191 F.3d 453
Unpublished Disposition
NOTICE: THIS IS AN UNPUBLISHED OPINION.
(The Court's decision is referenced in a "Table of Decisions Without Reported Opinions" appearing in the Federal Reporter. Use FI CTA6 Rule 28 and FI CTA6 IOP 206 for rules regarding the citation of unpublished opinions.)
United States Court of Appeals, Sixth Circuit.

In re: SOUTHERN OHIO CORRECTIONAL FACILITY
Darrin E. MORRIS, on behalf of themselves and all others similarly situated, et al.,; Plaintiffs-Appellees,
v.
Arthur TATE, Warden, et al., Defendants-Appellants.

No. 97-4491. | Sept. 24, 1999.

On Appeal from the United States District Court for the Southern District of Ohio.

Before SUHRHEINRICH and CLAY, Circuit Judges; and CARR,[*] District Judge.

Opinion

PER CURIAM.

***1** In this class action, the parties entered into a settlement agreement that established a $4.1 million settlement fund from which class members would be compensated. We must decide whether the district court exceeded its authority when it issued an order permitting class members to assign or designate third parties as recipients of their settlement awards. Because the district court effectively altered the settlement without the consent of the parties, we VACATE the order to the extent it permits such designations.

I. BACKGROUND

The present controversy arises out of a prison riot that occurred in April of 1993 at the Southern Ohio Correctional Facility ("SOCF"), a maximum security prison located in Lucasville, Ohio. Two inmates initiated a class action lawsuit in federal court on behalf of all inmates at the SOCF who were not indicted with committing crimes during the riot.[1] The inmates alleged that, during the rebellion, the prison staff failed to protect them from death, injury, and property loss.[2] The inmates also complained that the conditions of confinement at the SOCF following the uprising were unconstitutional.

On December 2, 1994, the district court certified the case as a class action under Fed.R.Civ.P. 23(b)(2). The district court certified the class as including any living or deceased inmate who had been incarcerated at the SOCF on or since April 11, 1993, or had been classified as a general population inmate during any portion of that time period. The district court also certified the following two subclasses: (1) those inmates present in K-8 block on or about April 13, 1993; and (2) those inmates indicted for crimes committed during the riot.

On January 22, 1997, the parties signed an agreement styled as the "Class Action Memorandum of Understanding" (hereinafter "Memorandum of Understanding"). The Memorandum of Understanding mandated various improvements in the conditions of confinement at the SOCF and contemplated a $4.1 million settlement fund to compensate class members for damages incurred during the rebellion. The parties also negotiated general procedures for the administration and distribution of the settlement fund, which the parties memorialized in a separate document entitled "General Protocol for Claims by Class Members Against Settlement Fund" (hereinafter "General Protocol"). The Memorandum of Understanding and the General Protocol (collectively, the "Settlement Agreement") embodied the complete agreement negotiated by the parties.

On January 30, 1997, the district court preliminarily approved the Settlement Agreement, ordering that notice of the proposed agreement be sent to the class members. As class members were notified of the proposed settlement, Betty D. Montgomery,

Attorney General of Ohio and counsel for Defendants-Appellants, contacted county prosecutors throughout the state and provided them with a list of inmates likely to receive a settlement award. The Ohio Attorney General also provided the inmate list to clerks of court across Ohio, the Crime Victim Section of the Attorney General's Office, and the Ohio Department of Human Services. The purpose of informing the county prosecutors was to facilitate the collection of judgments against the inmates pursuant to Ohio Rev.Code § 5120.133.[3]

***2** On April 14, 1997, Plaintiffs-Appellees filed a motion in the district court alleging that the actions of the Ohio Attorney General violated the Settlement Agreement. Specifically, Appellees claimed that the challenged actions violated paragraph Nine of the General Protocol, which provides, in pertinent part, that "[e]ach class member approved for payments shall be identified only by his claims number created for this litigation. No inmate receiving funds from the settlement fund shall be identified by name in any public filing with the Court." J.A. at 113. Appellees moved the court to order the Ohio Attorney General and counsel for Appellants to cease and desist from engaging in conduct in violation of the settlement; to declare that the compensation awarded to the class members may not be alienable; to authorize additional measures to protect the confidentiality of the awards; and to require Appellants and the Ohio Attorney General to reimburse the trustee of the settlement fund for all expenses incurred in connection with efforts made by creditors to seek payment from the fund. In subsequent filings with the court, Appellees challenged the constitutionality of Ohio Rev.Code §§ 2329.66(A)(12)(c),[4] 5120.133 and Ohio Admin. Code § 5120-5-03,[5] and requested the court to enjoin recoupment under Ohio Rev.Code § 5120.133.

After conducting a fairness hearing, the district court approved the Settlement Agreement on April 22, 1997. *See In re Southern Ohio Correctional Facility,* 173 F.R.D. 205 (S.D.Ohio 1997). The district court evaluated the fairness, reasonableness, and adequacy of the proposed settlement in accordance with Fed.R.Civ.P. 23(e).[6] However, the court did not rule on Appellees' cease and desist motion, stating that the complained-of conduct related to the enforcement of the settlement and administration of the settlement fund and did not constitute a sufficient basis to reject the settlement. Instead, the court stated that it would address Appellees' motion at a later date and ordered the parties to brief issues relating to the motion raised by the court at the fairness hearing.

On May 1, 1997, the Ohio Attorney General initiated an action against eighteen class members in the Court of Common Pleas, Franklin County, Ohio. The attorney general sought enforcement of the State of Ohio's statutory right of subrogation under Ohio Rev.Code § 2743.72 [7] for payments it made to victims of crime by way of various crime victim compensation programs. Appellees moved the district court to enjoin the state court proceeding.

On July 7, 1997, Appellees moved for leave to file a supplemental memorandum in support of their cease and desist motion in the federal court. The district court granted the motion and scheduled a show cause hearing, directing the parties to address why the court should not grant the requested relief.

On November 7, 1997, the Ohio Attorney General moved the Franklin County Court of Common Pleas to enjoin the class member-defendants from assigning to third parties any award they might receive from the settlement in the federal class action. Ruling that the State of Ohio was subject to immediate and irreparable harm, the Franklin County Court of Common Pleas granted the attorney general's motion on November 21, 1997. The state court also stated that any assignment executed by any of the class member-defendants would constitute a fraudulent conveyance under Ohio law because such a transfer would occur after they had been sued and were aware of the State of Ohio's status as a creditor.

***3** On November 24, 1997, after a show cause hearing, the district court ruled on Appellees' cease and desist motion. The court first held that the actions of the Ohio Attorney General did not violate the Settlement Agreement. However, the court expressed its concern over the validity of the judgments used to withdraw funds from the inmates' accounts and whether appropriate steps had been taken to ensure the validity of the judgments.[8] The court noted that many of the inmates appeared to have potentially meritorious defenses against the judgments, but were neither informed of the possible defenses nor given a hearing to challenge the validity of the judgments. The court also cited the unwillingness of the Attorney General's Office to undertake the responsibility of ensuring that the judgments are in fact valid.

Unaware of the state court injunction, the district court then ordered that class members be permitted to assign or designate third parties as recipients of their awards, and that the designations be made public. The court remarked:

> If the State wishes to collect on the outstanding judgment owed by a class member, this assignment will enable an independent judicial officer to review the underlying judgment to ensure its validity and correctness before being used as the basis for taking away an inmate's funds. Such assignment does

> not prevent the State from collecting its debts, and as the assignment shall be public, there is no concern of defrauding creditors.

J.A. at 84-85. However, the district court declined to grant the relief requested by Appellees or rule on the constitutionality of the challenged Ohio statutes because the Ohio Attorney General had not breached the Settlement Agreement and the granted relief addressed most of Appellees' concerns.

In making its ruling, the district court stated that it had jurisdiction over the settlement fund, explaining, inter alia, that the Settlement Agreement provided that the settlement fund be disbursed in accordance with the Memorandum of Understanding, the General Protocol, and "as directed by the Court."[9] The court also stated that it had broad equitable supervisory power to ensure the fair administration of the fund and to protect the interests of the class members.

On December 5, 1997, Appellants moved the district court to clarify its November 24, 1997 order permitting class members to designate third parties as recipients of their awards. Specifically, Appellants asked the court to clarify whether its order is limited to equitable amendment of the settlement agreement for purposes of the class action or also intended to serve as an injunction against state court proceedings prohibiting assignment of funds as a means to defraud creditors. Appellants noted that a preliminary injunction was granted by the Franklin County Court of Common Pleas prohibiting the assignment to third parties of any award received from the settlement in the federal class action. Appellants also noted that, in another state court action initiated by the Ohio Attorney General, a temporary restraining order was issued prohibiting the assignment of the settlement awards and that a hearing addressing the possibility of a preliminary injunction was scheduled for a future date.

***4** On December 22, 1997, Appellants filed a notice of appeal to this Court and also moved the district court to stay the distribution of awards from the settlement fund to class members seeking to assign their awards pursuant to the November 24, 1997 order. On February 2, 1998, Appellants also filed a motion with this Court to stay the payment of settlement funds to the designees of inmate class members. On February 24, 1998, the district court denied Appellants' motion to clarify and motion to stay. On March 3, 1998, a panel of this Court granted Appellants' motion for a stay pending the appeal.

II. DISCUSSION

We must first address Appellees' argument that Appellants lack standing to maintain this appeal. Appellees argue that Appellants do not have standing because they have not suffered an injury resulting from the district court's order. Appellees claim that Appellants are only protecting the rights of third-party creditors and have nothing at stake. We disagree.

To establish standing to maintain an action in federal court, a party must demonstrate that he has suffered an "injury in fact." *See Clinton v. City of New York,* 524 U.S. 417, 118 S.Ct. 2091, 2101-02 (1998); *American Federation of Gov't Employees v. Clinton,* 180 F.3d 727, 729 (6th Cir.1999). Taking as true their assertion that the district court improperly altered the Settlement Agreement, the Appellants have suffered an "injury in fact" because they lost the benefit of having the agreement enforced according to its original terms without the imposition of conditions not bargained for by the parties.

Having disposed of Appellees' standing challenge, we now turn to Appellants' claims. Appellants argue that the district court exceeded its authority when it ordered that class members be permitted to designate third parties as recipients of their awards. Appellants also argue that the practical effect of the district court's ruling was to enjoin Appellants from using state collection procedures without determining whether the requirements for issuing an injunction were met; that the district court's order violated the Prison Litigation Reform Act of 1995; and that the district court improperly decided a matter of state law, i.e., whether the designation of a third party as a recipient of the settlement awards would constitute a fraudulent conveyance under Ohio law. Because we find that the district court exceeded its authority in permitting designation of third parties as recipients of the awards, we do not address Appellants' other arguments.

In *Evans v. Jeff D.,* 475 U.S. 717 (1986), the Supreme Court described the scope of a district court's power to approve a proposed class action settlement:

> Rule 23(e) wisely requires court approval of the terms of any settlement of a class action, but the power to approve or reject a settlement negotiated by the parties before trial does not authorize the court to require the parties to accept a settlement to which they have not agreed. Although changed circumstances may justify a court-ordered modification of a consent decree over the objections of a

> party after the decree has been entered, and the District Court might have advised petitioners and respondents that it would not approve their proposal unless one or more of its provisions was deleted or modified, Rule 23(e) does not give the court the power, in advance of trial, to modify a proposed consent decree and order its acceptance over either party's objection. The options available to the District Court were essentially the same as those available to respondents: it could have accepted the proposed settlement; it could have rejected the proposal and postponed the trial to see if a different settlement could be achieved; or it could have decided to try the case.

***5** *Id.* at 726-27 (footnotes omitted); *accord Mallory v. Eyrich,* 922 F.2d 1273, 1279 (6th Cir.1991) (explaining that a district court possesses no discretion to alter the terms of a settlement agreement); *Brown v. County of Genesee,* 872 F.2d 169, 173 (6th Cir.1989) (per curiam) ("It is well established that a 'court must enforce the settlement as agreed to by the parties and is not permitted to alter the terms of the agreement." ' (quoting *Brock v. Scheuner Corp.,* 841 F.2d 151, 154 (6th Cir.1988))); *see also Walitalo v. Iacocca,* 968 F.2d 741, 750 (8th Cir.1992) ("By imposing liability on [the defendant] for expenses not within the definition of "costs," the court impermissibly altered the parties' settlement agreements."); *Jeff D. v. Andrus,* 899 F.2d 753, 758 (9th Cir.1989) ("The court's power to approve or reject settlements does not permit it to modify the terms of a negotiated settlement."); *Freeman v. B & B Assocs.,* 790 F.2d 145, 151 (D.C.Cir.1986) ("According to the Supreme Court, Rule 23(e) of the Federal Rules of Civil Procedure does not permit a court to materially modify a proposed settlement and order its acceptance over either party's objection."); *In re Air Crash Disaster at John F. Kennedy Int'l Airport on June 24, 1975,* 687 F.2d 626, 629 (2d Cir.1982) ("It is beyond a district judge's discretion to alter the terms of or refuse to enforce a settlement agreement, absent special circumstances, such as a material breach of the agreement, ... or duress ....“ (citations omitted)); *Kohr v. Allegheny Airlines, Inc.,* 504 F.2d 400, 405 (7th Cir.1974) ("[I]t was an abuse of discretion for the district court to effectively change the settlement from one providing for dismissal of plaintiffs' complaints with prejudice to one providing for the dismissal without prejudice."). As the Court in *Evans* made clear, unless the parties' compromise is entered as a consent decree, a district court cannot modify the terms of a proposed settlement without the consent of the parties.

Settlement agreements are a type of contract subject to principles of state contract law. *See Bamerilease Capital Corp. v. Nearburg,* 958 F.2d 150, 152 (6th Cir.1992). Here, the Memorandum of Understanding specified that the terms of the settlement would be governed by Ohio law. Under Ohio law, "[t]he purpose of contract construction is to effectuate the intent of the parties." *Skivolocki v. East Ohio Gas. Co.,* 313 N.E.2d 374 (Ohio 1974). "The intent of the parties to a contract is presumed to reside in the language they chose to employ in the agreement." *Kelly v. Medical Life Ins. Co.,* 509 N.E.2d 411, 413 (Ohio 1987). "[C]ommon words appearing in a written instrument are to be given their plain and ordinary meaning unless manifest absurdity results or unless some other meaning is clearly intended from the face or overall contents of the instrument." *Alexander v. Buckeye Pipe Line Co.,* 374 N.E.2d 146, 150 (Ohio 1978). "[A] writing, or writings executed as part of the same transaction, will be read as a whole, and the intent of each part will be gathered from a consideration of the whole." *Foster Wheeler Enviresponse, Inc. v. Franklin County Convention Facilities Auth.,* 678 N.E.2d 519, 526 (Ohio 1997).

***6** Nowhere in the Settlement Agreement do the parties evince an intent to allow class members to designate third parties as the recipients of their awards. Although neither the Memorandum of Understanding nor the General Protocol specifically prohibit such designations, they do not authorize them either. To begin with, paragraph Eleven of the General Protocol provides that "[a]ll class members who are authorized to receive a payment from the settlement fund will be presented with a release on the back of the check sent by the Claims Administrator. The release becomes effective upon the endorsement and negotiation of the check." J.A. at 113. Furthermore, paragraph Twelve of the General Protocol states that "[e]ach class member who is in custody, will be informed of the date when his check is sent to his facility." J.A. at 113. Finally, paragraph Fourteen of the General Protocol requires that each claimant be informed of "the amount to be paid the claimant in the event the claim is approved, prior to the distribution to the claimant of an award." J.A. at 115. These provisions clearly show that the parties' agreed only that the awards be sent to the claimant. Thus, by authorizing designation of third parties as recipients of the awards, the district court added a term to the compromise struck by the parties. Accordingly, we find that the district court impermissibly altered the terms of the settlement, acting beyond the scope of its authority.[10]

Appellees advance various arguments claiming that the district court, even if it altered the terms of the settlement, had the authority to permit designation of third parties as recipients of the settlement awards. We conclude that Appellees' contentions lack merit for the reasons discussed below.

Appellees assert that the parties granted the district court jurisdiction over the disbursement of the settlement fund. Appellees cite an agreed order dated February 19, 1997, which requires the settlement fund to be disbursed in accordance with "the Memorandum of Understanding, the General Protocol, and *as directed by the Court."* J.A. at 130 (emphasis added)

Additionally, Appellees claim that the district court had the discretion to devise a procedure used to disburse the funds because the Settlement Agreement primarily addresses the manner in which the amount of the class members' awards are to be determined and not the procedures used to disburse the awards. Appellees' argument is not well taken. We interpret the agreed order as requiring disbursements to be made by the direction of the district court as long as its ruling is consistent with the Memorandum of Understanding and the General Protocol And as we have already noted above, the district court's order altered the Settlement Agreement by authorizing class member to designate third parties as recipients of their awards.

Relying on *Waste Management of Ohio, Inc. v. City of Dayton,* 132 F.3d 1142 (6th Cir.1997), Appellees also claim that the district court had inherent jurisdiction to alter the Settlement Agreement. In *Waste Management,* our court held that a district court has inherent subject matter jurisdiction to address state law issues in determining whether the terms of a previously entered consent decree were violated.[11] We explained "that a consent decree has 'attributes of both a contract and of a judicial act' and is 'essentially a settlement agreement subject to continued judicial policing." ' *Id.* at 1145 (quoting *Williams v. Vukovich,* 720 F.2d 909, 920 (6th Cir.1983)). Noting that the prospective provisions of a consent decree operate as an injunction, we recognized that courts are required to "1) retain jurisdiction over the decree during the term of its existence; 2) protect the integrity of the decree with its contempt powers; and 3) modify the decree should 'changed circumstances' subvert its intended purpose." *Id.* at 1145-46 (quoting *Williams,* 720 F.2d at 920) (internal citations omitted).

***7** Unlike in *Waste Management,* the Settlement Agreement in the instant case was not entered by the court as a consent decree. Nothing in the Memorandum of Understanding or the General Protocol suggests that the parties even submitted a proposed consent decree. Moreover, neither the order granting final approval of the settlement nor the order permitting designation of third parties as recipients of the awards indicate that the agreement was entered as a consent decree.[12]

Finally, Appellees assert that Fed.R.Civ.P. 23(d) empowered the district court to issue the November 24, 1997 order. Rule 23(d) grants district courts broad authority to manage class actions and to enter appropriate orders to control the actions of counsel and parties.[13] *See, e.g., Gulf Oil Co. v. Bernard,* 452 U.S. 89, 100 (1981); *Shelton v. Pargo, Inc.,* 582 F.2d 1298, 1306 (4th Cir.1978); *see also* Fed.R.Civ.P. 23(d), Advisory Committee Notes. However, we do not believe that a district court, under the guise of controlling a class action under Rule 23(d), can alter the terms of a settlement agreement without the consent of the parties.[14] *See Evans,* 475 U.S. at 726-27.

In addition to modifying the Settlement Agreement, the district court's order also implicated principles of comity inasmuch as the Franklin County Court of Common Pleas enjoined eighteen class members from assigning to third parties any award they might receive from the settlement. However, because we have concluded that the district court acted beyond the scope of its powers in authorizing the designation of third parties as recipients of the settlement awards, the propriety of the district court's act of authorizing such designations in contravention of the state court injunction is no longer at issue.

III. CONCLUSION

For the foregoing reasons, we VACATE the district court's order of November 24, 1997, to the extent it permits class members to designate third parties as recipients of their awards.

CLAY, Circuit Judge, dissenting.

CLAY, Circuit Judge.

Because I believe that the district court retained jurisdiction over this case, and did not abuse its discretion in modifying the settlement agreement between the parties, I respectfully dissent from the opinion of the Court.

I.

As a preliminary matter, I disagree with the majority in its summary conclusion that Appellants have standing to maintain this appeal because “they lost the benefit of having the agreement enforced according to its original terms without the imposition of conditions not bargained for by the parties.” A lack of standing may bar an appeal even where a litigant had standing before the district court. *See Associated Builders & Contractors v. Perry,* 16 F.3d 388, 390 (6 th Cir.1994). To establish the “injury in fact” element of standing, a plaintiff must show that he has sustained or is immediately in danger of sustaining some direct injury as a result of the challenged conduct, and must show that the injury or threat of injury is “real and immediate” or “concrete and particularized,” not “conjectural” or “hypothetical.” *Kardules v. City of Columbus,* 95 F.3d 1335, 1347 (6 th Cir.1996) (internal citations omitted). While Appellants charge that they were injured because the order of the district court altered terms of their agreement, they can point to no terms in that agreement that prevents class members from designating third parties to receive their awards. Even if they could, their injury is hardly “real and immediate,” as they have already paid their settlement award into the district court. Nor is their alleged injury particularized, because to the extent that the order of the district court leads to a particular result, that result may adversely impact creditors but not the Ohio Attorney General. Given the absence of a concrete injury-in-fact to Appellants, Appellants have no standing to maintain this appeal, and this Court should dismiss this case.

II.

***8** A district court does not possess an “inherent power” to vindicate its own authority where parties enter into a voluntary agreement resolving their federal lawsuit. *See Kokkonen,* 511 U.S. 375, at 376-77 (1994). However, a district court does, as did the district court in this case, possess that power where the parties provide for such enforcement power in their settlement agreement. *See id.* at 381.

In *Kokkonen,* the Court applied the principles limiting federal jurisdiction to the attempt by a federal court to enforce a settlement agreement between parties to a suit in diversity who had ultimately settled and filed a stipulation of dismissal with prejudice.[1] *See id.* at 376-77. In concluding that the lower court did not have jurisdiction to enter an order enforcing that settlement agreement, the Court noted that ancillary jurisdiction would have existed if the parties had provided for “the court’s enforcement of a dismissal-producing settlement agreement,” *id.* at 381, recognizing that:

> The situation would be quite different if the parties’ obligation to comply with the terms of the settlement agreement had been made part of the order of dismissal-either by separate provision (such as a provision “retaining jurisdiction” over the settlement agreement) or by incorporating the terms of the settlement agreement in the order. In that event, a breach of the agreement would be a breach of the order, and ancillary jurisdiction to enforce the agreement would therefore exist.
> *Id.*

Accordingly, the Court suggested that a district court could retain jurisdiction of a matter after settlement by (1) conditioning dismissal, when it is pursuant to Federal Rule of Civil Procedure 41(a)(2), on the parties’ compliance with terms of the settlement agreement; or (2) incorporating the settlement agreement in the dismissal order or retaining jurisdiction over the settlement agreement, when it is pursuant to Federal Rule of Civil Procedure 41(a)(1)(ii). *See id.* at 381-82. Under *Kokkonen,* this Court has joined a number of other circuits in recognizing that a federal court does not have jurisdiction to enforce a settlement agreement reached in a dismissed action unless the order of dismissal incorporated the settlement agreement. *See Futernick v. Sumpter Twp.,* 78 F.3d 1051, 1055 n. 4 (6 th Cir.1996); *see also Scelsa v. City Univ. of N.Y.,* 76 F.3d 37, 41 (2d Cir.1996); *Baer v. First Options of Chicago,* 72 F.3d 1294, 1301 n. 7 (7 th Cir.1995). Significantly, however, this Court has also observed that where a district court retains jurisdiction after settlement, it may exercise ancillary jurisdiction under *Kokkonen. See Waste Mgmt. of Ohio v. City of Dayton,* 132 F.3d 1142, 1144-45 (6 th Cir.1997).

Here, the district court retained jurisdiction over the litigation, and thus properly assumed jurisdiction over the Appellees’ motion in this case. At the outset, it is worth noting that the Settlement itself provided that the district court should not enter an order of dismissal until a final distribution of settlement funds. Thus, the parties expressly agreed, in the Settlement, that the district court would maintain jurisdiction until administration of the Fund was complete. Moreover, in its order approving the Settlement, the district court retained jurisdiction over the specific issues raised in Plaintiffs’ motion for its future “enforcement of the Settlement and administration of the Settlement Fund.” *See In re Southern Ohio Correctional Facility,* 173 F.R.D. 205, 215 (S.D.Ohio 1997). Indeed, the district court “did not need to use any ‘magic form of words’ to retain jurisdiction-‘[a]ll that is necessary is that it be possible to infer that [the court] did intend to retain jurisdiction.” ’ *In the Matter of VMS Secs. Litig.,* 103 F.3d 1317, 1321-22 (7 th Cir.1996) (quoting *McCall-Bey v. Franzen,* 777 F.2d 1178, 1187-90 (7 th Cir.1985)). Here, the order makes clear that the district court intended to retain jurisdiction over the Appellees’

complaints about Appellants' potential abuse of the distribution of Fund assets.

***9** Further, the district court's order regarding administration of the Settlement Fund expressly reserves its power to instruct the Special Master/Trustee to perform certain functions in making payments out of the Fund. Such "affirmative control over the manner in which the dispute would be resolved and the funds distributed" brought the matters complained of in Plaintiffs' motion within the district court's jurisdiction. *See Baer,* 72 F.3d at 1294 n. 7. More generally, the "Stipulated Conditional Dismissal" in this case, which sets forth Plaintiffs' dismissal of a number of Defendants, expressly conditions dismissal on "consummation and completion of the entire" MOU. (J.A. at 109.) The "Stipulated Dismissal Entry" in this case expressly references the settlement in dismissing with prejudice cases consolidated with the present one. Given these facts, even if the district court cannot be said to have acted under authority granted it by a "consent decree," the district court properly reserved jurisdiction, in accordance with *Kokkonen,* over the specific issues raised in Appellees' motion. Thus, I must disagree with the conclusion of the majority that the district court lacked the authority to modify the agreement between the parties in this case.

III.

I further depart from the majority in that having concluded that the district court retained jurisdiction in this matter, I believe the district court did not alter the terms of the Settlement by ordering that it permit inmate class members to designate third parties to receive their settlement awards. Indeed, the present conflict arose because Appellees complained that Appellants had breached the letter and the spirit of the Settlement by violating their agreement to keep confidential the identities of inmates "approved for payments" and "receiving funds from the settlement fund," and by impairing the rights of inmate claimants to actually claim their awards.

Rather than altering the Settlement, the district court endeavored to preserve the Settlement as it was meant to operate under the applicable state law. Under Ohio law, the law governing the Settlement, disbursement of inmate funds is impermissible "if those funds are exempt from execution, garnishment, attachment, or sale to satisfy a judgment or order pursuant to section 2329.66 of the Revised Code or to any other provision of law." Ohio Rev.Code Ann. § 5120.133 (Banks-Baldwin 1998). The district court learned that collection efforts had begun against inmate class claimants, and that, as of August 10, 1997, class counsel had received complaints from forty-five class members regarding seventy-two separate collection proceedings. The district court further found that Appellants failed to advise prisoners or prison staff as to which debts could properly be collected, citing numerous instances of erroneous debt collection,[2] and that the Ohio Attorney General had taken the position that it was not the responsibility of the Department of Rehabilitation and Correction to verify the validity and accuracy of judgments underlying claims against inmate accounts. Finally, the district court correctly found that nothing in the Settlement prohibits the assignment of inmate awards from the settlement fund.

***10** In response to these findings, the district court adopted a remedy that would still allow inmate creditors to pursue claims against inmates but that would require creditors to submit their claims to independent judicial officers for review. While the majority asserts that the district court altered the terms of the settlement by changing the location to which payments must be sent, nothing in the Settlement requires the district court to send checks to the facility, since it is only an option and not a requirement that inmates deposit the monies into their prison inmate accounts. *See* Ohio Admin. Code § 5120-5-02(C) (1998) ("Funds in approved form in any reasonable amount may be accepted for an inmate from an approved source for deposit to the account of an inmate."). While some provisions of the Settlement might suggest that checks are to be sent to the prison facility, nothing in the district court's order requires that they be sent anywhere else. Rather, the order permits some inmates to designate third parties as recipients of their awards. Finally, the order does not prevent creditors, including the state of Ohio, from collecting its debts. Accordingly, the district court did not abuse its discretion in ordering that the Settlement permit inmate class claimants to assign their awards to third parties.

IV.

The district court properly retained jurisdiction over this matter and possessed the authority to enter an order granting limited equitable relief tailored to protect and effectuate the terms of the Settlement. I therefore respectfully dissent from this Court's decision to reverse the judgment of the district court.

Parallel Citations

1999 WL 775830 (C.A.6 (Ohio))

Footnotes

* The Honorable James G. Carr, United States District Judge for the Northern District of Ohio, sitting by designation.

1 The named plaintiffs in the lawsuit are Darrin Morris and Eugene Adams, both of whom were inmates at the SOCF during the time of the riot.

2 The named defendants in the suit, both in their individual and official capacities, are George Voinovich, Governor of the State of Ohio, Reginald Wilkinson, Director of the Ohio Department of Rehabilitation and Correction ("ODRC"), Arthur Tate, Jr., former warden of the SOCF; Terry Collins, present warden of the SOCF, and twenty-three other persons employed by ODRC. The employees of the ODRC named as defendants include: Eric G. Dahlberg; Ben Bower; Roger Roddy; David See; Roger Crabtree, John Newsome; Oscar McGraw; Jerry Williams; James Swann; Larry Neff; Charles Bell; Richard Brown, Ronald Bailey; Michael Turner; Patrick Burnett; Gerald E. Webb; Robert Finley; David Earl Bradley; Randy L. Stout; Wilbur K. Harris; E. Benner; Kevin Clarkson; and Jefferson Roy Lewis.

3 The statute provides:

> (A) The department of rehabilitation and correction, upon receipt of a certified copy of the judgment of a court of record in an action in which a prisoner was a party that orders a prisoner to pay a stated obligation, may apply toward payment of the obligation money that belongs to a prisoner and that is in the account kept for the prisoner by the department.... Except as provided in rules adopted under this section, when an amount is received for the prisoner's account, the department shall use it for the payment of the obligation and shall continue using amounts received for the account until the full amount of the obligation has been paid. No proceedings in aid of execution are necessary for the department to take the action required by this section.
>
> (B) ... The rules shall not permit the application or disbursement of funds belonging to an inmate if those funds are exempt from execution, garnishment, attachment, or sale to satisfy a judgment or order pursuant to section 2329.66 of the Revised Code or to any other provision of law.

Ohio Rev.Code Ann. § 5120.133 (Anderson 1998).

4 Section 2329.66(A)(12)(c) provides that, except in cases in which the person is an inmate and the payment resulted from a civil action against a government entity or employee, any person domiciled in Ohio may exempt from collection his right to receive a payment on account of personal bodily injury not exceeding five thousand dollars. *See* Ohio Rev.Code Ann. § 2329.66(A)(12)(c) (Anderson 1998).

5 The administrative rule provides guidelines and procedures for withdrawing money from inmate accounts kept by the Ohio Department of Rehabilitation and Corrections.

6 Federal Rule of Civil Procedure 23(e) provides, in relevant part, that "[a] class action shall not be dismissed or compromised without the approval of the court." Fed.R.Civ.P. 23(e).

7 Section 2743.72 provides that the State of Ohio, upon the payment of an award of reparations, "is subrogated to all of the claimant's rights to receive or recover benefits or advantages for economic loss for which an award of reparations was made from a source that is a collateral source or would be a collateral source if it were readily available to the victim or claimant." Ohio Rev.Code Ann. § 2743.72(A) (Anderson Supp.1998)

8 The district court noted that the actions of the Ohio Attorney General resulted in an Ohio state court amending the judgment of a class member fourteen years after his sentencing, without a hearing, to include $16,047.08 in court costs and appointed counsel fees.

9 The district court erred in stating that the Settlement Agreement provided that the settlement fund be disbursed "as directed by the Court." Rather, an agreed order dated February 19, 1997, required the settlement fund to be disbursed in accordance with "the Memorandum of Understanding, the General Protocol, and as directed by the Court." J.A. at 130.

10 Appellees maintain that the district court's order is consistent with the decision in *Kokkonen v. Guardian Life Ins. Co.,* 511 U.S. 375 (1994). In *Kokkonen,* the Court indicated that, if the parties consent, a district court can retain jurisdiction to enforce a settlement agreement by embodying the settlement in its dismissal order or by expressly retaining jurisdiction over the agreement. In the present case, however, the district court did not enforce the settlement agreement. Rather, the court altered the terms of the

compromise without the consent of both parties.

Appellees also assert that permitting class members to designate third parties to receive their awards is consistent with the ability of persons under Ohio law to authorize agents to perform acts on their behalf. *See, e.g.,* Ohio Rev.Code §§ 1337.01-.17, *State ex rel. Steckman v. Jackson,* 639 N.E.2d 83 (Ohio 1994) (permitting inmates to use designees to secure public records). Although persons may permit agents to act on their behalf under Ohio law, the terms of the Settlement Agreement indicate that the parties intended that class members not be permitted to designate third parties as recipients of their awards.

11 In *Waste Management,* we also found that the district court had subject matter jurisdiction to address the state law issues presented because the consent decree specifically conferred such jurisdiction to the district court. *See Waste Management,* 132 F.3d at 1144-45.

12 As authority to permit the designation of third parties as recipients of the awards, the district court cited *In re Corrugated Container Antitrust Litigation,* 752 F.2d 137 (5th Cir.1985), in which the court stated that a district court in a class action has a duty to act as the guardian of the class members and assure that any approved settlement is completed. The district court also cited *Zients v. LaMorte,* 459 F.2d 628 (2d Cir.1972), in which the court, pursuant to its equity powers, ordered the consideration of five untimely claims in contravention of the terms of the class action settlement agreement. Although *In re Corrugated Container* and *Zients* seem to support the district court's authority to alter the terms of the Settlement Agreement, we believe that the court cannot make such a modification in light of the Supreme Court's decision in *Evans. See Evans v. Jeff D.,* 475 U.S. 717 (1986).

13 Rule 23(d) states, in relevant part, that in class actions,

> the court may make appropriate orders: (1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action; (3) imposing conditions on the representative parties or on intervenors; (4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; (5) dealing with similar procedural matters.

Fed.R.Civ.P. 23(d).

14 The Rule 23(d) cases cited by Appellees do not support the proposition that a district court has authority under the rule to amend a negotiated settlement. *See, e.g., United States Trust Co. of New York v. Alpert,* 163 F.R.D. 409, 423 (S.D.N.Y.1995) (appointing class counsel); *Miller v. Mackey Int'l, Inc.,* 70 F.R .D. 533, 535 (S.D.Fla.1976) (appointing guardian ad litem to act on behalf of class members); *Peoples v. Wainwright,* 325 F.Supp. 402, 403 (M.D.Fla.1971) (enjoining prison officials from censoring prisoner-counsel correspondence during the class action).

1 I question the applicability of *Kokkonen* to the instant case. *Kokkonen* involved a suit for damages and not for equitable relief. *See Kokkonen,* 511 U.S. at 376-77. It is unclear whether and to what extent the analysis of *Kokkonen* should apply to cases involving a district court's approval of settlement agreements that include provisions of prospective operation, or a district court's approval of settlements of 23(b)(2) class actions.

2 The district court identified thirteen dormant judgments improperly used to seize inmate funds, as well as two inmates who were subjected to collection for incorrect amounts. The district court also cited an instance where a state court amended a fourteen year-old judgment to add costs that did not previously exist and then ordered an inmate to pay $16,047.08. The district court noted that cost orders older than ten years may be "dormant" and thus no longer subject to collection under Ohio law.