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United States District Court, D. Connecticut.

Leo McCOY et al
v.
Michael BELMONT et al

No. 3:85 CV 465(JGM). | March 14, 2000.

Opinion

RULING ON DEFENDANTS' MOTION FOR RELIEF FROM JUDGMENT

MARGOLIS, Magistrate J.

***1** Although familiarity with the complex legal and procedural history of this protracted litigation is presumed, a summary of facts relevant to this request follows. Absent objection from either party, on June 22, 1998, this Magistrate Judge issued an Order of Reference appointing Professor Edward Skarnulis as a Special Master for twelve (12) months to report periodically on the status of the implementation of the Consent Decree which was entered into by the parties on March 10, 1992. (Dkt.# 217). On May 18, 1999, Professor Skarnulis filed his report and recommendations. (Dkt.# 262). The Court extended Professor Skarnulis' appointment to November 15, 1999 or to such other date as established by the Court. (*See* Dkt. # 297).

On July 7, 1999, new counsel filed an appearance for plaintiffs and the prior attorney of record filed a motion for withdrawal, which the Court granted. (Dkts.272–73). By letter, plaintiffs have expressed their dissatisfaction with numerous conclusions and recommendations proposed by the Special Master Skarnulis. (Letter to Court dated July 26, 1999). A lengthy settlement/status conference was held before this Magistrate Judge on July 28, 1999, extending the deadline by which the parties were to file formal objections to the Special Master's report to September 3, 1999. (*See* Dkts.263, 271 & 278).

On August 11, 1999, defendants filed a Motion for Relief from Judgment with brief in support. (Dkts.282–83). Pursuant to Federal Rule of Civil Procedure 53(e)(2), the Court also scheduled an evidentiary hearing on whether it should adopt Professor Skarnulis' recommendations, to commence on September 27, 1999. (*See* Dkt. # 278). On that day, plaintiffs' counsel stated that they were not prepared to go forward with the hearing, which was then rescheduled to November 15, 1999. (*See* Dkt. # 296). The hearing commenced on November 15 and adjourned on November 18, 1999. (*See* Dkts.302–07).[1] Pursuant to the Court's scheduling order filed on January 19, 2000 (Dkt.# 310), defendants filed a post hearing memorandum on February 8, 2000 (Dkt.# 315) and plaintiffs filed their post hearing brief on February 22, 2000 (Dkt.# 316).

I. DISCUSSION

In their post hearing brief, defendants put forth two arguments. First, they argue that if the Court adopts any of the Special Master's recommendations, it must adopt them all because "[e]ach component of his recommendations ... is dependant upon the others; the removal of one would greatly reduce any chance of success." (Dkt. # 315 at 2). The Special Master proposes, *inter alia,* reduced staff support and removal of the guardian/parents from the McCoy home on the grounds of the Southbury Training School [hereinafter "STS"]. (Dkt. # 262 at 8–9). Defendants cite the cross-examination testimony of plaintiffs' witness, Sister Barbara Eirich, that plaintiffs' staffing demands exceed the staffing levels in programs she administers for individuals with needs similar to the McCoy men. (Dkt. # 315 at 3; 11/16/99 Tr. at 131–34, 135–36). Defendants also contend that the proposed transfer of administration of the McCoy program from the guardian/parents to the State is necessary because of the well-documented acrimony and mistrust between the parties and would eliminate STS' present role. (Dkt. # 315 at 3 & 5).

***2** Second, defendants urge the Court to exercise its discretion and to grant relief from judgment pursuant to Federal Rule of Civil Procedure 60(b)(6). (Dkt. # 315 at 4 & 6–7). Defendants point to the testimony of plaintiffs' witness Kathy Hanewitz, Case Manager, who recommends a family directed model of support, as the two current models cannot "mesh." (*Id.* at 5; 11/17/99 Tr. at 48–49, 52, 54–56, 60, 61–64, 68–69). Defendants contend that this model is the better approach given the lengthy and acrimonious relationship between the parties, noting that it has been used successfully here in Connecticut. (Dkt. # 315 at 7–8).

In opposition, plaintiffs cite numerous reasons why the Court should deny defendants' motion and should enforce the Consent Decree including: defendants are culpable for the suffering of the men; defendants must live up to their obligations under the Consent Decree which they entered into voluntarily; and the family support model is inappropriate in this case given the men's elderly parents. (Dkt. # 316 at 2–3). Plaintiffs then detail many of the Special Master's criticisms of defendants' management of

the McCoy program. (*Id.* at 4–7). Next, plaintiffs enumerate the Special Master's recommendations, agreeing to some of them and requesting modification to the Consent Decree. (*Id.* at 8–16).

The threshold issue before the Court is whether it should grant defendants' motion. If that motion is denied, the next step is whether to implement some or all of the Special Master's recommendations.

Rule 60(b)(6) of the Federal Rules of Civil Procedure provides:

> On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons ... any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time .... A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C. § 1655, or to set aside a judgment for fraud upon the court....

FED. R. CIV. P. 60(b)(6).

"There is no suggestion ... that a consent decree is not subject to Rule 60(b). A consent decree no doubt embodies an agreement of the parties and thus in some respects is contractual in nature. But it is an agreement that the parties desire and expect will be reflected in, and be enforceable as, a judicial decree that is subject to the rules generally applicable to other judgments and decrees." *Rufo v. Inmates of Suffolk County Jail,* 502 U.S. 367, 378 (1992) (citation omitted). "A party seeking modification of a consent decree may meet its initial burden by showing either a significant change either in factual conditions or in law." *Id.* at 384.

***3** In the present case, defendants have failed to meet this burden. The parties entered into the Consent Decree on March 10, 1992. (Dkt.# 110). Defendants concede that there has been no sudden change in the facts or applicable law since that time. (Dkt. # 283 at 9 & Dkt. # 315 at 6). The obstacles and difficulties of implementation have been ongoing and defendants acknowledge that staff turnover and the attendant issues of training and continuity of care has been an ongoing problem since the Fall of 1995. (Dkt. # 283 at 4).[2] The family support model which defendants propose as an alternative is not a unique one. (*Id.* at 9–10 & Dkt. # 315 at 7–8). Moreover, the advancing age of the McCoy parents militates against use of this model. (*See* Dkt. # 316 at 2). Therefore, the Court *denies* defendants' Motion for Relief from Judgment.

The next issue is whether the Court should adopt in whole or in part the Special Master's recommendations. (*See* Dkt. # 262). The Federal Rules provide that "[i]n an action to be tried without a jury the court shall accept the master's findings of fact unless clearly erroneous...." FED. R. CIV. P. 53(e)(2). *See also Collins v. Foreman,* 729 F.2d 108, 118–19 (2d Cir.) (special master's findings in a consensual reference are presumptively correct and subject to review when there has been manifest error), *cert. denied,* 469 U.S. 870 (1984); *McCarthy v. Bronson,* 906 F.2d 835, 838–40 (2d Cir.1990)(same), *aff'd on other grounds,* 500 U.S. 136 (1991).

Neither party has established that the Special Master's findings are clearly erroneous. In fact, defendants did not file any objections to the Special Master's recommendations. (Dkt. # 315 at 1). While plaintiffs have objected to some of the recommendations, their brief does not cite any case law nor have they provided any supporting documentary evidence or affidavits sufficient to meet the "clearly erroneous" standard.[3]

In conclusion, the Court adopts the Special Master's recommendations contained in his report filed on May 18, 1999. (*See* Dkt. # 262). As detailed in his report filed, the Special Master had numerous conversations and consultations, with both parties, their counsel, medical and support staff at STS, administrators from the Department of Mental Retardation, and outside consultants in the field of developmental disabilities. As Professor Skarnulis forcefully testified, the "hybrid" model created by defendants either permitting or forcing Mr. and Mrs. McCoy to become the "de facto supervisors" of the McCoy Home simply cannot function effectively. (11/15/99 Tr. at 44, 58–59, 60–62, 81, 83–84, 85–87, 88–90, 104–05, 107–08, 110–13, 116–19, 122–23. *See also* 11/17/99 Tr. at 48–49, 52, 54–56, 60, 61–64). Professor Skarnulis remains hopeful that with the imposition of a new administration, the Consent Decree can be effectively implemented. (11/15/99 Tr. at 50–56, 66–70, 106–07, 120–22. *See also* Dkt. # 243). Because of the breadth of his familiarity with this case, the Court hereby extends Professor Skarnulis' appointment to *September 30, 2000* to ensure the orderly implementation of his recommendations.

II. CONCLUSION

***4** In conclusion, for the reasons stated above, defendants' Motion for Relief from Judgment (Dkt.# 282) is *denied* and the Court adopts the Special Master's recommendations contained in his report, filed May 18, 1999. (*See* Dkt. # 262).

Footnotes

1 Plaintiffs called eleven witnesses: Valerie Grush, an occupational therapist; Dr. Skarnulis; Susan Gannon, Kathleen Tessitore, Pauline Polozhania, Carol Gary, Danwell Arnini, and Doreen DePaiva, all of whom work at the McCoy home; Sister Barbara Eirich, plaintiff's expert; Kathleen Hanewicz, case manager for plaintiffs; and Dr. Robert McDonald, plaintiffs' physician.

Defendants called only one witness, Thomas Harris, personnel manager for the Southbury Training School.

The four transcripts were filed on March 13, 2000. (Dkt.318–21).

2 As before, the McCoy men are blessed to have the services of a few "core staff" members, *see* note 1 *supra,* who appear to have unwavering loyalty to Mr. and Mrs. McCoy, to the detriment and exclusion of new employees. (*See also* Dkts.187 & 195). Virtually all the witnesses agreed that "pulling" employees from STS to help at the McCoy home was not helpful to plaintiffs or the core staff.

And as before, the turnover rate of staff is staggering—of the 108 employees hired since fall 1995, ninety-two have discontinued their employment, leaving a core staff of seven and nine *per diem* employees. (11/17/99 Tr. at 75–76). As plaintiffs' occupational therapist, Valerie Grush, acknowledged on cross-examination, she has trained ten to twelve staff members, including registered nurses, of whom only two to four remain in the McCoy home. (11/15/99 Tr. at 27).

No one would dispute the "critical link" that Mrs. McCoy performs in maintaining her sons' health. (11/18/99 Tr. at 5–6). However, it is also abundantly clear that Esther and Leo McCoy, Sr. cannot remain as the sole administrators of this home.

3 The Court notes that at the evidentiary hearing on November 15, 1999, plaintiffs called Dr. Skarnulis as a witness. (Dkt. # 318, at 38–123). He testified extensively as to his methodologies, evidence and his recommendations. Both parties had ample opportunity to examine Dr. Skarnulis. Neither party moved for his withdrawal.