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United States District Court, E.D. Pennsylvania.

Baby NEAL, et al., Plaintiffs,
v.
Thomas P. RIDGE, et al., Defendants.

Civ. A. No. 90–2343. | Dec. 7, 1995.

Opinion

MEMORANDUM

ROBERT F. KELLY, District Judge.

***1** Before this Court is Plaintiffs' Motion, pursuant to Rule 60(b)(6) of the Federal Rules of Civil Procedure, for Reconsideration of this Court's April 12, 1993 Order which granted, in part, Defendants' Motion for Summary Judgment. Specifically, Plaintiffs are requesting this Court to reinstate their claims under the Adoption Assistance and Child Welfare Act of 1980, 42 U.S.C. §§ 627(a)(2)(A), (B), (C), 627(b)(3) and 671(a)(10) ("AACWA") and the Child Abuse Prevention and Treatment Act, 42 U.S.C. §§ 5101–5106 ("CAPTA"). Plaintiffs' motion is based upon the recently passed Social Security Act Amendments of 1994 (the "Amendments"). For the following reasons, Plaintiffs' Motion is denied.

BACKGROUND

By Memorandum Opinion and Order, dated April 12, 1993, this Court granted Defendants' summary judgment motion as to each of Plaintiffs' claims asserted under the AACWA and CAPTA. In doing so, this Court concluded that the language of the AACWA sections at issue did not unambiguously confer an enforceable right on behalf of its beneficiaries under 42 U.S.C. § 1983, nor did it create an implied cause of action for private enforcement, and that any holding to the contrary would contradict the reasoning applied by the Supreme Court in *Suter v. Artist M.,* 503 U.S. 347, 112 S.Ct. 1360 (1992). Memorandum Opinion, pp. 7–12. Likewise, this Court found that CAPTA, a "federal-state" funding statute, did not create a private right of action under 42 U.S.C. § 1983. *Id.* at 14. This Court reasoned that "[t]he recent decision of the Supreme Court in *Suter* ... supports the unwillingness of the Court to find a private right of action under such statutes." *Id.* Accordingly, this Court dismissed those counts from Plaintiffs' First Amended Complaint and Intervening Complaint.

STANDARD

Rule 60(b)(6) provides: "On motion and upon such terms as are just, the court may relieve a party ... from a final judgment, order, or proceeding for ... any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time...." FED.R.CIV.P. 60(b)(6).

> In *Klapprott v. United States,* 335 U.S. 601, 69 S.Ct. 384, 93 L.Ed. 266 (1949), the Supreme Court held that Rule 60(b)(6) permits a district court to vacate a judgment whenever such action is appropriate to accomplish justice. Later, the Supreme Court stressed that a district court should do so only in extraordinary circumstances. *Ackermann v. United States,* 340 U.S. 193, 71 S.Ct. 209, 95 L.Ed. 207 (1950).... "[The Third] Circuit has consistently held that in order to grant a motion under Rule 60(b)(6) the movant must allege and prove such extraordinary circumstances as will be sufficient to overcome [the] overriding interest in the finality of judgments." [*Mayberry v. Maroney,* 529 F.2d 332, 337 (3d Cir.1976)].

Wilson v. Fenton, 684 F.2d 249, 251 (3d Cir.1982); *see also Moolenaar v. Government of Virgin Islands,* 822 F.2d 1342, 1346 (3d Cir.1987), *citing Kock v. Government of the Virgin Islands,* 811 F.2d 240, 246 (3d Cir.1987).

"REASONABLE TIME"

***2** The initial issue raised by the parties is whether Plaintiffs timely filed this motion. Defendants contend that under either the rigid approach of Local Rule 20(g)[1], or the more flexible approach of FED.R.CIV.P. 60(b)(6), Plaintiffs' Motion for Reconsideration, filed six months after the 1994 Social Security Act Amendments were signed into law, is untimely. Defendants' Opposition Memorandum, p. 6. Thus, it must first be determined which time requirement applies.

Plaintiffs are correct in their contention that Local Rule 20(g) is inapplicable. *See Baylson v. Disciplinary Board,* 764 F.Supp. 328, 336 (E.D.Pa.1991), *aff'd,* 975 F.2d 102

(3d Cir.1992) ("Local Rules that are in conflict with the Federal Rules or Acts of Congress are nullities."). In *Laskey v. Continental Products Corp.,* 804 F.2d 250 (3d Cir.1986), the Third Circuit stated:

> The primacy of the Federal Rules of Civil Procedure with regard to the procedural aspects of litigation in federal courts is well-settled. *See Hanna v. Plumer,* 380 U.S. 460, 465, 85 S.Ct. 1136, 1140, 14 L.Ed.2d 8 (1965). Thus, the "reasonable time" provision of Federal Rule 60(b), as opposed to the [10–day] limitation of Local Rule [20(g)], controls the determination [as to] whether appellant's motion was timely filed.

Id. at 255.

"Under Rule 60(b)(6) there is no specific time within which that motion must be made, however, the rule requires that such a motion be made within 'a reasonable time.' " *Hughes, et al. v. Warehouse Employees Local 169,* No. 80–4905, 1985 WL 3291, at *3 (E.D.Pa. October 25, 1985). "[W]hat is a reasonable time must depend to a large extent upon the particular circumstances alleged." *Laskey,* 804 F.2d at 255 (quoting 7 J. Moore & J. Lucas, *Moore's Federal Practice,* ¶ 60.27[3], p. 60–301 (2d ed. 1985)). In the present action, this Court entered its Memorandum and Order on April 12, 1993, the Amendments were not signed into law until October 31, 1994, and Plaintiffs filed this motion on May 4, 1995, over two years after this Court's initial judgment. However, in applying Rule 60(b)(6), it is the time that has elapsed since the motion was first possible that is relevant. Here, Plaintiffs' motion was brought six months after the Amendments were passed, four months after the Third Circuit rendered its decision reversing this Court's denial of class certification pursuant to FED.R.CIV.P. 23(b)(2), and one month after this Court certified the class.

In deciding the timeliness of Plaintiffs' Rule 60(b)(6) motion, "[t]he relevant considerations include, whether the parties have been prejudiced by the delay and whether a good reason has been presented for failing to take action sooner." *U.S. v. Boch Oldsmobile, Inc.,* 909 F.2d 657, 661 (1st Cir.1990), *citing United States v. Wyle,* 889 F.2d 242 (9th Cir.1989). Plaintiffs have argued that their appeal of this Court's denial of class certification and dismissal of Plaintiffs' AACWA and CAPTA claims had already been briefed and argued by the parties at the time the Amendments were passed. Plaintiffs, thus, contend that "[f]iling the motion in the district court before the appeal was decided would have been a procedural quagmire...." Plaintiffs' Reply Brief, p. 7. Furthermore, Defendants have not alleged that they have been prejudiced by any delay in Plaintiffs' filing of this motion. Based on the above circumstances, Plaintiffs have satisfied the reasonable time requirement.[2]

THE 1994 SOCIAL SECURITY ACT AMENDMENTS AND SUTER

***3** Despite its timing, Plaintiffs' motion provides no basis for reinstating their claims under the AACWA and CAPTA. While a change in the law may provide the extraordinary circumstances necessary for granting a Rule 60(b)(6) motion, the basis for reconsideration, asserted by Plaintiffs, does not provide the justification in this case. As set forth below, the Social Security Act Amendments of 1994 have no significant bearing on the Supreme Court's decision in *Suter* nor this Court's prior analysis regarding Plaintiffs' claims under the AACWA and CAPTA.

Plaintiffs contend that specific language in the Amendments supports their contention that the state's failure to abide by the terms of the AACWA, with the exception of § 671(a)(15) thereof, gives rise to a private cause of action. They point to the following portion of the 1994 enactment:

> In an action brought to enforce a provision of the Social Security Act, such provision is not to be deemed unenforceable because of its inclusion in a section of the Act requiring a State plan or specifying the required contents of a State plan. This section is not intended to limit or expand the grounds for determining the availability of private actions to enforce State plan requirements other than by overturning any such grounds applied in *Suter v. Artist M.,* 112 S.Ct. 1360 (1992), but not applied in prior Supreme Court decisions respecting such enforceability: Provided, however, that this section is not intended to alter the holding in *Suter v. Artist M.* that section [6]71(a)(15) of the Act is not enforceable in a private right of action.

Social Security Act Amendments of 1994, Pub.L. No. 103–432, § 211, 108 Stat. 4398, 4460 (Oct. 31, 1994) (to be codified at 42 U.S.C. § 1320a–2). Based on this section of the Amendments, Plaintiffs contend that extraordinary circumstances exist to justify the relief sought.

However, contrary to Plaintiffs' contentions, "Congress identified no 'grounds' applied in *Suter* that were 'not applied in prior Supreme Court decisions respecting ... enforceability.' Thus the [Amendments have] no effect on the interpretive issues raised by the Adoption Assistance Act." *LaShawn v. Barry ("Lashawn II ")*, 1995 WL 633528, *14 (D.C.Cir. October 31, 1995). In *LaShawn II,* Circuit Judge Williams' analysis of the *Suter* decision is instructive:

> *Suter* did not find provisions of the Adoption Assistance Act unenforceable "because of ... inclusion in a section of [the Act] requiring a State plan or specifying the required contents of a State plan." 42 U.S.C. § 1320a–2. Rather ... its holding was based on the combination of (1) the Pennhurst I requirement of a clear statement for any conditions on state receipt of federal grants, see 503 U.S. at 356, (2) the absence of "statutory guidance ... as to how 'reasonable efforts' are to be measured", id. at 360, and (3) the establishment of an alternative enforcement mechanism, see id. at 360–61.... The *Suter* Court's principal concern was the Act's vagueness. In discussing the "reasonable efforts" clause, § 671(a)(15) (state must make "reasonable efforts" to prevent need for removing child from his home and to return child to home after removal), the Court noted: "How the state was to comply with this directive and with the other provisions of the Act, was within broad limits, left up to the State." 503 U.S. at 360 (emphasis added).

***4** *Id.* at *12.

In addition, *LaShawn II* recognized that "[t]his interpretation of *Suter* corresponds with the ordinary inquiry as to whether to infer a private right of action from a statutory scheme." *Id.* at *13 (citations omitted). Circuit Judge Williams also cited *Doe v. District of Columbia,* Civ. No. 93–0092, slip op. at 17 (D.D.C. Feb. 25 1994), acknowledging the court's finding

> that a provision that had originally been relied on in this case, 42 U.S.C. § 5106a(b)(2) (a provision of the Child Abuse Prevention and Treatment Act), "invests only 'generalized dut[ies]' upon the states and does not 'unambiguously confer' and enforceable right to bring a private action against the government." The court at no point relied on Congress's [sic] having specified that the requirement should be embodied in a State plan.

LaShawn II, 1995 WL 633528 at *13. Furthermore, the court in *LaShawn II* noted its disagreement with two district courts that, in interpreting § 211, have deferred to the congressional view that inclusion in a plan was central to *Suter* 's analysis—*see Jeanine B. v. Thompson,* 877 F.Supp. 1268, 1283 (E.D.Wis.1995); *Harris v. James,* 883 F.Supp. 1511, 1520 (M.D.Ala.1995). *Id.* at *15 FN11.

Plaintiffs also contend that the legislative history of the Amendments shows that "Congress passed Public Law 103–432 because of the danger that courts would, and had begun to, erroneously interpret *Suter* to deny children, and other prospective beneficiaries of federally-mandated state plans, the right to seek judicial intervention to compel a state to implement and enforce such plans." Plaintiff's Memorandum, p. 9. Plaintiffs refer to the following part of the Conference report:

> The intent of this provision is to assure that individuals who have been injured by a State's failure to comply with the Federal mandates of the State plan titles of the Social Security Act are able to seek redress in the federal courts to the extent that they were able to prior to the decision in *Suter v. Artist M.,* while also making clear that there is no intent to overturn or reject the determination in *Suter* that the reasonable efforts clause to Title IV–E does not provide a basis for a private right of action.

H.R.CONF.REP. NO. 761, 103d Cong., 2d Sess. 926 (1994). Thus, Plaintiffs argue that the Amendments restore the law to what it was prior to the *Suter* decision.

However, in examining the identical legislative history, the District of Columbia Circuit, in *LaShawn II,* stated that the intent of the provision, as expressed by Congress, lacks any significant impact on the Supreme Court's analysis in *Suter,* and, thus, has no practical effect on future court decisions regarding similar issues. In *LaShawn II,* Circuit Judge Williams explained:

> "[T]he [Supreme] Court decided *Suter* by applying previously established judicial criteria to a specific instance (§ 671(a)(15)) of a general question (whether Congress intended to create an enforceable right). The dissent in *Suter* ... was not correct in claiming that the *Suter* majority had "changed the rules of the game." 503 U.S. at 377 (Blackmun, J., dissenting). Even if Congress could wipe *Suter* from the books, we think that lower courts addressing the same issue would have no basis for assuming that, if once again confronted

with a *Suter*-like issue, the Supreme Court would not do just what it did in *Suter.* Thus, unless § 211 actually changed part of the test that led to the outcome in *Suter* (which, as we have said, it did not), courts should find equally vague provisions of similar acts equally unenforceable for the reasons that the Court found convincing in *Suter.*

***5** *LaShawn II,* 1995 WL 633528, *14 (D.C.Cir. October 31, 1995).

Like in *Suter,* this Court, in granting Defendants' Motion for Summary Judgment on Plaintiffs' AACWA claims, examined the precise language of the subsections at issue. In doing so, this Court determined that the language was too vague and ambiguous to create enforceable rights under 42 U.S.C. § 1983.[3] *See* Memorandum Opinion, pp. 7–12. According to *LaShawn II,* such reasoning underlying this Court's April 12, 1993 decision remains sound, despite the passage of the Social Security Act Amendments of 1994. *Id.* at *13 (concluding that the Amendments have not done "anything to supply more precise standards for the [AACWA], or to alter the clear statement requirement or the [AACWA]'s non-judicial enforcement provisions; it thus changed none of the factors on which the *Suter* Court's reasoning depended.").

Furthermore, the Amendments provide no basis for reinstating Plaintiffs' CAPTA claims. In granting summary judgment in favor of Defendants on Plaintiffs' CAPTA claims, this Court relied on pre-*Suter* case law. Memorandum Opinion, pp. 13–14. Thus, the *Suter* decision merely served as "further support [ ]" for this Court's finding "that [CAPTA] does not give rise to an enforceable private right of action under 42 U.S.C. § 1983." *Id.* at 14.

For the reasons stated above, the Social Security Act Amendments of 1994 do not provide the "extraordinary circumstances" necessary to grant Plaintiffs' Motion for Reconsideration under FED.R.CIV.P. 60(b)(6). Thus, an appropriate order will be entered denying Plaintiffs' motion.

ORDER

AND NOW, this 7th day of December, 1995, upon consideration of Plaintiffs' Motion for Reconsideration of this Court's Dismissal of Plaintiffs' claims under the Adoption Assistance and Child Welfare Act of 1980, 42 U.S.C. §§ 627(a)(2)(A), (B), (C), 627(b)(3) and 671(a)(10) and the Child Abuse Prevention and Treatment Act, 42 U.S.C. §§ 5101–5106, and all responses thereto, it is hereby ORDERED that Plaintiffs' Motion is DENIED.

Footnotes

1 Local Rule 20(g) of the United States District Court for the Eastern District of Pennsylvania provides that "[m]otions for reconsideration or reargument shall be served within ten (10) days after the entry of the judgment, order, or decree concerned."

2 "Rule 60(b) sets forth two distinct requirements for the timely filing of motions. While motions made pursuant to subsections (1) through (3) must be filed 'not more than one year after the judgment, order, or proceeding was entered or taken,' motions brought under subsections (4) through (6) must be 'made within a reasonable time.' FED.R.CIV.P. 60(b). Subsection (6) has been interpreted as supplying 'a means of escape from the one-year limit,' and, therefore, is a more flexible standard. 11 Wright, Miller & Kane, *Federal Practice and Procedure:* Civil 2d § 2864 at 355 (1995). Some courts have specifically held that subsections (4) through (6) may be timely even when filed more than one year after judgment. *See, e.g., Teamsters Local No. 59 v. Superline Transp. Co.,* 953 F.2d 17, 20 n. 3 (1st Cir.1992)." Plaintiffs' Reply Brief, p. 5.

3 Prior to *Suter,* the United States Supreme Court recognized the right of individuals, under 42 U.S.C. § 1983, to bring suit to enforce requirements set forth in federal funding statutes. *See, e.g., Wilder v. Virginia Hosp. Ass'n,* 496 U.S. 498 (1990). In determining whether or not the particulars of a state plan can be enforced by its intended beneficiaries, the Supreme Court examined the following three issues: (1) whether the statutory provision at issue intended to benefit the plaintiff; (2) whether the provision creates a binding obligation on the state or merely expresses congressional preference; and (3) whether the interest plaintiff asserts is so vague and amorphous as to be beyond the competence of the judiciary to enforce. *Id.* at 509.