

145 F.3d 1332

Unpublished Disposition

NOTICE: THIS IS AN UNPUBLISHED OPINION.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 Use FI CTA6 Rule 28 and FI CTA6 IOP 206 for rules regarding the citation of unpublished opinions.)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.

PEOPLE FIRST OF TENNESSEE, on behalf of its members; Carl Beard, nfr Wendy Kurland; Sandra Howard; Herman Walter Runions, nfr Sarah R. Todd; Harvy Richard Watson, nfr Bonita Scott; Clarence Wilson, nfr Wilma Williamson; Stevelyn Daniel Tucker; Keith Collins, Plaintiffs-Appellees,

v.

ARLINGTON DEVELOPMENTAL CENTER; Ned McWherter; Mona Reeves-Winfrey, sued in her official capacity as Superintendent of Arlington Developmental Center; Mental Health, TN; Evelyn C. Robertson, Jr., sued in his official capacity as Commissioner of Mental Health and Mental Retardation; Marjorie Nellie Cardwell; Tennessee Health Department; Russell White, sued in his official capacity as Commissioner of Health; Mannie Martin, sued in his official capacity as Director of Bureau of Medicaid; Tennessee Department of Human Services; Robert Grunow, sued in his official capacity as Commissioner of Human Services; Betty Gayle, sued in her official capacity as Assistant Commissioner for Social Services; Patsy Matthews, sued in her official capacity as Assistant Commissioner for Rehabilitation Services, Defendants-Appellees, Parent-Guardian Association of Arlington Developmental Center, Intervenor-Appellant.

No. 97-5232.

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May 7, 1998.

On Appeal from the United States District Court for the Western District of Tennessee.

Before KRUPANSKY, NELSON, and BATCHELDER, Circuit Judges.

Opinion

PER CURIAM.

*1 This is a class action involving alleged violations of the constitutional rights of developmentally disabled residents of a state institution. The parents and guardians of a number of the residents intervened to oppose class action status, but the class was certified and the case was ultimately resolved in a settlement approved by the district court. The intervenors have appealed, asking us to overturn the certification of the class, the approval of the settlement, and three related rulings. We find no basis for doing so.

I

In December of 1991 an entity called "People First of Tennessee" brought suit against the Arlington Developmental Center ("ADC"), seeking injunctive and declaratory relief on behalf of ADC's residents. ADC is an institution owned and operated by the state of Tennessee to care for mentally retarded people. Approximately 400 individuals were housed at ADC when the suit was filed.

People First of Tennessee is a non-profit advocacy organization composed of (and allegedly governed by) people with disabilities. Joining with six individual ADC residents,¹ the organization sued ADC and other state agencies and officials² on claims that residents of the institution were being deprived of basic care and medical treatment, habilitation and training programs, adequate behavior and nutritional management, physical therapy, adequate communication services, and rights of personal choice, privacy, and freedom of association. It was also alleged that the residents suffered frequent injury and abuse, unnecessary restraint, and loss of skills caused by inadequate therapy programs and inadequate staffing. Some of People First's claims were based on the "substantive" component of the Due Process Clause of the Fourteenth Amendment, others were based on the First

Amendment, as made applicable to the state by the Fourteenth Amendment, and still others had a statutory basis.

Acting on behalf of relatives and guardians of ADC residents, the Parent-Guardian Association of Arlington Developmental Center (“PGA”) moved to intervene. PGA objected to People First’s representation of the class and expressed concern that People First would eventually seek to close ADC.

On January 26, 1993, the district court granted PGA’s motion to intervene and dismissed many of People First’s claims. The court’s ruling left certain due process and freedom of association claims to be adjudicated, but none of the statutory claims.

While the class action was pending, the federal government sued the State of Tennessee under the Civil Rights of Institutionalized Persons Act, asserting claims similar to those advanced in the *People First* case. *United States v. Tennessee*, 92-2062 M1/A (W.D.Tenn.) (hereinafter referred to as “the *U.S.* case”). The *U.S.* case went to trial in the fall of 1993, and the court found that constitutional rights of ADC residents were indeed being violated. On September 2, 1994, the court entered a 54-page remedial order. Extensive training and monitoring programs were mandated, and the state was directed to reduce the ADC population to 200 residents. The reduction was to be accomplished by transferring appropriate residents to community living arrangements designed to meet individual needs.

*2 At this point the court entered a temporary stay of proceedings in the *People First* case. All motions in this case were denied without prejudice, and the parties were instructed to review the Remedial Order and then renew any motions they wished to press further. Among the pending motions was one in which PGA had moved to consolidate the class action with the *U.S.* case. PGA did not renew the consolidation motion.

People First renewed its motion for class certification, and on September 26, 1995 over objection from PGA-the court certified a plaintiff class. The class included

Developmental Center; all persons who have been transferred from Arlington Developmental Center to other settings such as intermediate care facilities or skilled nursing facilities but remain defendants’ responsibility; and all persons at risk of being placed at Arlington Developmental Center.”

The court went on to hold that the relief granted in the *U.S.* case disposed of People First’s due process claims. The court adopted the findings of fact from the *U.S.* case and entered the remedial order from that case “as the final order in this matter as a remedy for defendants’ violation of plaintiffs’ Fourteenth Amendment rights.” The First Amendment claims remained at issue.

Meanwhile, in June of 1995-almost 30 months after it had been allowed to intervene-PGA moved for leave to file a complaint against the state alleging that the placement of residents in community living arrangements would be harmful to the residents so placed. Treating the complaint as a cross-claim, the court denied the motion as both untimely and inappropriate because no substantive due process issues remained to be decided.

People First and the state settled the remaining issues in January of 1997. Having stipulated to violations of the residents’ First Amendment associational rights, the state agreed to develop a right-of-association policy, to train staff members to allow free exercise of the right of association, to implement a program for disciplining staff who violated residents’ rights, and to allow “advocates, religious organizations, and community organizations reasonable opportunity to communicate with residents and allow[] residents the opportunity to participate in community activities.”

PGA objected to the settlement, contending that there should have been no stipulation without proffered evidence and expressing concern that the settlement would limit parental access to residents. After considering the objections and other factors, the district court approved the settlement as fair, adequate, and reasonable.

PGA now appeals the class certification and the approval of the settlement, as well as the denial of the motion to consolidate, the denial of the motion for leave to file a

“all persons who on or after December 12, 1989, have resided, or are residing at the Arlington

cross-claim, and the entering of findings from the *U.S.* case.

II

*3 Most of the challenged rulings are subject to review under an abuse of discretion standard. See *Weaver v. University of Cincinnati*, 970 F.2d 1523, 1531 (6th Cir.1992), *cert. denied*, 507 U.S. 917, 113 S.Ct. 1274, 122 L.Ed.2d 668 (1993)) (class certification); *Bailey v. Great Lakes Canning, Inc.*, 908 F.2d 38, 42 (6th Cir.1990) (class settlement); *Cantrell v. GAF Corp.*, 999 F.2d 1007, 1011 (6th Cir.1993) (motion to consolidate); *Shearson/Am. Express, Inc. v. Mann*, 814 F.2d 301, 308 (6th Cir.1987) (counterclaim). The entry of final judgment on the substantive due process claims is reviewed *de novo*. See *Parrett v. Am. Ship Bldg. Co.*, 990 F.2d 854, 857 (6th Cir.1993).

A

The propriety of class certification in a case such as this, where injunctive and declaratory relief has been sought with respect to allegedly unlawful conditions at a state institution, turns in part on Fed.R.Civ.P. 23(b)(2).³ Before certifying a class under Rule 23(b)(2), the district court must conduct a rigorous analysis to determine whether

“(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.” Fed.R.Civ.P. 23(a).

Considering each of these provisions, the district court concluded that the class certification requirements of Rules 23(a) and 23(b)(2) were met. At the time of certification ADC had approximately 385 residents. Although residents’ medical and habilitation needs varied, the court found that “whether defendants are prohibiting

residents from associating with certain individuals in violation of their First Amendment rights” was a question common to the class. The claims against the state arose from the same patterns and practices, moreover, and were based on the same legal theory. See *In re Am. Med. Sys., Inc.*, 75 F.3d 1069, 1082 (6th Cir.1996) (discussing the typicality requirement). Finally, the court determined that the named plaintiffs would fairly and adequately protect the interests of the class. The plaintiffs’ counsel was qualified and competent to prosecute the action vigorously, and there was no evidence that People First had interests that were antagonistic to those of the other residents. See *id.*, at 1083; *Senter v. General Motors Corp.*, 532 F.2d 511, 525 (6th Cir.), *cert. denied*, 429 U.S. 870, 97 S.Ct. 182, 50 L.Ed.2d 150 (1976).

PGA’s primary objection to class certification was that many of the residents’ parents and guardians opposed representation by People First. There were thus conflicts of interest between the representative and the class, according to PGA, and there were not enough residents allied with People First for the class to be numerous.

Noting that Tennessee law does not give guardians exclusive control over the exercise of their wards’ legal rights, the district court rejected this argument. We find no abuse of discretion in this or any other aspect of the district court’s treatment of the class certification issue. We cannot say the certification was improper.⁴

B

*4 Where settlement of a class action is proposed, Fed.R.Civ.P. 23(e) directs the court to hold a hearing to determine whether the proposed settlement is “fair, adequate, and reasonable, as well as consistent with the public interest.” The district court held the requisite hearing in this case, after appropriate notice, and carefully considered (among other things) the likelihood of success on the merits, the complexity of the litigation, the stage of discovery, the opinions of the parties’ counsel, the concerns of the class members and other interested parties, and the public interest. *Cf. Williams v. Vukovich*, 720 F.2d 909, 922-924 (6th Cir.1983). The settlement was held to be fair, adequate, and reasonable in light of the pertinent factors.

We find no abuse of discretion in the court's decision. The settlement assured that residents' First Amendment rights would be protected without the expense and effort of a trial. PGA's concerns about impairment of parental access to residents are unsupported; the language of the settlement protects residents' rights to associate with others, but in no way abridges the rights of parents and guardians.

C

As to the denial of PGA's motion to consolidate, we note that the motion was denied without prejudice. PGA never having filed a new motion to consolidate, as the court invited it to do, we find it hard to see how PGA can complain of the failure to consolidate. PGA was allowed to intervene in the *U.S.* case, in any event, and the concerns about community placement were more properly addressed there.

As to the denial of PGA's motion for leave to file a complaint against the state, we note that the motion came

some two and one-half years after PGA's intervention. The proposed complaint, moreover, addressed only the due process issues dealt with in the *U.S.* case. The district court did not abuse its discretion in denying the motion.

Finally, PGA challenges the court's entry of findings from the *U.S.* case, a proceeding in which PGA maintains that its interests were not represented. The question, however, is whether the state-the defendant against which the remedial order was directed-had a full and fair opportunity to contest the allegation that it had violated the substantive due process rights of the ADC residents. The court properly held that the state had such an opportunity. The remedial order in the *U.S.* case addressed the conditions underlying People First's due process claims, and collateral estoppel barred relitigation of the due process issues in this case. PGA cannot effectively challenge the remedial order in the *U.S.* case as an intervenor here.

AFFIRMED.

All Citations

145 F.3d 1332 (Table), 1998 WL 246146

Footnotes

¹ The initial complaint included four individual plaintiffs, but an amended complaint, filed in February of 1993, added two more. The plaintiffs will be referred to collectively as "People First."

² The defendants will be referred to collectively as "the state."

³ Rule 23(b)(2) allows class actions, under certain conditions, in cases in which "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole."

⁴ Responding to PGA's appeal of the certification, the state itself questioned certain aspects of the class definition. Inasmuch as the state has not appealed, however, these matters are not properly before the court.