

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

CONSUMER ADVISORY BOARD, et al,	)	
	)	
Plaintiffs	)	
	)	
v.	)	Civil No. CV-91-321-GZS
	)	
BRENDA HARVEY, et al.	)	
	)	
Defendants	)	

**MOTION FOR FURTHER FINDINGS AND CONCLUSIONS AND/OR  
TO CLARIFY, ALTER OR AMEND THE JUDGMENT**

Plaintiffs move this Court for further findings and conclusions in accordance with Fed.R.Civ. 52(a), and/or to clarify, alter or amend the Court’s March 19, 2010 Order on Motion for Relief from Judgment (the “Order”), in accordance with Fed.R.Civ. 59(a), as follows:

In an action tried on the facts without a jury, the Court must find the facts specially and state its conclusions of law separately. Rule 52(a)(1). The general rule is that detailed findings and conclusions are not required when issuing a decision granting relief under Rule 60(b). *Atkinson v. Prudential Property Co.*, 43 F.3d 367, 374 (8th Cir. Minn. 1994). However, before terminating a consent decree, “a district court should make sufficiently detailed findings of fact and conclusions of law under Rule 52(a) to advise the parties of the factual basis for its decision and permit informed appellate

review.” *Gonzales v. Galvin*, 151 F.3d 526, 532 (6<sup>th</sup> Cir. Ohio 1998). It has also been stated that “[a]ll objections raised by the party opposing termination must be dealt with by the district court.” *J.G. v. Bd of Educ.*, 193 F.Supp.2d 693,700 (WDNY 2002). And, when terminating or dissolving a decree, the parties are entitled to “a rather precise statement of [their] . . . obligations” flowing from the decision. *Board of Educ. v. Dowell*, 498 U.S. 237, 246 (U.S. 1991). In this case, the Order terminates a consent decree that governs the delivery of services and supports for approximately 750 of Maine’s most vulnerable citizens. Because termination of Consent Decree will potentially affect every aspect of the lives of the Class Members, they are entitled to an order that clearly details the Court’s findings and conclusions and that provides “a rather precise statement” of the future obligations of the Defendants with respect to the delivery of services and supports required by the Consent Decree.

The Court’s Order terminates the Consent Decree by granting Defendants’ motion for relief under two separate grounds within Rule 60(b)(5). Those grounds are: (1) the Decree has been “satisfied,” and (2) applying the Decree prospectively “is no longer equitable.” Although, the Court did not conduct a trial in this matter, it has engaged in an extensive fact-finding process over the past ten years through the offices of a Special Master. The facts found by the Special Master and adopted by the Court do not, however, address all of the issues decided in the Order. In particular, the Special Master made no detailed findings on the issue of mechanisms of future compliance and had no occasion or authority even to consider the equitable determinations required to be made

under rule 60(b)(5). The Special Master did not employ a fact-finding process on the question of mechanisms of future compliance because the parties engaged in extensive *negotiations* on the subject. If successful, the negotiations would have precluded the need for any fact-finding, but they were not successful because Defendants withdrew from the negotiations and chose to file their motion instead.

Under both grounds for relief, the Order states that there are sufficient mechanisms in place to assure “future compliance.” And, the Order grants relief on the second ground without finding that it is no longer equitable for the Class members to receive services and supports provided in the Decree but not guaranteed by statute. To more fully advise the parties of the factual basis for its decision Plaintiffs request that the Court make more detailed findings of fact and conclusions of law, and/or clarify its determinations pertaining to the sufficiency of mechanisms of future compliance and prospective application of the Decree.

**Mechanisms of Future Compliance.** The Order states that:

the Court is similarly satisfied that adequate mechanisms are currently in place to assure future compliance with the other aspects of the Consent Decree as detailed in the exhibits provided by Defendants. (See Defs. Exs. 1 & 2.). *Order*, at 8.

However, the fear that history may repeat itself will always be present and will require that the Class Members and those that advocate on their behalf to be forever vigilant. *Id.* at 9.

Because the statutes and regulations listed on Defendants' Exhibits 1 and 2 *are not* coextensive with the provisions of the Decree,<sup>1</sup> and specifically do not include the services, supports and certain procedural protections enumerated in the Next Court Order, Plaintiffs request further findings, or a clarification from the Court, on the question of whether services and supports promised by the State years ago are no longer required.

**No Longer Equitable.** The Order states:

In short, the record before the Court provides ample evidence that Defendants have the commitment and mechanisms to continue to provide a system that will protect the class members' rights under the Constitution and federal law. Thus, continuing to monitor Defendants for compliance with the Consent Decree's numerous requirements is inequitable.

The Court concludes that it is no longer equitable to *monitor* Defendants, which is different from the determination requested by Defendants' motion, that giving the Decree prospective effect (even without monitoring) is no longer equitable. Similar to the request above, Plaintiffs request that the Court clarify this point to confirm that the Decree, in accordance with its requirement of "future compliance," has prospective effect in its provisions governing services and supports but will no longer entitle Plaintiffs to federal judicial relief for denial of those services and supports.

In the alternative, Plaintiffs request specific findings on the following:

Whether and how the mechanisms listed on Defendant Exhibits 1 and 2 are sufficient to assure future compliance with the Decree, and in particular the provisions enumerated in the Next Court Order.

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<sup>1</sup> The un rebutted evidence in the record established that the Defendants insisted that some substantive provisions of the Decree be left out of the statutes and regulations listed on Exhibits 1 and 2 and that Plaintiffs successfully negotiated with the Defendants to have these provisions incorporated in the Next Court Order.

That circumstances have changed, in the law or in the facts, making it no longer equitable to enforce the Decree, and in particular the provisions enumerated in the Next Court Order. *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 384 (1992).

That prospective compliance with the Decree, in particular the provisions enumerated in the Next Court Order, has become “unworkable because of unforeseen obstacles,” or “harmful to the public interest.” *Id.*

The Plaintiffs understand and respect that the Court has rejected their contention that Rule 60(b)(5) is not the appropriate vehicle for either vacating or terminating (if there’s a difference) this Decree and their contention that the Decree by its own terms supplants Rule 60(b)(5) and exclusively governs issues of termination only within the Decree’s own terms. Plaintiffs respectfully suggest that the interests of the Class Members are prejudiced by uncertainty with respect to whether or not the Court has decided as a matter of federalism that Class Members shall no longer be entitled to receive annual medical examinations, or annual dental examinations, or eyeglasses when they cannot pay for them, or a minimum of 12 days of respite each year, or an award of attorney fees on a successful grievance appeal; or whether the Court has decided only that the promises made by the State in the Decree shall no longer be the subject of Federal Court oversight, supervision or enforcement, so that the Plaintiffs’ only remedies for alleged breach of one or more of those promises lies within the mechanisms of the grievance system, or the adult protective system, with judicial review in a Maine Superior Court, in accordance with state law. It is of enormous importance to the Class Members, their guardians, their families, their allies and the providers who serve them to know unmistakably whether or not the Class Members are or are not entitled to receive annual

medical examinations, or annual dental examinations, or eyeglasses when they can't pay for them, or a minimum of 12 days of respite each year, or an award of attorney fees on a successful grievance appeal, or whether they no longer have any legal right to those things, notwithstanding the State's promise to provide them, and notwithstanding the State's agreement to the express terms of the Decree, assuring that the Decree could not be terminated *unless* there were mechanisms of future compliance with the Decree's requirements in place. Plaintiffs have understood that the Court's active oversight and supervision was coming to an end, but the Plaintiffs respectfully disagree that their entitlement to receive the services and supports promised in a settlement and prescribed in the Decree can simply be extinguished, acting out of considerations of federalism, so as to leave the Plaintiffs not only without recourse to the federal forum, but without eyeglasses. If the Court is indeed determining that it is no longer equitable for indigent Class Members to receive eyeglasses, the traditions of chancery court practice embodied in Rule 60(b)(5) require findings not yet made to support that legal conclusion.

In order to enable informed appellate review, indeed in order to enable the Plaintiffs to make an informed decision about whether to seek appellate review, Plaintiffs suggest that Rule 52, and the Supreme Court's requirement of a "rather precise statement," require that the Court say whether the Court means to excuse or discharge the Defendant's obligations to provide annual medical examinations, or annual dental examinations, or eyeglasses, or a minimum of 12 days of respite each year, or an award of attorney fees on a successful grievance appeal or whether the Court simply means to

leave it to the State Courts whether or not the State's promises shall hereafter have meaning in operational fact.

Dated: March 29, 2010

/s/ Gerald F. Petrucelli,

/s/ Bruce A. McGlaulin,

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 29, 2010, I electronically filed Plaintiffs' Motion for Further Findings and Conclusions and/or to Alter or Amend the Judgment with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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