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United States District Court, N.D. Illinois, Eastern Division.

Willie WILLIAMS, etc., Plaintiffs,
v.
Michael P. LANE, et al., Defendants.

No. 81 C 355. | Aug. 25, 1993.

Opinion

MEMORANDUM OPINION AND ORDER

SHADUR, Senior District Judge.

***1** This Court's brief April 20, 1993 memorandum opinion and order (the "Opinion") (1) granted the motion of plaintiffs (a number of the members of the "Class," the plaintiff class in this action) to enforce the Settlement Agreement (the "Agreement") that the parties had entered into in 1991 to cover the money damages aspect of the Class' claim and (2) accordingly ordered the Illinois Department of Corrections ("Department") to cause to be paid forthwith the various amounts that were due to the movants under the Agreement but that had been withheld by the Illinois State Comptroller. Department has filed what it terms a "Motion To Alter or Amend Judgment,"[1] and the motion has been fully briefed and is ready for decision.

In principal part (though not entirely) Department reasserts its Eleventh Amendment arguments that this Court has already found wanting in the Opinion.[2] Perhaps the best clue to that is found in Department's feeble efforts to distinguish the wholly parallel decision in *Hankins v. Finnel,* 964 F.2d 853, 856–57 (8th Cir.1992). It does not require much legal sophistication to recognize that whenever a litigant is effectively reduced to saying that a compelling adverse decision is assertedly distinguishable because it involved (say) a white horse rather a black one, and to saying that the adverse decision is "unique" (Department's Mem. 7 and 10 and R.Mem. 7) and "should be limited to its facts" (Department's Mem. 9, 10 and 14 and R.Mem. 7), that really reflects a realization that the decision is truly on point and that the litigant cannot escape its impact.

Department seeks to evade responsibility for what the Comptroller has done by urging that Department—and therefore the State of Illinois—was not a party to the Agreement. But as both *Hankins* and the Opinion recognize, that proposition attempts to gloss over the realities of the case. To be sure, the named defendants in the case were individuals at the top levels of Department—but their lawyers were at all times the State's own chief legal officer, the Attorney General, and his assistants. As Class Counsel point out (Plaintiffs' Mem. 5), the Agreement was permeated with references to Department (Class Counsel counted 41 of them). But most importantly in terms of the parties' intent, Agreement ¶ A.1 (which, like the rest of the Agreement, was jointly drafted by the Attorney General's office and Class Counsel) expressly stated that *Department*—and *not* the individual defendants—"shall cause [the settlement amount] to be paid to each class member."

Do the Attorney General's minions now claim that it was a mistake for them to draft that language as a direct undertaking by Department?[3] If the Agreement was not intended to create a contractual obligation on Department's part (that is, on the part of the State), what was it? An empty promise? A fraud on opposing counsel to induce them to enter into the Agreement, and a fraud on this Court to induce it to approve the Agreement as part of a judicial decree over which this Court retained jurisdiction for enforcement purposes?[4]

***2** Although it seems that giving them the benefit of the doubt may be more than the Attorney General and Department merit under the circumstances, this Court will not lightly ascribe such mean-spiritedness and outright deception to the State's chief judicial officer (and hence to the State itself). Instead the Agreement will be read in its normal sense: as an unequivocal undertaking by Department (that is, by the State) as the indemnitor for the individuals whose unconstitutional conduct (undertaken in pursuance of their functions as high-ranking correctional officials) had caused harm to the Class members. It is also worth noting that the Attorney General's current memoranda studiously avoid addressing the duplicitous nature of his current position, under which Department (again meaning the State) as indemnitor is a non-party, and yet the claims that are relied on for nonperformance of the indemnification obligation are those of the State itself (though wearing another hat, that of its Comptroller, in acting for other State agencies).[5]

It is really of no moment that the parties to the Agreement are recited as the individual defendants rather than Department. Once again, it was *Department* and not the individuals that the Agreement referred to as making the express commitment to cause the Class members to be paid. This is a classic case for finding a waiver of any potential Eleventh Amendment immunity through Department's conduct—*Hankins* and the other cases cited in the Opinion at 3–4 squarely support that proposition,

and Department's efforts to distinguish those cases are unpersuasive.

Nor do the authorities that are cited in Department's current memoranda alter the analysis. Each of the cited decisions rejecting Eleventh Amendment immunity waivers dealt with an entirely different scope of claimed waiver. And nothing in the saving clause of the Illinois indemnification statute vitiates the power of the State (in this case acting through Department) to waive immunity voluntarily, as it did here. Finally, the public policy arguments that have been advanced by Department and the Comptroller ignore the fact that nothing prevents the State—once it has made the payments that Department has contracted to make—from following ordinary procedures to collect what is owed to it, rather than seeking to do so via the Comptroller's self-help that causes the State (through Department) to break its promise.[6]

Conclusion

There is no need to grant the Comptroller's motion to intervene, because the State is already before this Court in the person of Department and because the Comptroller represents no independent interest. That motion is denied.

In any event both Department and the Comptroller (each of them acting through the State's lawyer, the Attorney General) essentially try to rehash arguments that have failed to carry the day the first time around. Department's motion to alter or amend is denied, and Department is again ordered to cause the omitted payments to be made forthwith.

Footnotes

1 Department's motion operates on the premise that the Opinion occasioned a final judgment, necessitating a Fed.R.Civ.P. ("Rule") 59(e) motion to be relieved from its terms. Class counsel have responded that no Rule 58 "separate document" has set forth the claimed "judgment," so that no judgment has been noted on the civil docket as Rule 79(a) requires. That certainly seems accurate, for what are at issue here are *post* -judgment enforcement proceedings. In any case Department's motion is clearly timely, though it is more accurately characterized as a motion for reconsideration and is hence subject to the standards well articulated in *Above the Belt, Inc. v. Mel Bohannon Roofing Co.,* 99 F.R.D. 99, 101 (E.D.Va.1983).

2 That type of mere repetition really calls for denial of such a motion out of hand—just look at Judge Warriner's statement of principles as set out in *Above the Belt.*

3 When the Attorney General was being a bit more candid (though in the course of making much the same argument), he acknowledged at page 2 of his brief preceding the issuance of the Opinion (emphasis added):

> *Under the Agreement,* the Department is responsible for issuing payments to those eligible class members filing claims.

4 In what Department and its lawyers obviously fail to recognize as the height of unintended irony, the Attorney General devotes something more than a page (Mem. 12–14) to the proposition that "public policy encourages settlement." Is such a public policy—one with which this Court wholeheartedly agrees—promoted by what purports to be a settlement but is then welshed on by one of the settling litigants? Or do the Attorney General and Department mean that the types of "settlement" that they consider ought to be encouraged are wholly illusory ones that, like the three witches in Macbeth (act V, sc. 7, lines 50–51) "keep the word of promise to our ear and break it to our hope"?

5 Any attempted answer to that point—a point made in *Hankins* and in the Opinion at 3, and now reemphasized at Plaintiffs' Mem. 3—is conspicuously absent from both of Department's memoranda. It can only be surmised that the Attorney General simply does not have an answer, and that he therefore took the path of silence in hopes that the point would go away by itself.

6 Department's R.Mem. 8–13 sets up a straw man in urging the constitutionality of Illinois' statutory offset program. Nothing said in this opinion questions that, or for that matter questions the State's legitimate interest in collecting its debts. It remains free to do so by any means—once Department has honored its contractual undertaking that originally induced this Court to approve the parties' settlement.