of 2005, set out the requirements for states to receive federal funding under various programs. Because these federal statutes generally promote, rather than hinder, the objectives of the Exit Plan, they do not constitute change legal circumstances which make the continuing enforcement of the Exit Plan more onerous or inequitable. Indeed, the Department has received federal funds and grants often *because* of the reforms the Department has made pursuant to the Consent Decree and Exit Plan. The regime of federal child welfare laws to which the defendants refer makes the continued enforcement of the Exit Plan a better idea, not a worse one.

The defendants also argue the Exit Plan should be vacated because of federalism concerns, citing the Supreme Court's instruction to lower courts to make sure "responsibility for discharging the State's obligations is returned promptly to the State and its officials when the circumstances warrant." Horne, 129 S.Ct. at 2595 (internal citations omitted). In this case, the defendants argue that the Exit Plan should be vacated because of the impact the Plan has on state budget priorities. While the state has spent millions of dollars over the course of this litigation to reform DCF's practices, doing so was required by the state's constitutional and statutory obligations to the children in its care. Also, because the Exit Plan is the product of negotiations between the parties, and because the parties may revise the plan to make compliance more achievable, as they did in 2006, the kind of federalism concerns that may warrant a court's early vacatur of a consent decree are not present in this case.

Finally, the defendants argue that Horne has significantly altered the 60(b)(5) standard, requiring courts to vacate consent decrees if "they are aimed at eliminating a condition that does not violate federal law or does not flow from such a violation." Id., citing Milliken v. Bradely, 433 U.S. 267, 282 (1977). But the defendants overstate the impact of Horne. That case involved a declaratory judgment ordering the State of Arizona to increasing funding for non-English speaking students in its public schools in order to comply with a federal statute, and the subsequent passage of a law by the Arizona state legislature creating a durable funding formula that met the federal requirements. The Supreme Court reversed the lower court's denial of the motion to vacate, holding that the "critical question" is whether the objective of the original declaratory judgment order has been achieved, and suggesting that the Arizona state statute did achieve that objective. Horne did not call into question a district court's authority to enforce a validly entered Consent Decree negotiated by the parties. Horne also did not turn 60(b)(5) motions into vehicles to relitigate the original claims of the underlying litigation, in an effort to determine whether ongoing violations of federal law exist. Even after Horne, a court "may not rewrite [or vacate] the existing consent orders so as to reduce defendants' promise to some ill-defined constitutional floor." Evans v. Fenty, 701 F.Supp.2d 126, 165 (D.D.C. 2010).

For the reasons discussed above, the defendants' motion is denied. Because the Department has not yet met all the targets laid out in the Exit Plan, children in the state's care face unneeded delay and disruption, and continue to go without important services.

It is also important to note, though, that the state has made considerable progress in achieving the goals of the consent decree, and it is to be commended for that effort. The end may very well be in sight. The return of control of services to the State of Connecticut for our

most vulnerable children is within our grasp. The Court is also mindful that the Supreme Court has indicated that federal oversight of state services, such as those provided by the Connecticut Department of Children and Families, should be temporary, and that state officials are better equipped to provide the leadership in these areas. On the other hand, this case will not end until the state has fully met its responsibilities in addressing the needs of these children. All the parties need to provide an additional measure of effort to bring this federal oversight to a final conclusion.

Finally, over the course of this litigation, the Defendants have provided helpful insight and suggestions on the methods of evaluating the state's performance in meeting the outcome measures in the Exit Plan. Accordingly, although the Court will deny the Defendants' Motion to Vacate, it directs the parties to meet immediately with the Court Monitor to determine whether adjustments should be made to the methods of evaluating the performance of DCF.

So ordered this 22nd day of September, 2010 at Hartford, Connecticut.

/s/ Christopher F. Droney
CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE