

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

JUAN F., by and through his  
next friends Brian Lynch and  
Isabel Romero, on behalf of  
themselves and all others  
similarly situated, et al. :

v. : Civil No. H-89-859(AHN)

JOHN G. ROWLAND, ET AL. :

RULING AND ORDER ON DEFENDANTS' MOTION FOR RECONSIDERATION

The standard for granting a motion for reconsideration is strict. See Shrader v. CSX Transp., Inc., 70 F.3d 255, 257 (2d Cir. 1995). Reconsideration is generally denied "unless the moving party can point to controlling decisions or data that the court overlooked - matters, in other words, that might reasonably be expected to alter the conclusion reached by the court." Id. The defendants have not met this standard -- they have not presented any change in controlling law, new evidence, or the need to correct a clear error of law or to prevent manifest injustice. See United States v. Adegbite, 877 F2d. 174, 177 (2d Cir. 1989). Accordingly, their motion for reconsideration [doc. # 459] is DENIED. Nonetheless, the court believes it is appropriate to state on the record the reasons why entry of the Exit Plan as an order of the court is appropriate, necessary, and required.

First, the defendants were given notice and an opportunity to be heard before the Exit Plan was ordered. It is clear from the language of the Exit Plan itself, as well as from the facts leading up to the final Exit Plan as detailed by the Court Monitor at the hearing today, that the parties were heard before the Exit Plan was presented to the court. Each measure in the Exit Plan was discussed at length with the defendants. Each of the numerous drafts of the Exit Plan were reviewed by the defendants. The Court Monitor had many discussions with the defendants concerning the provisions of the Exit Plan, and the defendants had several opportunities to comment on those provisions. As a result of those discussions, the Court Monitor made changes in the draft Exit Plan, many of which were based on the defendants' comments and concerns.

Further, the October 7, 2003 Order, which was an agreed-upon solution that avoided court-ordered receivership for DCF as a remedy for the defendants' significant, undisputed, and repeated failures to comply with the 1991 Consent Decree, Manuals, and 2002 Transition/Exit Plan, expressly provides that the Court Monitor's final decision on outcome measures, standards and exit plan would be binding on all parties. In addition, the plain language of the October 7, 2003

stipulation and order unambiguously states that it and the Exit Plan described therein would replace the 1991 Consent Decree, Manuals, and 2002 Transition/Exit Plan, all of which were vacated by the October 7, 2003 Order.

The defendants' suggestion that the court could not enter the Exit Plan as an order without their express consent borders on frivolous. The defendants are not exposed to any new, different, or additional penalties for non-compliance with the terms of the Exit Plan than they were exposed to under the prior orders. Indeed, because the Exit Plan replaces and modifies the 1991 Consent Decree, Manuals, and 2002 Transition/Exit Plan, all of which were court orders, a fortiori, the Exit Plan must be a court order.

This is also true with regard to the provision of the Exit Plan that the defendants say exceeds the scope of the October 7, 2003 Order and allegedly offends the constitution and laws of Connecticut. This provision, which states that the defendants shall "provide funding and other resources necessary to fully implement the Exit Plan" is almost identical to a provision in the original 1991 Consent Decree.<sup>1</sup>

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<sup>1</sup>The 1991 Consent Decree at ch. XXIV, p. 114 provides: "The State of Connecticut shall pay for, and fund, the costs for the establishment, implementation, compliance, maintenance, and monitoring all of the mandates in this Consent Decree and all determinations and directives of the

Moreover, this funding provision does not require the Commissioner and the Governor to illegally appropriate state funds. There are numerous ways the Governor may lawfully obtain the funding to implement the State's agreement other than by "appropriation." For example, he may request the funds from the General Assembly as he did, albeit grudgingly,<sup>2</sup> in his 2004-05 budget. He may also move funds from within

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DCYS Monitoring Panel as may be set forth in Manuals, memoranda, or other materials issued in the performance of its duties."

<sup>2</sup>The comments that accompany the 2004-05 budget for DCF hardly constitute a zealous attempt to convince the legislature that DCF's increased appropriations are necessary, i.e.: "Unfortunately, the Exit Plan developed by the federal court monitor and adopted by the court in December 2003 is, at best, questionably attainable, and at worst, unrealistic - particularly in its expectations about speeding adoptions and reducing the number of children in residential treatment. At least one other measure is unrealistic and several more are extremely difficult to attain. In addition, the Exit Plan ordered by the court also requires the state to provide carte blanche funding to implement it: a provision that gives the court monitor judge powers reserved to the legislature under the State Constitution, and which could violate the state's constitutional cap on spending. The far-reaching financial provisions, which shows wholesale disregard for the budgetary process and threatens to siphon funding from other agencies and important needs, was never included in draft plans as required by the October order before the Exit Plan was handed down. . . ." FY 2004-2005 Governor's Midterm Budget Adjustments, Connecticut, Feb. 4, 2004, Introduction, Investing in Child Protection & Welfare, The Exit Plan, at 99-100. Statements such as these do not seem designed to encourage the legislature to enact the necessary funding. To the contrary, these statements convey a message that the administration does not actually support its funding request.

an agency's appropriation from one line item to another, see Conn. Gen. Stat. § 4-87(a), and may spend money directly from the State's contingency fund "as he deems necessary and for the best interest of the public." See Conn. Gen. Stat. § 4-84. In addition, even if the funding provision was not included in the Exit Plan, the court could, under its equitable powers, require state officials to provide the necessary funds. As the Supreme Court recently noted in a case involving judicial enforcement of a federal consent decree against a state agency, federal courts are not reduced to merely hoping for compliance. Rather, if a state agency refuses to adhere to a consent decree, the court may impose such prospective ancillary relief, including financial sanctions, that is necessary to insure compliance. See Frew v. Hawkins, \_\_\_ U.S. \_\_\_, 124 S.Ct. 899, 905 (2004). "The principles of federalism that inform the Eleventh Amendment doctrine surely do not require federal courts to enforce their decrees only by sending high state officials to jail. The less intrusive power to impose a fine is properly treated as ancillary to the federal court's power to impose injunctive relief." Id. (quoting Hutto v. Finney, 437 U.S. 678, 690-91 (1978)).

Finally, the filing of the motion for reconsideration,

coupled with the comments the administration made to the legislature in presenting the 2004-05 budget for DCF, and comments such as those recently made by the House minority leader,<sup>3</sup> do not bode well for the new era of cooperation that was supposedly ushered in by the agreement that led to the October 7, 2003 Order. This motion and such comments cause the court to question the sincerity of the remarks made at the time the agreement was announced -- that it put "for the first time, the Court Monitor and administration officials . . . on the same team[,] " raised "the mission of DCF to the highest possible level within [the] administration[,] " and that as far as the administration was concerned "there is nothing more important . . . than taking care of children in Connecticut." Colin Poitras, A Sharp Turn For State DCF The Deal: State, U.S. to Share Control of Agency Child-Care Crisis, The Hartford Courant, Oct. 8, 2003.

In conclusion, the court reminds the parties of the sentiments expressed by the Court of Appeals ten years ago

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<sup>3</sup>As reported in the Journal Inquirer, the main concern of the House Minority Leader is not funding. Rather, as he stated: "'I've been upset all along that we've been trying to operate the DCF with a federal judge who thinks he can manage the agency. . . . They've been managing it for the last 15 years under the consent decree and they're as much at fault as anyone else' for the agency's troubles." Kym Soper, Gov Grudgingly Gives DCF Funds to Meet Consent Decree Mandates, Journal Inquirer, Feb. 5, 2004.

which are just as appropriate today. "Resolution of this complex case by consent decree would not have been possible without the admirable cooperation of the parties and the careful, diligent work of the court monitor. Their joint efforts have effectively addressed over one-hundred issues that plaintiffs have advanced in their broad-scale challenge on behalf of Connecticut's foster care and adoptive children. Because of the parties' cooperation, wisdom, and good faith displayed so far in dealing with these important problems, lengthy and expensive formal judicial proceedings have been avoided, and relief to the plaintiff class has been expedited. We fully expect that the same attitudes will continue to prevail as the parties, the court monitor, and the district court continue to wrestle with the problems that still remain to be resolved under the consent decree." Juan F. v. Weicker, 37 F.3d 874, 881 (2d Cir. 1994). The court is optimistic that the parties will continue to cooperate and employ the same good faith and wisdom as we move towards full implementation of the Exit Plan.

SO ORDERED this 10th day of February, 2004 at Bridgeport, Connecticut.

/s/  
Alan H. Nevas

United States District Judge