

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

The issue presently in dispute is whether the Consent Decree and FTSU Manual include relative and special study foster homes in the staffing support requirement of at least one social worker for every forty foster families. On August 29, 2000, the Court Monitor submitted a recommendation in which he concluded that these homes were included in the staffing requirement. Thereafter, the defendants moved to remand the issue to the Monitor to conduct an evidentiary hearing. The plaintiffs moved for approval of the recommendation. Upon de novo review, the court concludes that the Consent Decree and Manual is not ambiguous as to the inclusion of relative and special study foster homes and that it was the intent of the parties to include these homes in the staffing support requirement at issue.

Procedural Background

In October and November, 1998, the plaintiffs' attorney

requested a compliance hearing claiming that DCF had failed to meet the Consent Decree and Manual requirements pertaining to the foster care system. The plaintiffs submitted a list of complaints concerning the number and adequacy of DCF foster homes and specialized foster homes. In November and December, 1998, the Court Monitor held compliance hearings on the issue of foster care. On February 18, 1999, he submitted his "Report on Compliance Hearing Relating to Foster Care." Among the Monitor's recommendations was that the parties negotiate FTSU reorganization issues and if they could not agree, the Monitor would submit recommendations to the court. The court adopted the Monitor's report on April 27, 1999. Thereafter, the Monitor held six mediation sessions resulting in the resolution of all FTSU issues except the present one involving the inclusion of relative and special study foster homes in the ratio of staffing support to foster homes.

In July, 1999, the Monitor submitted a second report. In that report the Monitor stated:

During negotiations, the Plaintiffs' attorney contended that relative and special study homes should have been included in the calculation of the number of social workers required. The Defendant did not agree with this position. Neither of these types of foster homes has been included in prior calculation. The Juan F. Consent Decree and Family Training and Support Unit Manual are unclear on this issue and no oral or written records have been found to shed light on the question. The Juan F. Court Monitor's Office will attempt to resolve this question prior to June 30, 2000. If the parties cannot mediate an agreement on this question, the Juan F. Court Monitor shall make a recommendation to the court in accordance with the 1992 Monitoring Order

[providing that "[i]f any issue is presented to the Court, the Court Monitor shall certify in writing the issues to be decided, along with the Court Monitor's recommendations"].

In this report, the Monitor recommended that he hold further mediation sessions on this issue and if no agreement was reached, he would submit a recommendation to the court by June 30, 2000. The court adopted the report on September 17, 1999. Thereafter, the Monitor held seven mediation sessions, but the parties were not able to reach an agreement on this issue.

On August 29, 2000, the Monitor submitted his recommendation. He recommended that relative and special study foster homes be included in the pool of foster parents to be supported by regional FASU<sup>1</sup> staff at a ratio of at least one social worker for every forty foster families.

Thereafter, on September 29, 2000, the defendants filed an objection to the Monitor's report, and on October 17, 2000, moved to remand the matter to the Monitor for an evidentiary hearing or for an evidentiary hearing before the court. The plaintiffs moved for an order adopting the Monitor's recommendation.

#### DISCUSSION

The defendants initially objected to the Monitor's recommendation on the grounds that it was an unwarranted expansion or modification of the Consent Decree, that the Monitor

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<sup>1</sup>Family Training and Support Unit (FTSU) and Foster and Adoptive Support Unit (FASU) are the same. Currently, because of recent reorganizations, the unit is now referred to by the FASU acronym.

failed to give DCF credit for other non-mandated support services it provides to these homes, and that he failed to consider the profound fiscal consequences of his recommendation. In their subsequent filing, the defendants asserted that the Consent Decree and Manual are ambiguous on this issue and that due process requires the court to remand the matter to the Monitor for an evidentiary hearing to determine the intent of the parties.<sup>2</sup>

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<sup>2</sup>The procedures set forth in the Monitoring Order for handling this type of dispute were followed in this instance and there is no merit to the defendants' procedural challenge or their claim that the Monitor was required to hold an evidentiary hearing.

Section IV of the Monitoring Order entitled "Dispute Resolution" provides that if the plaintiffs assert that DCF is or is likely to be in non-compliance with any provision of the Consent Decree or Manuals, they must notify DCF and the court Monitor in writing. The Monitor is then required to meet with the parties and attempt to resolve the issue. If no agreement is reached, then the issue shall be presented to the court. See Monitoring Order Sect. IV(B). The Monitoring Order further provides in IV(C):

If any issue is presented to the Court, the Court Monitor shall certify to the Court in writing the issues to be decided, along with the Court Monitor's recommendations. At the Court hearing, the Court Monitor or any member of his staff may be called as a witness by any party or the Trial Judge.

With respect to this portion of the Monitoring Order, the Second Circuit noted that "[i]n such a dispute, therefore, the Monitor's function is to investigate the dispute, determine what the issues are, and make recommendations to the district court for their resolution." In re Juan F., 37 F.3d 874, 877 (2d Cir. 1994). The Monitoring Order does not require the Monitor to conduct an evidentiary hearing in such a situation. But see Juan F., 37 F3d at 880 (stating that the Monitor has the power to hear evidence and issue findings of fact) (citing Fed. R. Civ. P. 53(c)).

In this instance, the Monitor followed the procedure set forth in the Monitoring Order.

The plaintiffs maintain that the Consent Decree staffing requirement at issue is unambiguous and is not restricted to any particular type of foster family. The court agrees.

The interpretation of a consent decree presents an issue of law. See Berger v. Heckler, 771 F.2d 1556, 1568 (2d Cir. 1985) (citing United States v. Board of Educ., 717 F.2d 378, 382 (7<sup>th</sup> Cir. 1983)). When interpreting a consent decree, the court must apply principles of contract law. See id. at 1567-68 (“[c]onsent decrees are a hybrid in the sense that they are at once both contracts and orders. . . . [T]hey are construed largely as contracts, but are enforced as orders”) (citing United States v. ITT Continental Baking Co., 420 U.S. 223, 236 (1974)). In interpreting this type of contract, the court cannot randomly expand or contract the terms agreed upon. See EEOC v. Local 580, 925 F.2d 588, 593 (2d Cir. 1991). Great weight must be given to the explicit language of the decree. See Berger v. Heckler, 771 F.2d at 1568.

The scope and intent of the decree must be discerned within its four corners, and not by reference to what might satisfy the purposes of one of the parties to it. See id. at 1568 (quoting United States v. Armour & Co., 402 U.S. 673, 681-82 (1971)). The decree should, however, be interpreted in such a way as to “ascribe[] meaning, if possible, to all of its terms.” United States Naval Inst. V. Charter Comm. Inc., 875 F.2d 1044, 1049-50 (2d Cir. 1989). To interpret a consent decree without running

afoul of the four corners rule, the court may use certain aids to construction such as the circumstances surrounding its formation, any technical meaning the words used may have had to the parties and any other documents expressly incorporated in the decree.

See ITT Continental Baking Co., 420 U.S. at 238. It is inappropriate for the court to search for the purpose of the decree and construe it on that basis. See id. at 235.

Moreover, consideration of extrinsic evidence is not proper unless the terms of the decree are ambiguous. See SEC v. Levine, 881 F.2d 1165, 1179 (2d Cir. 1989). Terms are ambiguous if they are reasonably susceptible of more than one interpretation. See Burger King Corp. v. Horn & Hardart Co., 893 F.2d 525, 527 (2d Cir. 1990). But an ambiguity may not be found merely because the parties argue different interpretations. See Wards Co. v. Stamford Ridgeway Assoc., 761 F.2d 117, 120 (2d Cir. 1985). Language is unambiguous if it has a "definite and precise meaning." John Hancock Mut. Life Ins. Co. v. Amerford Int'l Corp., 22 F.3d 458, 461 (2d Cir. 1994).

Applying these principles to the provisions of the Consent Decree and Manual at issue, the court finds that the staffing requirement unambiguously applies to relative and special study foster homes in the same way it applies to all other foster homes. Because the court finds the Consent Decree and Manual to be unambiguous, there is no need to resort to extrinsic evidence or to hold an evidentiary hearing. See Wilder v. Bernstein, 153

F.R.D. 524, 527 n.3 (S.D.N.Y. 1994).

The FTSU Manual provision in dispute is dated September 1, 1992 and provides that for training and support purposes, the DCF family and support unit must assign "[a]t least one (1) social worker for every forty (40) foster families." FTSU Manual § IV(F)(4)(a) ("Regional FTSU Staff Requirements, Staffing Levels and Production Requirements for Functional Work Groups"). The plain language of this provision indicates that it applies to all foster families. It makes no express exclusion of, exception for, or distinction between "regular" foster homes and "relative" or "special study" foster homes, and no such exclusion, exception or distinction can be reasonably read into the provision by construction.

If the defendants had intended to restrict application of the social worker staffing requirement to only "regular" foster homes, it was incumbent on them to do so explicitly. Indeed, when the parties intended to provide for different staffing requirements for relative foster homes they expressly did so. See FTSU Manual § IV(F)(3) (pertaining to staffing requirements for licensing special study and relative foster homes).

This interpretation of the staffing requirement also finds support in the definitions of "foster parent" and "social worker" in the Consent Decree's glossary. The glossary defines "foster parent" as "[a]ny person who is licensed as a foster parent by DCYS to provide 24-hour care to children in a family home."

Without doubt, relative foster parents are included in this definition of foster parent. There is no dispute that relatives were licensed foster parents at the time the Consent Decree was entered and continued to be licensed until 1995, and that the same licensing process was used for relative and non-relative foster homes. Moreover, the definition of "social worker" as a "DCYS employee . . . who provides casework, case management and social work services regardless of specialized placement (e.g., adoption, FTSU, Hotline)" is strong evidence that the parties intended social workers to provide the same services to all foster families regardless of whether they were classified as relative or non-relative. In order to do so, relative foster homes would have to be included in the staffing ratio at issue here.

Accordingly, the court finds that the FTSU provision unambiguously applies to all foster homes, regardless of whether they are relative or non-relative homes. The defendants' fiscal and policy arguments in support of a contrary reading of this provision are irrelevant to the court's interpretation of what the parties intended at the time the Consent Decree was entered. Those arguments are more properly raised in a motion to modify the decree and the defendants are entitled to make such a motion. But the court is unwilling "to grant a modification in the guise of construing a consent decree." Wilder v. Bernstein, 153 F.R.D. at 534.

CONCLUSION

For the foregoing reasons, the plaintiffs' Motion For An Order Adopting The Recommendations Of The Juan F. Court Monitor Dated August 29, 2000 [doc. # 330] is GRANTED. The defendants' Motion For Remand To Court Monitor Magistrate For An Evidentiary Hearing Or, In The Alternative, Motion For Submission Of An Offer Of Proof Preliminary To An Evidentiary Hearing Before The Court [doc. # 327] is DENIED. The court hereby ORDERS that the Consent Decree and FTSU Manual § IV(F)(4)(a) provision requiring at least one social worker for every forty foster families be construed as applying to relative and special study foster homes.

SO ORDERED this                    day of December, 2000, at Bridgeport, Connecticut.

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Alan H. Nevas  
United States District Judge