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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JAMES NORMAN, et al.	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 89 C 1624
	)	Judge William T. Hart
JESS MCDONALD, Director	)	Magistrate Joan B.
Illinois Department of Children	)	Gottschall
and Family Services ("DCFS")	)	
	)	
Defendant.	)	

REPLY MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR CONTINUED MONITORING AND/OR DECLARATORY AND INJUNCTIVE RELIEF

The Director admits that he has failed to comply with important aspects of the Consent Decree. His non-compliance affects thousands of homeless families in Illinois. While the Director gives assurances that he will in the future comply, he also insists that the Decree be vacated. Plaintiffs are entitled to an order ensuring that the Director does what the Decree obligates him to do. The Director's memorandum in opposition ("Def. Mem.") presents three insubstantial defenses.

The first defense suggests that there is a factual dispute concerning his non-compliance with the Decree. See Def. Mem. at 2, 6-12, passim. No such dispute exists. Indeed, the Director ultimately concedes that he is not complying with the Decree in the respects plaintiffs allege. See Section II, infra.

The Director's second defense is that plaintiffs cannot obtain a modification of the Decree, and that the "plaintiffs cannot meet their burden of proving contempt." Def. Mem. at 29. See id. at 29-31. Since plaintiffs have not moved for modification or contempt, this is a curious defense indeed. The Director's argument is apparently that contempt is the only remedy available

to plaintiffs--a remarkable notion that is contradicted by the Decree and by settled principles of law.[1] See Section III, infra.

The Director's third defense--by far his most ambitious--is that "there is no longer a 'substantial claim under federal law' to support the continued enforcement of this decree," and that it should therefore be vacated. Def. Mem. at 17 (quoting Evans v. City of Chicago, 10 F.3d 474, 482 (7th Cir. 1993)(en banc), cert. denied, _____ U.S. ____, 114 S.Ct. 1831 (1994)). See Def. Mem. at 17-24. To the contrary, plaintiffs advance numerous substantial federal constitutional and statutory claims that support the Decree. See Section IV, infra.

I. THE CLAIMS, PROCEDURAL HISTORY, AND THE CONSENT DECREE.

Plaintiffs in this class action are thousands of parents who "have lost, are at risk of losing, will lose, or cannot regain custody of their children from the Illinois Department of Children and Family Services because they are homeless or unable to provide food or shelter for their children." Norman v. Johnson, 739 F. Supp. 1182, 1184 (N.D.Ill. 1990). They challenged the state's policies of "taking and retaining custody of children from impoverished parents" based on the parents' inability to obtain cash, food, shelter, or other subsistence, and its failure to assist these parents in meeting the conditions the state itself was imposing on the return of their children to their custody. First Amended and Supplemental Complaint ("Am. Comp.") ¶1. See 739 F. Supp. at 1184.

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[1] The Director's argument can be summarized in an analogy. A defendant was ordered to pay a plaintiff $100 by a date certain; several years after the date certain, he has paid $75. Plaintiff files a motion seeking an order enforcing the original order to pay $100. Defendant resists the motion by describing in ample detail his payment of the $75, claiming that this is sufficient activity to avoid a finding of contempt, and asserting that, absent contempt, the court has no power to order him to pay the other $25.

The plaintiffs alleged violations of their constitutional rights under the First and Fourteenth Amendments to the United States Constitution and their statutory rights under Title IV-B of the Social Security Act, 42 U.S.C. §§627(a)(2)(c) and (b)(2) and Title IV-E of the Act, 42 U.S.C. §§671(a)(12), (14), (15), and (16). Am. Comp. ¶¶44, 45. Only the claim under §671(6)(15) (the "reasonable efforts" claim) was ultimately decided adversely to plaintiffs' position in Suter v. Artist M., 503 U.S. 347 (1992), on which the Director relies so heavily. See §§IV.B., infra.

Contrary to the Director's contention (Def. Mem. at 19), plaintiffs have never claimed that they have a privately enforceable constitutional or statutory right to "cash, housing and other subsistence assistance" from DCFS. Id. The constitutional claims sought to vindicate First and Fourteenth Amendment rights to be free from unwarranted governmental interference in the parent-child relationship. See § IV(B). infra. And none of the statutes on which plaintiffs relied conferred a right to "subsistence assistance," but rather to services (e.g., case plans, coordination of services). Id. After a full hearing before Magistrate Gottschall. this Court entered a preliminary injunction directing case plans on behalf of two of three named plaintiffs and adopting the Magistrate's recommended findings of fact. Norman v. Johnson, 739 F.Supp. 1182, 1192 (N.D.Ill. 1990). The defendant appealed the preliminary injunction ruling, but then agreed to settle the case. The resulting Consent Decree constituted a "complete resolution of [all] the claims in this action... ." Decree at ¶23. Also, on March 10, 1995, the Court, resolving specific claims of noncompliance, entered a supplementary order enforcing the Decree. Order of March 10, 1995 at ¶7. That order required defendant to: (a) provide all data required by the Decree and requested by the Monitor; (b) provide a Norman ombudsperson with increased authority; and

(c) implement, by July 1, 1995, a plan for DCFS actively to initiate court petitions to return class members' children home and further family reunification and properly "screen" class members' cases. The order also extended the term of the Monitor to February 15, 1996, with the same duties and authority as were already embodied in the Decree. In entering its Order, the Court stated that plaintiffs "can tell me in a year if [further monitoring] is necessary." Transcript of February 27, 1995 at 3, (Appendix A hereto).

The Director did not respond to the Monitor's Sixth Report, covering the calendar 1994, until December 11, 1995. Plaintiffs immediately sought, unsuccessfully, an agreement to continue the monitoring. Plaintiffs recently furnished a detailed letter replying to the Director's December 11 Response. The reply shows that DCFS has disagreed with or failed to respond to more than half of the Monitor's recommendations in the Sixth Report. See Letter of February 26, 1996, (Appendix B hereto).

II. THE DIRECTOR CONCEDES NON-COMPLIANCE WITH THE DECREE.

In their motion, plaintiffs state that they "do not here claim across-the-board non-compliance with the Decree but raise specific non-compliance issues of significance to the Decree as a whole." Motion at 1 (emphasis added). They then identify five "critical" compliance defaults, establishing non-compliance principally by reference to the Monitor's findings. Id. at ¶14. See id. at ¶¶15-29.

The Director says that plaintiffs allege DCFS has "barely implemented" the Decree. Def. Mem. at 2. This is merely a straw man that the Director sets up so that he can describe the extent to which he has complied with the Decree. Id. at 12. See id. at 6-12. But it is the Director's non-compliance that is at issue here. His recitation of accomplishments is beside the

point and may be ignored for purposes of this motion.

As to the five areas of non-compliance that are at issue here, the Director winds up admitting to most, if not all, of plaintiff's specific charges.[2]

A. Monitoring Activities

The Director acknowledges the "admitted problems with data [collection]" (Def. Mem. at 13)(citing First, Second, Third, Fourth, Fifth, and Sixth Reports), as well as "difficult[ies]" and "concerns" that have prevented the proper and complete collection and reporting of data on his family unification efforts. Id. at 13-14 (citing Sixth Report at 34, 36; Fifth Report at 19).

These acknowledgments amount to a concession of plaintiffs' allegations. Motion at ¶19-21. The points the Director makes to cushion this concession do not help him. He emphasizes, for example, that the incompleteness of the monitoring data does not necessarily mean that DCFS has defaulted on its obligations with "regard to the actual provision of services." Def. Mem. at 13. Yet, absent data, there is no way for the Director (or plaintiffs or the Court) to establish that he is providing the services in question in compliance with the Decree. The Director also says that the blame for the non-compliance is properly attributable to the "decentralized nature of the [cash assistance] program itself" and to DCFS "worker[s]." Def. Mem. at 13-14. But this is only to say that compliance is challenging; it does not excuse non-compliance. Moreover, the Director controls the "nature of the program" and the "workers", so he is not passively at the mercy of

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[2] The Director's concessions make detailed citations to the Monitor's factual findings unnecessary here. Review of the last four reports issued (covering 1992-1994), reveals a finding of noncompliance or only partial compliance in each of the five categories at issue. The concessions and findings are ample support for the relief sought here. If this Court concludes that, those admissions and findings notwithstanding, factual questions decisive of the motion remain, it should set an evidentiary hearing.

either. The Director claims that the "automated system" he is developing will cure some of the acknowledged problems. Def. Mem. at 14. But this promise supports continued monitoring to enable plaintiffs and DCFS to determine whether the new system actually cures the Director's default. Similarly, a longer monitoring period is necessary to help determine the curative effect of the Director's redesign of the "front-end" of the child welfare system (see Def. Mem. at 14), which is scheduled to be implemented over an 18 month period beginning June 1996.[3]

B. Undercertification of Norman Families

The Director notes that the certification process is not expressly required by the Decree. Def. Mem. at 15. However, the Decree does require that eligible families receive Norman services and benefits. Decree at ¶5. Only families that are "class members" are "eligible." Id. And defendant himself selected certification as the administrative tool for identifying class members. Thus, the Director's acknowledgement that DCFS is "correctly certifying Norman families in 76 to 83 percent of the cases" (Dir. Mem. at 15) itself concedes substantial non-compliance with the Decree. A 17% to 24% non-compliance rate means that several hundred eligible families each year are deprived of the benefit of the Decree.

C. Timely Cash Assistance

In the Sixth Report, the Monitor found that "[d]uring every reporting period [under the Decree] cash assistance agencies in Cook County and downstate...could not supply needed checks to vendors for clients." Sixth Report at 35. The Director acknowledges such problems through November 1995, but says that the "problem of cash shortages...is being addressed" and "should

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[3] The front end redesign itself is predicated on the Director's acknowledgment of massive difficulties in delivering timely services to children and families entering the child welfare system. See Appendix C hereto (relevant pages of redesign document).

be alleviated by the automated cash assistance system." Def. Mem. at 15. As with the data collection and reporting issues, the promised implementation of the automated system supports, rather than defeats, continued monitoring. See §II.A., supra.

D. Screening and Return Home Activity

The Director also does not dispute his default on his obligation to initiate prompt court proceedings to return children to their homes pursuant to ¶9(f) of the Decree. Def. Mem. at 16. This default is doubly significant, since the Director specifically settled the plaintiffs' ongoing claims of non-compliance with ¶9(f) by making a renewed and expanded commitment to "implement a plan" for compliance with ¶9(f) and "to provide for screening of cases" by July 1, 1995. March 10, 1995 Order at ¶4. The Director concedes he has no plan yet. Def. Mem. at 16. He only states that he is "continuing to work" on a "plan that will work" to remedy his non-compliance. Id.

The Director contends that completion of the plan "does not require monitoring." Id. The Director's admitted violation of both the Decree and March 10, 1995 Order justifies the need for the continued oversight monitoring provides. (see Motion, at Prayer for Relief ¶C.4.) Once a plan is submitted, only continued monitoring will permit the plaintiffs and the Court to determine whether the plan in fact "works."

E. Underutilization Of Public Aid Resources

Plaintiffs alleged that the Director is in violation of his obligation under the Decree to "maximize payment of DPA-administered benefits to eligible families." Motion at ¶29 (citing Decree ¶6). The Director replies that "[p]laintiffs admit[ ] that DCFS has complied" with this mandate. Def. Mem. at 17. But Plaintiffs acknowledged only that DCFS had "developed...a

process" for utilizing DPA resources, which is separately required by the Decree (at ¶6(a)(ii) and (iii)), not that it had maximized payment of DPA-administered benefits. Motion at ¶29. Plaintiffs cited the Monitor's finding--which the Director does not dispute--that there were "not more than 19 cases of public aid utilization" during the last half of 1994. Id. This tiny figure--during a period when more than 475 children in Norman-certified families were returned home--establishes a prima facie case of non-compliance with the "maximization" provision of ¶6 of the Decree. The Director's contention that the Decree does not require a certain level of utilization of welfare benefits is not responsive to the issue of whether he has maximized utilization.

III. THIS COURT HAS BROAD AUTHORITY, FROM DIFFERENT SOURCES, TO GRANT PLAINTIFFS' MOTION TO ENFORCE THE DECREE

Plaintiffs seek an order enforcing the Decree, not modifying it. The basis for the principal relief plaintiffs seek, continued monitoring, illustrates this point. Plaintiffs are entitled to continued monitoring under existing provisions of the Decree itself, and, alternatively, as a remedy for the Director's non-compliance with other provisions of the Decree.

A. The Decree Provides for Further Monitoring

The guiding principle of construction is to read the "consent decree...within its four corners... ." Firefighters v. Stotts, 467 U.S. 561, 574 (1984). See Def. Man. at 26. Application of that principle requires giving effect to each of its many provisions and then reconciling those provisions, to accomplish the Decree's intended purposes. See U.S. National Bank of Ore. v. Independent Ins. Agents, 113 S. Ct. 2173, 2182 (1993)("text" must be read in the "aggregate", all "'words...taking their purport from the setting in which they are used'")(citation omitted).

The Director reads the Decree, as modified by the March 10, 1995 Order, as setting an absolute end of monitoring on February 15, 1996. Def. Mem. at 27. But pertinent provisions

of the Decree include those requiring implementation of all programs and policies on or before December 1, 1991--3 and 1/2 years before the Monitor's term was to expire. Decree ¶¶4-10, 12, 13, 14. Another pertinent provision states that during the 3 and 1/2 year post-implementation phase. DCFS is required to provide "reliable and valid information" respecting the implemented programs and policies. Id. at ¶15. The Director concedes that he has not yet fully implemented significant portions of the Decree. that he has implemented others long after the required date, that the data system is still not reliable. and that numerous recommendations have not been implemented. See §II. supra. Reading the provisions requiring full implementation by December 1, 1991. with the provisions requiring monitoring of the (implemented) policies and programs and reconciling those provisions. requires that the Monitor's term be understood as linked to the timely implementation of the Decree's other requirements. Late implementation of non-monitoring Decree provisions extends the monitoring term. Moreover, the Decree's process for the parties to respond to the Monitor's reports through compliance planning (Decree at ¶16) means that the Decree provides sufficient time for the parties properly to address delayed reports, such as the Sixth Report (the Director's response to this calendar 1994 report not being filed until December 11. 1995) and the yet-to-be-completed Seventh Report (covering 1995).

The Director also misreads the Decree when he contends there should be no Seventh Monitor's Report. Specifically, he says that his duty to submit information to the Monitor expired on July 1, 1995. His contention is that the Sixth Report (covering calendar 1994) fully discharged the duty to file monitoring reports under the Decree. Id. at 31-32.

Even under the Director's reading, the Decree directs monitoring at least until July 1, 1995. And the March 10. 1995, Order extended such monitoring "under the same terms and

conditions" until February 15, 1996. Nevertheless, the Director argues that the Monitor's authority even to submit a report expired when the report was not filed by February 15, 1996. Def. Mem. at 31. This is wrong; neither the Decree (even as the Director reads it) nor the March 10, 1995 Order excuse a 1995 report. Prior practice in this case (under which reports have, in fact, followed the monitoring period) also requires a Seventh Report.

In any event, this Court has already put the issue of 1995 monitoring and reporting to rest by directing the Monitor to submit "[a] consolidated report covering the period 1-1-95 through 12-31-95 9 [to] be filed after the completion of that time period." Order of October 26, 1995 (attached as Appendix D hereto).

B. Continued Monitoring Is An Appropriate Remedy For Non-Compliance

The Director says that, if his reading of the Decree (barring continued monitoring and prohibiting submission of a Seventh Monitoring Report) is correct, then there is no basis for directing continued monitoring because there has been no "adjudication or admission" that he has violated any law for which continued monitoring might be an appropriate remedy. He thereby implicitly concedes that, as plaintiffs averred in their Motion (at ¶24), monitoring is an appropriate remedy for (admitted or judicially determined) non-compliance. The Director, of course, has admitted to such non-compliance here. See §II, supra. Thus, the factual and the legal predicates for the monitoring relief plaintiffs seek are clearly established.

The relief plaintiffs seek in addition or as an alternative to continued monitoring would simply enforce existing provisions of the Decree, or remedy non-compliance with them. See Motion at ¶¶ 25-29 (describing existing provisions and Director's non-compliance with them); Prayer for Relief at ¶¶B, C. No element of the relief sought is grounded on a requested

modification of the Decree. The Director's reliance on cases concerning modification of decrees, e.g., South v. Rowe, 759 F.2d 610 (7th Cir. 1985), and Fox v. United States Dep't. of Housing and Urban Development, 680 F.2d 315 (3rd Cir. 1982), is therefore misplaced.

C. This Court Has Broad Authority To Enforce The Decree, Other Than Through Its Contempt Powers

The Director argues that the only way the Court can enforce the Decree is through a finding of contempt. and that the level of his partial compliance makes a contempt finding unwarranted. Def. Mem. at 29-31.[4]

The Director is mistaken. Whether the Court orders additional monitoring because it reads the Decree already to require it. or whether the Court orders monitoring (and/or other remedies) to bring about compliance with other provisions of the Decree, the Court has power from at least three sources. other than its contempt powers, to enforce the Decree.[5]

First. the Decree explicitly provides that:

> This court retains jurisdiction over this case to enforce compliance with this order or the recommendations of the monitor. Plaintiffs may file a motion with this court at any time to seek compliance with the provisions of this Order or the recommendations of the monitor...

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[4] While plaintiffs do not seek an adjudication of contempt, a finding of contempt would not be inappropriate. For example, the Director's complete failure to "implement a plan" for compliance with ¶9(f) of the Decree and "to provide for screening of cases" by July 1, 1995, see §II.D, supra. is such a substantial and willful violation of the March 10, 1995, order as to justify a contempt finding.

[5] The difference is exemplified in Langton v. Johnston, 928 F.2d 1206 (1st Cir. 1991), where the plaintiffs unsuccessfully sought contempt sanctions after a 20-year process of attempting to obtain compliance with consent decrees involving residential care for the mentally ill. In deferring to the district court's decision not to find contempt of court in light of the defendant's substantial. though imperfect, compliance, the court of appeals specifically noted that the district court "entertained numerous enforcement actions brought under the ... consent decrees." Id. at 1222. This motion is just that type of "enforcement action" and not an effort to obtain contempt sanctions.

Decree ¶20. This provision empowers the Court to "enforce compliance" and authorizes this motion as the appropriate procedure to invoke the Court's power. See, McCall-Bey v. Franzen, 777 F.2d 1178, 1188-90 (7th Cir. 1985).

Second, this Court has inherent power to enforce its orders. The Decree is an order of this Court, incorporating mandatory language in the form of an injunction. Plaintiffs are seeking further injunctive relief to enforce it. "Injunctions ... are remedies imposed for violations (or threatened violations) of a legislative or judicial decree." Madsen v. Women's Health Center, 114 S. Ct. 2516. 2524 (1994) (emphasis added). The Court has the power to enforce by injunction its prior injunctive order. See Kokkonen v. Guardian Life Ins. Co., 114 S.Ct. 1673, 1677 (1994)("[I]f the parties' obligation to comply with the terms of the settlement agreement ... [is] made part of the order ... by incorporating the terms of the settlement agreement in the order ... a breach of the agreement would be a violation of the order, and the ancillary jurisdiction to enforce the agreement would therefore exist.") See also, McCall-Bey, 777 F.2d at 1189-90 ("federal jurisdiction to enforce agreements to settle federal suits...[exists if there is] a deliberate retention of jurisdiction. as by issuing an injunction") (emphasis added).

Third. under 28 U.S.C. §2202 the Court can enter an injunction providing for "further relief" pursuant to a declaratory judgment that the defendant has failed to comply with the Decree. See Motion at 1. The Director admits he is out of compliance. A corresponding finding by this Court would constitute sufficient declaratory relief to support a remedial order under 28 U.S.C. §2202.

IV. THE DECREE COMPROMISED NUMEROUS STATUTORY AND CONSTITUTIONAL CLAIMS THAT WERE AND REMAIN SUBSTANTIAL AND THESE CLAIMS CONFER FEDERAL JURISDICTION TO ENFORCE THE DECREE

A. Evans Affirms That, If A Consent Decree Settles A Federal Claim That Is And Remains Substantial, A Federal Court May Enforce The Decree

Evans III holds that a federal court lacks jurisdiction to enforce a consent decree that at the time of enforcement, does not rest upon a "substantial federal claim." 10 F.3d at 482. It also holds that where a consent decree resolves a federal claim that is and remains substantial, a federal court may enforce the decree Id. at 478-79. A claim is "substantial" for jurisdictional purposes unless it "clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or ... is wholly insubstantial and frivolous." Bell v. Hood, 327 U.S. 678, 682-83 (1946). Only a claim "patently without merit," Hagans v. Lavine, 415 U.S. 528, 542-43 (1974), or "foreclosed by prior decisions of th[e] [Supreme] Court," Oneida Indian Nation v. County of Oneida, 414 U.S. 661, 666 (1974), is "insubstantial." See Holiday Magic, Inc. v. Warren, 497 F.2d 687, 697 (7th Cir. 1974). See also 13B Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure §3564, at 71.

Evans embraces the established understanding of what a "substantial" claim is for jurisdictional purposes when it states that "a settlement of a dispute about the meaning of...[a] law may be enforced if the agreement compromises genuine uncertainties." Evans, 10 F.3d at 478-79. Measured by this standard, the Decree resolved at least five substantial federal claims in addition to the "reasonable efforts" statutory claim now foreclosed by Suter v. Artist M., 503 U.S. 347

(1992). This Court may therefore enforce the Decree. Evans, 10 F.3d at 478-79.[6]

B. The Federal Statutory Claims Are Substantial And Support the Relief Encompassed in the Decree.

Plaintiffs brought four statutory claims in addition to the "reasonable efforts" claim rejected in Suter: a right under 42 U.S.C. § 627(a)(2)(c) and § 627(b)(2) to a services program designed to prevent placement in foster care and facilitate return of a child to his or her family, where appropriate (Am. Comp. ¶44(a)): a right under §§622(b)(2) and 671(a)(4) to have DCFS coordinate its child welfare services with existing programs that provide benefits and services to poor families (Am. Comp. ¶44(b)); a right under §§671(a)(16) and 675(1) and (5)(c) and to a case plan for each child that provides services which will facilitate return of the child to his parents (Am. Comp. ¶¶ 21(b) and (c) and 44(d)); and the right under §§627(a)(2)(B) and 671 (a)(12) to notice and fair hearing whenever DCFS denies benefits to a parent (Am. Comp. ¶45(a)). These claims support the scope of relief defendant agreed to in the Decree: programs and policies designed to solve poverty-related obstacles to family unity or reunification, return

[6] The Director's reliance on Evans (Def. Mem. at 17-25) is therefore misplaced. Moreover, unlike Evans, there are no legitimate federalism concerns here that might limit the Court's authority to enforce the Decree. See Def. Mem. at 18 (suggesting such concerns). The Director did not unwillingly inherit the obligations of the Decree, but negotiated its terms. In fact, he strategically decided to pursue his arguments about plaintiffs' reasonable efforts claim elsewhere, petitioning for certiorari in Suter just one week before the Decree was entered. He does not now wish to alter DCFS's policies embodied in the Decree, but continues to embrace them. See Def. Mem. at 6-13. Compare id. with Evans, 10 F.3d at 478. Moreover, the Decree here was drafted to respect the right of the Director to administer DCFS. It sets up an orderly process for evaluation and negotiation utilizing the Monitor as a facilitator, and carefully keeps the parties from inordinately involving this Court in their differences. In a five year period, the parties have come to this Court in disagreement only one other time. This Court has not become unduly entangled in the management of DCFS. Plaintiffs request no such entanglement now. Moreover, the $100,000 yearly monitoring costs the Director claims are very modest, given the size of DCFS' program.

children home speedily, and ensure that services are coordinated with existing resources from Public Aid, CHA and other programs.[7]

In its ruling on plaintiffs' motion for preliminary relief, this court specifically determined that 42 U.S.C. §§627(a)(2)(C), 622(b)(2), 671(a)(12) and 675(5)(c) all create rights in the parent-plaintiffs. Norman, 739 F. Supp. at 1188. It also determined that 42 U.S.C. §§622, 627 and 675 create an enforceable right to services, including the right to have DCFS coordinate with other agencies. Id. at 1185 n.8 (adopting Magistrate's analysis).[8] Defendant's withdrawal of his appeal rendered these determinations final. Decree at p. 2 and ¶20.

The Director relies entirely on the Supreme Court's decision in Suter to establish that all these federal statutory claims are so "insubstantial" as to deprive the Court of jurisdiction to enforce the Decree. Def. Mem. at 20-23. His argument is that the "reasoning in Suter ...[urges that] the specific statutory provisions cited by plaintiffs...are themselves not sufficiently well-defined to create the individually enforceable rights plaintiffs seek." Def. Mem. at 20-21.

Suter held only that 42 U.S.C. §671(a)(15) was unenforceable, not that other provisions

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[7] It is of no account that the relief afforded in the Decree may go somewhat beyond the specific requirements of these statutory provisions. Parties are free to enter into settlements that require more of them than the specific federal provisions upon which they are based. Suter, 503 U.S. at 354-55 n.6; Rufo v. Inmates of Suffolk County Jail, 112 S. Ct. 748, 762 (1992). See Kindred v. Duckworth, 9 F.3d 638, 641 (7th Cir. 1993) (it is "rare case when a consent decree establishes only...bare minimums required by...constitution).

[8] See also Magistrate's Report, 739 F.Supp. at 1203-1208; Plaintiffs' Memorandum In Support of Private Rights of Action Under 42 U.S.C. §1983 and the Adoption Assistance and Child Welfare Act of 1980 (filed Aug. 15, 1989) at 11-15 (discussing enforceability of the case plan and case review requirements of §671(a)(16)); 24-27 (addressing enforceability of §§622(a) and (b) and 627); 28-29 (discussing the coordinated services requirement of 622(a)).

of Title IV-E, or any provisions of Title IV-B, were. 503 U.S. at 364.[9] Moreover, the Suter Court emphasized that, in assessing the enforceability of a particular provision, "each statute must be interpreted according to its own terms." Id. at 358 n.8. The contention that Suter "forecloses" all of plaintiffs' statutory claims under Titles IV-B and IV-E, see Oneida Indian Nat., 414 U.S. at 666, is therefore wholly without merit; it could hardly foreclose such claims when it did not even address them.

The Director's argument seeking to apply the "reasoning" of Suter to the statutory claims in this case is directed towards the merits of plaintiffs' statutory claims and exhorts an extension of Suter. It does not address the "substantiality" of the claims in the Evans sense. The Eighth Circuit, in Angela R. v. Clinton, 999 F.2d 320 (8th Cir. 1993), rejected exactly this approach. The court stated:

> [T]he analysis in Suter might ultimately compel the conclusion that the other federal statutes upon which plaintiffs rely do not create an enforceable private right of action...but these questions go to the merits of plaintiffs claims, not to the district court's jurisdiction. Because Suter does not "inescapably render the claims frivolous" [citation omitted]...the district court had jurisdiction to approve the proposed settlement and to enter a consent decree resolving the claims... .

999 F.2d at 324.

The court in Evans III vacated the decree after holding that none of the plaintiffs' claims were substantial. 10 F.3d at 480-83. In contrast, there is a formidable body of law both before and after Suter upholding statutory claims based on the very statutory provisions plaintiffs advanced and the Decree resolved. See Memorandum of August 15, 1989 (citing pre-Suter cases);

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[9] Legislation after Suter explicitly clarifies that the holding of Suter applies only to 42 U.S.C. § 671(a)(15). 42 U.S.C. §1320(a)(10)(as amended October 31, 1995). See Harris v. James, 833 F. Supp. 1511 (M.D. Ala. 1995)(applying 42 U.S.C. § 1320a-2, as amended, to limit breadth of the Suter analysis); Ward v. Thomas, 895 F. Supp. 406 (D. Conn. 1995)(same).

Angela R., 999 F.2d at 323, 324 (claims under §§ 620-28 and §§670-679; rejecting jurisdictional challenge to entry of decree and holding that Suter does not "inescapably render [other] claims frivolous"); Jeanine B. By Blondis v. Thompson, 877 F. Supp 1268, 1282-84 (E.D. Wis. 1995)(denying motion to dismiss claims under §§627(a)(2) and (b)(3) and §§671(a)(2), (3), (7), (10), (11) and (13)).

The Decree here compromised "genuine uncertainties" (Evans III, 10 F.3d at 479) as to all of plaintiffs' federal statutory claims. Suter ended the uncertain federal enforceability as to one of these claims only (42 U.S.C. §671(a)(15)). The other statutory claims remain substantial, and offer a jurisdictional predicate for this Court's enforcement of the Decree.

C. The Plaintiffs' Constitutional Claims are Substantial.

Plaintiffs challenged the Director's "standardless" removal of their children from their homes as an "unwarranted intrusion" into their families solely because of their poverty, in violation of their associational, privacy and due process rights. See Am. Comp. ¶¶1, 9, 14, 16, 32(b), 33(f) and (h), 44(e), 45(b); See e.g., Pl. Reply Mem (3/24/89) at 3. The Director wrongly characterizes this claim as asserting a constitutional right to "specific substantive services." Def. Mem. at 23. But plaintiffs' constitutional complaint is not about DCFS's taking of custody "without providing for cash assistance housing or other services," Def. Mem. 23; it concerns DCFS's taking of children from the home without due process of law and without fair regard for the plaintiffs' weighty associational, privacy and liberty interests. See P. Reply Mem. 3/24/89) at 3. The constitutional claims concern intrusive removal and separation policies, not the failure to afford aid and services to the plaintiffs. See Pl. Reply 3/24/89 at 3.

DeShaney v. Winnebago County Dept of Soc. Servs., 489 U.S. 189 (1989), which the

Director relies on heavily, persuasively supports the conclusion that the plaintiffs' constitutional claims are substantial enough to support jurisdiction. Joshua DeShaney sued the county child welfare agency for failing to protect him by removing him from the abusive home. While holding that no constitutional duty to protect Joshua existed, the Court recognized that some "special relationships" may impose on the State "affirmative duties of care and protection," id. at 197-98, when "the State takes a person into its custody and holds him there against his will." Id. at 199-200. This action imposes on the state a "corresponding duty to assume some responsibility for his safety and well being." Id. (citing e.g., Youngberg v. Romeo, 457 U.S. 307, 315-16 (1982)). The Court noted, "it is the State's affirmative act" to "restrain" personal liberty that "trigger[s]" due process protections, not its failure to act. 489 U.S. at 200. The Court stated that a harmful placement "in a foster home operated by [State] agents...might [be] a situation sufficiently analogous to incarceration or institutionalization to give rise to an affirmative duty to protect." Id. at 200 n.9. More significantly, it also stated that the premature or otherwise unwarranted removal of Joshua from his parents would create a substantial federal claim of "improperly intruding in the parent-child relationship based on the ... Due Process Clause." Id. at 203. That is the claim plaintiffs brought here. Am. Comp. at ¶¶ 32, 41-43, 45. See Pl. Reply Mem. (3/24/89) at 3.

Child welfare law is replete with the recognition of the fundamental liberty interest parents and children have in their relationship. Stanley v. Illinois, 405 U.S. 645 (1972); Quilloin v. Walcott, 434 U.S. 246 (1978); Smith v. O.F.F.E.R., 431 U.S. 816 (1977); Meyer v. Nebraska, 262 U.S. 390 (1923). This interest is so substantial that only "clear and convincing evidence" of parental unfitness can completely sever it. Santosky v. Kramer, 455 U.S. 745 (1982). Here,

the defendant cannot and does not contend that the homeless plaintiffs lose their liberty interests in care and custody of their children upon eviction, loss of public aid or other financial hardship. DCFS's child removal policies plaintiffs challenged--policies of not returning children to homes considered "too small", or without nicely made beds for each child--cannot be squared with the plausible liberty interests of the plaintiffs. These policies implicate substantial constitutional claims.

The complaint further alleges that the state's standardless and coercive removal and separation policies violate the impoverished plaintiffs' due process rights to be free from arbitrary governmental interference in their lives. Am. Comp ¶¶ 1, 14, 45(a). These claims also are substantial. See White v. Roughton, 689 F.2d 118 (7th Cir.1982); Carey v. Quern, 588 F.2d 230 (7th Cir. 1978); Doston v. Coler, 732 F.Supp. 857, (N.D.Ill. 1988). The complaint also challenged the unfair conditions imposed upon plaintiffs' exercise of their custodial rights, including the "Catch 22" conditions imposed on the return of their children home. Am. Comp. ¶¶ 33, 44(e). See Norman, 739 F.Supp. at 1194. These claims likewise are substantial. See, e.g., Youakim v. McDonald, 71 F.3d 1274 (7th Cir. 1995); Jackson v. Indiana, 406 U.S. 715 (1972)(indefinitely long civil commitment unrelated to its purpose violates due process).

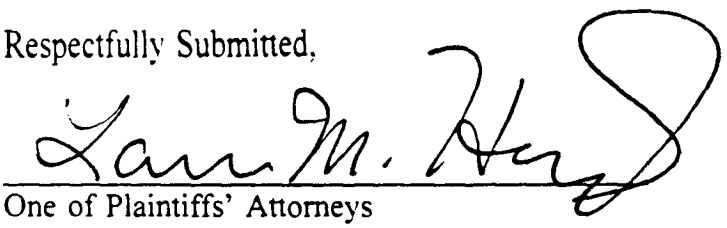
Finally, the complaint alleges that the plaintiffs' property interests in continuation of public benefits were arbitrarily abridged (they lose eligibility for benefits such as AFDC when they lose custody of their children) without notice and an opportunity for a hearing when the unlawful child removal polices are applied to them. E.g., Am. Comp. ¶¶ 35(f), 37(c), 43, 45(a). This claim is substantial under cases such as Goldberg v. Kelly, 397 U.S. 254 (1970) and Vargas v. Trainor, 508 F.2d 485 (7th Cir. 1974), cert. denied, 420 U.S. 1008.

In short, plaintiffs stated a number of substantial constitutional claims. Some of these claims are unsettled, but others are well-settled in favor of the plaintiffs. Had plaintiffs prevailed at trial, they may well have secured broader relief than the Decree provides, perhaps barring many of the Director's removal policies altogether. The Director chose to settle the case by agreeing to provide affirmative services to help homeless families involved with DCFS, rather than risk an injunction against his removal policies. That choice, because it was made in settlement of substantial constitutional claims (which remain substantial), cannot be rescinded simply because the plaintiffs now seek to secure the "affirmative services" promised them in the settlement.

V. CONCLUSION

The Plaintiffs' motion should be granted.

Respectfully Submitted,



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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JAMES NORMAN, PAULETTE PATTERSON, WANDA HILLIARD JOANN MITCHELL, on their own behalf and all others similarly situated, Plaintiff, vs. STERLING M. RYDER, Director Illinois Department of Children and Family Services, Defendants.	Docket No. 89 C 1624 Chicago, Illinois February 27, 1995 9:30 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS - Motion
BEFORE THE HONORABLE WILLIAM T. HART

APPEARANCES:

For the Plaintiff Class:	LEGAL ASSISTANCE FOUNDATION OF CHICAGO BY: MS. LAURENE M. HEYBACH 343 S. Dearborn, Suite 700 Chicago, Illinois 60604
For the Defendant:	SKADDEN, ARPS, SLATE, MEAGHER & FLOM BY: MS. CHRISTINA M. TCHEN and MS. JENNIFER LEVI 333 W. Wacker Drive, Suite 2100 Chicago, Illinois 60606
Court Reporter:	FRANCES CACIOPPO, CSR, RPR Official Court Reporter 219 S. Dearborn Street, Suite 2502-A Chicago, Illinois 60604 (312) 435-5561

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PROCEEDINGS RECORDED BY
MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED BY COMPUTER

THE CLERK: 89 C 1624, James Norman, et al. vs. McDonald. Motion.

THE COURT: Good morning.

MS. HEYBACH: Good morning, your Honor.

MS. TCHEN: Good morning, your Honor. Christina Tchen and Jennifer Levi for defendant.

MS. HEYBACH: Laurene Heybach for the plaintiff class.

MS. TCHEN: Your Honor, this is a consent decree case that was entered by you in 1991.

THE COURT: Yes. I am willing to extend it, but why two years?

MS. TCHEN: Well, your Honor, we have had extensive discussions with plaintiff's counsel. We have also discussed this with Ms. Smith, the monitor. I think it's sort of the considered judgment of everyone that two years will give the Department an additional period of time within which to work with Ms. Smith toward fully implementing the consent decree.

THE COURT: Yes, but, you know, our Court of Appeals has spoken out on extending consent decrees for too long and being concerned about their becoming out of date and saying that in many ways sometimes they become an incubus.

MS. HEYBACH: Your Honor, if I could be heard on this?

The decree itself does not expire, Judge. It's the

monitoring issue. I know that many reports --

THE COURT: I know.

MS. HEYBACH: -- have been filed with the Court. This order, amongst the things it does --

THE COURT: Right.

MS. HEYBACH: -- is excuse the last report. But following those reports, one can tell that there are many areas in which the defendants have not accomplished -- the defendant, rather -- has not accomplished the things mandated in the decree.

THE COURT: I don't have any real quarrel with that except that I think that the extension will be limited to one year. You can tell me in a year if it's necessary to extend again. But keeping in mind that these things should have a life that is not beyond my vision anyway, I am going to only extend it a year at this time.

MS. HEYBACH: Your Honor, I appreciate the concerns that you have articulated about things not going on forever, but this is a case in which all parties have worked extensively.

THE COURT: I am not quarreling with that. I am not disputing you on that. I am simply saying I will do it for a year and another year if it's necessary. Come in and tell me why it's necessary then.

MS. TCHEN: Thank you, your Honor.

* * * * *

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Frances Ciccippo April 4, 1995.

Official Court Reporter

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February 26, 1996

Christina Tchen, Nancy Eisenhauer
Skadden, Arps, Slate, Meagher
& Flom
333 West Wacker Drive
Chicago, Illinois

Dear Tina and Nancy:

The length of your December 11, 1996, response to the Norman Consent Decree 6th Monitoring Report, the urgency of the issue of the continued monitoring of the Decree, as well as other pressing work, prevented us from giving you a point-by-point reply. A detailed discussion may not be useful, but we believe it is necessary to highlight where we agree and disagree.

General Comments.

The response claims to "already have implemented 22 recommendations and to be in the process of implementing 18 more." This suggests only 9 recommendations are in doubt. But the text is otherwise.[1] See e.g., comment below regarding Recommendation #1 (recommendation is listed as one "agreed to" when substance shows strenuous disagreement). Many recommendations have been dismissed, disagreed with, or considered "outside the scope of the Decree." Equally significant is that many recommendations concern matters of long-standing non-compliance, for which the promise of future compliance, in or after 1996, for findings related to 1994, is per se inadequate and insufficient.

A special comment must be made about matters "outside the scope of the Decree." This comment is particularly inappropriate. The monitoring reports are not merely meant to parrot the Decree.

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[1] Contrary to the representation that 22 recommendations are "already implemented" and 18 others are "being implemented," the plaintiffs' count is that DCFS agrees to only 21 recommendations (##3, 6, 7, 12, 13, 15, 17, 19, 20, 25-29, 30-34, 37, 47, 49), not 40, with partial disagreement or lack of clarity even as to 3 of the otherwise agreed recommendations only. Future implementation is promised as to two (##6, 12). 19 recommendations are viewed as "outside the scope of Norman (##4, 5, 8, 9, 10, 11, 16, 30, 31, 38-46, 48); DCFS plainly disagrees with six recommendations (##11, 18, 21, 23, 35, 36); and gives unclear or unresponsive answers to six others (## 1, 2, 4, 14, 22, 24).

The monitors are to assess underlying and related problems, and to consider whether solutions to problems previously identified are working. No recommendation, when it relates to underlying and related problems, is beyond the "scope of the Decree." While recommendations may not all be feasible to implement, and all recommendations are subject to discussion, the "outside the scope of the Decree" comment misses the point that monitoring was intended to be broad based so long as recommendations do impact on provisions of the Decree. See particularly the reply to recommendation ##9 and 10 below as examples of basic disagreements regarding the scope of this case.

Specific comments on the text of the response follow.

We strenuously disagree with all efforts to blame HAP agencies for cash depletion. (p. 5)

We have concern that only one part of the DV protocol is being implemented, and that the chosen part (screening for domestic violence) is likely to lead to further dramatic caseload increases in the absence of concomitant services to families to prevent placement. (p. 6)

We continue to be concerned that training is insufficient. Even trained workers lack proficiency. Private agency staff remain largely untrained on Norman.

A. Class Certification ¶3(b). (p. 7) (Finding of Cook County non-compliance). DCFS questions the monitor's methodology, but this seems unfair post hoc. DCFS had ample opportunity to insure a fair methodology in advance of the review.

Plaintiffs consider the monitor's conclusions regarding under-certification to be fair and reasonable. DCFS's response, quibbling with methodology and assumptions, does not address the problem the monitor has consistently found.

The front end redesign will not be fully effective, at best for 18 more months. More training on certification is unlikely to suffice.

Recommendation #1[2]. (p. 10)

The plaintiffs believe the monitor is correct that a complete review of certification should be undertaken, and decentralization is insufficient. These recommendations do not entail "doing away"

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[2] Hereinafter, the recommendations are designated by the number sign followed by the number, "#____". Compliance and non-compliance findings are discussed following the letter section of the decree (A-Q) to which the discussion relates.

with certification. DCFS's response is insufficient. This response indicates that, contrary to DCFS' own presentation of the recommendation as one it implemented, DCFS has not "already implemented it.

#2. (p. 13) It is apparently agreed the DCFS should certify under the allegations indicated, though the answer is unclear how DCFS claims the new cash information system will alleviate this problem, or whether the system will work as expected.

#3. (p. 13) The monitor recommends that indicated findings of inadequate shelter, etc, "must be properly indicated in report findings." DCFS agrees and believes that "new procedures may alleviate problems that may exist". DCFS is working on these new procedures.

#4. (p. 14) The monitor recommends that DCFS review the issue of missing permanency goals. DCFS considers this issue "outside the scope of the Norman Decree". Plaintiffs strenuously disagree, since permanency goals are meant to determine whether children of Norman class members should return home, and services related to goals are central to the Decree. This area is one that requires continued monitoring to see if efforts to limit the number of missing permanency goals are successful.

#5. (p. 14) The monitor recommends review of the use of permanent relative home and permanent foster home permanency goals. DCFS claims this is only a B.H. issue, not a Norman issue. Plaintiffs disagree, in so far as Norman class members may be assigned such goals and such an assignment could operate as an obstacle to the return of Norman children home.

B. Cash Assistance. (p. 15)

#6. (p. 16) The cash assistance data system "has been finalized," according to DCFS but a start date is not indicated. The system will "collect necessary information" but won't issue cash unless a worker does the inputting. Whether this new design itself will introduce delays in securing cash for clients who need timely assistance should be monitored, as should the triggering by 10% of initial funds.

#7. (p. 7) DCFS has furnished the internal audit to the Monitor. DCFS has complied with the recommendation, after a long delay.

C. Reasonable Efforts. (p. 16)

DCFS questions the conclusion that Cook County is out of compliance based on a survey that found reasonable efforts in 80-90% of cases reviewed. DCFS questions the monitor's resting the conclusion that there is a lack of reasonable efforts in part on the shockingly low

return home activity in Cook County, and disclaims its own responsibility for that result. In plaintiffs' view, if children are not going home who reasonably could, with effort on DCFS's part, then DCFS's efforts are not sufficient. In light of DCFS's utter failure to initiate return home action (in violation of ¶4 of the supplemental order), DCFS cannot simply blame the courts or other parties for failure to return children home and then contend its own reasonable efforts are sufficient.

#8. (p. 18) DCFS contends that use of "best practices" to provide permanent planning efforts is outside Norman, and falls with B.H. See comment p. 1 above regarding such "beyond the scope" claims.

#9. (p. 18) DCFS contends that the recommendation that "DCFS have a service orientation" is a "B.H." but not a "Norman" issue. This statement entirely misunderstands the focus of Norman on services at the front end of the system, to prevent family separation. If this is not what Norman concerns, what is, in DCFS's view, Norman about?

This disavowal of any connection of service delivery issues to Norman is ironic in view of the Department's proposal to plaintiffs to limit the monitor's future role to the front end redesign issues.

#10. (p. 19) DCFS claims that the recommendation concerning "renewed emphasis" on working with biological parents is also outside the scope of the Decree but falls within B.H. (where parents are not even class members!) See comments about ¶ 9. It is clear DCFS considers Norman issues only to be the literal provisions of the Decree, while it considers B.H. issues to be anything and everything concerning DCFS, even if those issues concern non-B.H. class members! This view of the Norman Decree makes meaningless any monitoring or recommendation process, which of necessity must be somewhat broader and deeper than the literal language of the Decree.

#11. (p. 19) DCFS claims that case assignment is outside of Norman, but part of B.H. The monitors have noted that a significant case assignment problem impacts on delivery of Norman services. DCFS must remedy that problem in Norman (as well as in B.H.).

D. Court Action Initiation: (p. 20)

DCFS agrees it is in "partial compliance" with this provision. The monitor's finding is vastly too generous. DCFS is, in the plaintiffs' view, fully out of compliance.

#12. (p. 20) The monitor recommends immediate discussions of the agreed order's screening and petition provision DCFS claims it is

actively working on this, but the plaintiffs consider the response--to a recommendation itself issued in May 1995, before the implementation deadline expired--to be much too little, much too late. Plaintiffs first met to discuss the plan with Cheryl Cesario shortly after the July 1995 deadline had already expired. Ms. Cesario abruptly ended that meeting to attend to a crisis. No further effort of any kind was undertaken until December when Ms. Cesario indicated she would be assigning Ms. Katz to the project. Ms. Katz has only just begun to develop one aspect of the plan and the ideas she has were very preliminary. As of December 22, 1995 she was unaware that her duties extended to a "protocol for screening cases" and she had focused only on "return home petitions", and then, only to a very limited extent. Since that date, no further plan has been presented to plaintiffs' counsel, despite plaintiffs' counsel's repeated requests for more information. The Department's promise to "meet with plaintiffs' counsel shortly "to discuss the protocol" rings hollow, when as of February 23rd, no further plan had been tendered and no further discussion had been scheduled.

E. Training. (p. 21)

The Department concedes it "may have been in 'partial' compliance at the time of the Report, but contends it now is in full compliance. DCFS claims, without furnishing evidence or details, cannot satisfy plaintiffs or the monitors. The monitor's report found a continuing lack of full awareness of Norman policies, despite training. In that context, DCFS's claim to full compliance must be considered skeptically. DCFS mentions "future" training plans but also provides no information as to those plans.

#13. (p. 21) Class membership training should be conducted. Same DCFS response as to #12. Same plaintiff reply.

#14. (p. 21) The monitor recommends that private agencies should be required to attend training. DCFS's answer is non-responsive: DCFS merely notes that agencies "have attended." The plaintiffs request that DCFS take this recommendation seriously and that the process of ¶16 of the Decree for negotiation concerning the recommendations occur.

F. Prompt Return: (p. 22) Not monitored in this report.

G. Notice and Appeal Rights--(p. 22) Undetermined.

The monitor contends that she did not receive data necessary to assess compliance with this requirement, and no independent assessment was done. The monitor indicated a lack of means of checking whether parents received the materials mandated by the Decree. DCFS asserts it does provide notices. The accuracy of this assertion in neither verified nor questioned by the monitor.

H. Interagency Agreements. (p. 23)

The plaintiffs agree with the monitor that only partial compliance is shown. DCFS objects, claiming "good faith". Good faith is not the test of actual compliance, however; it is the test for whether the lack of actual compliance should be overlooked or excused. The underutilization of the CHA agreement is a matter largely within DCFS control. Despite the good faith addition of a housing specialist to DCFS staff, more work is urgently needed before any finding better than "partial compliance" would be appropriate.

As to efforts "elsewhere," the plaintiffs would appreciate some greater documentation as to those efforts so that the adequacy and progress in achievement of further interagency agreements can be assessed.

#15. (p. 25) The monitoring report recommends more coordination between DCFS, housing authorities and HAP staff. DCFS apparently agrees with this recommendation and promises a housing conference this spring. Plaintiffs sincerely hope that this future plan will be implemented as promised. but are concerned that without the efforts of the monitors, particularly here, Ms. Fager, plaintiffs are concerned that such an undertaking may not occur.

#16. (p. 26) DCFS agrees to look at the housing authorities by LANs and to consider the statewide service delivery system developed in Missouri and Minnesota. DCFS claims it is "not required" to do so under the Decree. Plaintiffs disagree with this limited view of the monitor's powers to make recommendations under the Decree. Plaintiffs also note that the monitors were specifically requested by the Director to design an alternative pilot model, in partial resolution of the plaintiffs' ongoing concerns about the barriers Norman certification imposed in service delivery. DCFS should not be able to have it both ways: engage in broad discussions with the plaintiffs and monitors regarding service delivery and utilize monitor time on such tasks, and then, whenever the monitors make suggestions regarding that service delivery, claim there is no requirement that they consider the suggestions.

#17. (p. 26) DCFS agrees that it will host a Housing Conference. See # 15 above.

I. Maximizing payment of DPA benefits (p. 26)--finding of non-compliance.

DCFS offers that a new procedure for direct supervisors to contact DPA on behalf of DCFS has been put into place and that downstate supervisors as well as 170 Cook County supervisors have been trained in the procedure. This development is promising but needs to be reinforced until well-utilized. DCFS also disclaims

responsibility for DPA's failure to provide the full grant prior to return home. Plaintiffs believe that a renewed request for such an agreement should immediately be made, as well as a new submission f a request for a federal waiver.[3] The dramatic underutilization found by the monitors fully supports the non-compliance finding and merits DCFS's more sustained attention.

#18. (p. 27) DCFS claims that "reassessing" the provision of the full AFDC grant is not required by the Decree. But the Decree does require maximizing payment of DPA benefits. DCFS has given no reason for rejecting this recommendation by the monitor.

#19. (p. 28) DCFS claims that it has implemented the procedures to access expedited AFDC benefits. In light of the dramatic underutilization of these benefits, the implementation of these procedures has clearly not occurred.

#20. (p. 28) The monitors recommend core training on AFDC. DCFS claims to be considering this recommendation.

#21. (p. 28) The monitors recommend that utilization of AFDC be included in staff performance evaluations. The Department disagrees, viewing consideration of performance standards as untimely. Plaintiffs are concerned that, in the absence of concrete incentives for staff to utilize procedures, the fact that the procedures impose new demands on staff will mean that the procedures will be underutilized. While performance standards may not be the best tool to address the problem, some tools must be developed. The plaintiffs request that DCFS develop a plan to better increase the utilization of these resources beyond the procedure itself and the training. Collaborative work with the monitor on this point is overdue.

#22. (p. 29) The Department agrees that private agency staff should be trained on AFDC resources and is working with the Illinois Counsel on Training to incorporate it into ongoing training. Plaintiffs wish to have some assurance that this training is mandated and actually received by private agency staff, uniformly. Until then, it remains just another promised future undertaking five years after the Norman decree was entered.

J. Risk assessment. (p. 29)

The Department was found to be in compliance. The plaintiffs note, however, that this finding is a substantially delayed one, in light of the Decree's requirement of risk assessment protocols by

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[3] Federal waivers were freely granted during 1995 and DPA received an extensive waiver from the federal Department of Health and Human Services on a majority of the provisions for which it requested one.

July 1, 1991.

The plaintiffs are extremely concerned about the defendant's decision to proceed on increasing domestic violence screening without at the same time increasing the services available to domestic violence victims. In the absence of increased services, it is very likely that many children will be removed from their mothers when the children, with services, could remain in their care. The Domestic Violence Advisory Group, created following the recommendations of the monitor here, has not recommended a one-sided approach, reassessment of domestic violence without providing services.

K. 90 Day Return Home. (p. 30)

The monitoring report found that children are "not returning home" within 90 days because of administrative or fiscal convenience and thus found compliance. The plaintiffs disagree with the monitor's conclusions. In the absence of a screening and active court process for returning children home promptly, the conclusion that "administrative convenience" accounts for some children not returning home is very likely.

L. Ombuds. (p. 30) The monitors find the Ombuds office is performing in compliance with the Decree. The plaintiffs have been satisfied with Bobbie Evans' performance but are very concerned with her recent assignment to other duties and information which suggests that the housing specialist is being forced to take on her work.

#23. (p. 30) The monitors recommend that an Ombuds person with extensive clinical experience have authority to implement the Decree. The Department objects to expanding the qualifications and role of the Ombuds this way. The plaintiffs believe that, while in compliance with the Decree's provision regarding the ombuds, adopting the monitor's suggestion would be an improvement. The plaintiffs do not think that DCFS should reject the suggestion out of hand.

M. Housing Advocacy Program. (p. 31)

DCFS claims now to be in full compliance. This assertion must be assessed in the next monitoring report. DCFS claims to have implemented the "vast majority" of the monitor's recommendations concerning the HAP program.[4]

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[4] This is another example of how Department delay has prevented effective review by the monitor. Had DCFS timely responded to the Sixth Report, there would have been a completed review of the alleged full compliance.

#24. (p. 32) The monitor recommends that the HAP contracts contain provisions for data collection. The Department has redesigned the HAP report format but does not indicate any change in the HAP contract.

#25. (p. 32) The monitor recommends flexibility in extending HAP contracts. DCFS claims this flexibility exists and has been utilized. Without the monitor's evaluation, plaintiffs cannot independently assess the truth about this assertion.

#26. (P. 33) The monitor recommends immediate action on developing an accurate reporting mechanism for HAP and cash assistance data. DCFS has developed this mechanism and expects it to be operating in March, 1996.

#27. (p. 33) The monitor recommends targeting areas of the state without HAP contracts to assess reasons for lack of such contracts. DCFS claims to have begun this evaluation, and is considering alternatives to HAP programs. The plaintiffs would like a fuller report on these alternatives.

#28. (p.32) The monitor recommends targeting areas of low utilization. DCFS claims it is doing so, but expects the new cash systems to improve utilization significantly. Plaintiffs suggest that DCFS and the monitor look particularly at the areas of low utilization as the new systems come in to see if the under-utilization problems are addressed fully by the new systems.

#29. (p. 35) The monitor recommends that DCFS DCP liaisons be required to attend HAP meetings. DCFS has decided to hold these meetings at DCP offices, but does not respond to the recommendation for required attendance. In light of the serious attendance problem in the past, further action to insure better attendance, such as making some number of meetings mandatory, or mandatory on certain staff, is warranted.

#30. (p. 35) The monitor recommended work with emergency shelters to reserve beds for DCFS families. DCFS considers this recommendation outside the scope of the Decree. It is not, particularly since the absence of such beds may lead immediately to violations of the Decree. The plaintiffs believe that DCFS should consider it and should provide some response to this recommendation.

#31. (p. 35) The monitor recommends that DCFS "explore the issue of lack of adequate housing for unsupervised visits." DCFS claims this is not relevant, and that, moreover, it is addressing the

concerns through the "front end reform", Bates and B.H.[5] Plaintiffs counsel here are Bates counsel too and are unaware of any efforts to address parents' housing needs through Bates (indeed, were such an issue to arise in Bates, the likely response would be that "housing is a Norman issue.") The lack of housing for extended unsupervised visits (which are typically required by juvenile court judges) can be a serious and long term obstacle to returning children home. As such, it raises the likelihood of more systemic Norman violations. DCFS should respond to this recommendation, and at least investigate the extent to which lack of housing for visits delays return of children otherwise ready to return home.

#32. (p. 36) The monitor recommends more training on housing resources. DCFS says it is doing so and cites the upcoming Housing Conference as evidence of its efforts.

#33. (p. 37) The monitor recommends fax machines for Norman liaisons. DCFS denies any reports of difficulty reaching liaisons. DCFS promises to "provide any equipment it deems necessary."

#34. (p. 37) The monitor has recommended lead responsibilities for the above and for the housing conference be assigned to the new housing specialist. DCFS agrees to this recommendation and has acted on it.

N. Manual of Referral Services. (p. 37)--Undetermined. DCFS claims that it is in compliance because the manuals were provided, and objects to the voicing of concern about usage by the monitor. DCFS appears to have completely abandoned its own manual developed a few years ago and never updated.

#35. (p. 38) The monitor recommends that DCFS "explore the feasibility of having a more state of the art, user friendly resource manual." DCFS says it has no plans to change and will not even explore this suggestions. Plaintiffs are concerned that DCFS is rejecting out-of-hand a proposal that may assist in service delivery.

#36. (p. 38) The monitor recommends consultation on such a manual. DCFS says it will so consult if it ever decides to update the manual in this way. Plaintiffs believe that some response indicating a time frame for reconsideration of the proposal would be helpful.

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[5] Defendant's counsel has informed plaintiffs' counsel that the detailed front-end redesign plan will not be provided for plaintiffs' review.

O. Protocol for Locating Absent Parents. (p. 38)--undetermined.

DCFS contends that compliance has been shown in Champaign County. Plaintiffs do not quarrel with DCFS's limited contention. DCFS also claims to be addressing problems with implementation and monitoring of the protocol "elsewhere" but does not explain in detail how that is being done. Plaintiffs believe they are entitled to know in more details the steps DCFS is taking to implement the protocol.

#37. (p. 39) The monitor recommends automation of ACR to summarize the number of parents needed to be located and if a diligent search was conducted. DCFS agrees to explore a regular report, and claims the information is already documented.

P. Domestic Violence Policy. (p. 39)

The monitors find full compliance, but DCFS disagrees that following the recommendations of the task force it established is necessary to remain in full compliance. The plaintiffs urge DCFS to follow those recommendations, particularly in the area of expanded service delivery. Without the capacity to protect women who reveal domestic violence in the course of expanded assessments, children will be at greater risk of removal from their non-abusive parent, in violation of the Decree.

#38. (p. 40) The monitor recommends coordination of implementation of the Task Force's recommendations by the domestic violence specialist. Here, too, DCFS considers the recommendations "outside the scope". But see comments at p. 1 and directly above. Domestic violence issues are the direct subject of the Decree and the advisory committee itself was created as a result of a monitor's recommendation, as a means of addressing the glaring inadequacies regarding domestic violence information and service delivery. If the domestic violence committee is to be a forum for front end redesign, plaintiffs would like to be apprised of what issues are being brought to the Task Force for consideration and what response DCFS is making to the Task Force's recommendations.

#39. (p. 41) The monitor strongly recommends against use of the new domestic violence screen until court personnel are trained and the "capacity for referrals" is adequate. DCFS does not respond to this recommendation, claiming the subject is "outside the scope" of the Decree, but insists that the DCFS training is proceeding, even in the absence of training for court personnel and adequate referrals. Plaintiffs consider this response inadequate. See comments on #38 above.

#40. (p. 41) The monitor recommends designation of staff in field offices to address domestic violence. The Department says it will consider the suggestion but then appears to disagree with it and claims that it is not "required under the Norman Consent Decree."

Plaintiffs believe that DCFS should respond to the need for improved field office staffing to respond to the domestic violence issues the screening will uncover.

#41. (p. 42) The monitor recommends DCP be represented at the DV task force. DCFS claims this is "outside the scope" but nevertheless to be implementing it. See same comments as are above regarding "outside the scope".

#42. (p. 43) DCFS claims that while the recommendation that the Advisory Committee make recommendations regarding DV curriculum to DCFS is "outside the scope of the Decree", it nevertheless has been done.

#43. (p. 43) Same response, regarding coordination between the Task Force and various other committees and positions in DCFS.

#44. (p. 43) The monitor recommends work with Judge Salyers on establishing DV advocates at juvenile court. Same response by DCFS as above. Plaintiffs consider that the issue of court liaison positions and advocate positions should be addressed in connection with the initial petition screening and return home system DCFS is required to establish both by the Decree and ¶4 of the supplemental Order.

#45. (p. 44) The monitors recommend that DCFS work with the Advisory Committee to assess the current statewide capacity of domestic violence services. DCFS again that this is "outside the scope of the Decree" (though it claims to be doing a "preliminary assessment of needs and capacity." This recommendation is hardly outside the Decree: screening is likely to increase demands for services and threaten violation of key paragraphs of the Decree in the event children are removed from their domestic violence victim/mothers in the absence of services.

#46. (p. 44) The monitor recommends that DCFS apply for federal programs funding DV training. DCFS has documented its efforts in this area.

#47. (p. 45) The monitor recommends that the DV and housing specialists have adequate support staff. DCFS claims this recommendation also falls outside the Decree. It is not: the supplemental order specifically calls for the appointment of the housing specialist. Clearly, if the specialist is unable to perform his duties due to lack of support staff, the supplemental order would be violated. Nevertheless, DCFS claims it will "evaluate their requests for support." The monitors has subsequently raised concerns about increasing demands placed on the housing specialist without adequate support. DCFS must immediately address these concerns.

O. Seeking federal funds (p. 46) full compliance. Plaintiffs do

not quarrel with this conclusion.

#48. (p. 46) DCFS indicates it has applied for federal domestic violence funds.

Conclusion.

The unusual detail and formality of Defendant's response to the Sixth Monitoring Report appears designed more to defend assertions of non-compliance than to negotiate and resolve concerns in the manner anticipated by the Decree. Within the response, however, are numerous explicit and implicit admissions that the commitments of the Decree have not yet been achieved.

Plaintiffs seek to invoke (and to bring to a satisfactory conclusion) the process provided in the Decree for negotiation and resolution of the non-compliance and monitor-recommendation issues. DCFS' belated response to the Sixth Report has short-circuited that process as has the failure of DCFS to provide timely and accurate data to the monitors. The promise of future action on many of these issues is welcomed, but in light of past delays, viewed with caution. That view is colored also by DCFS' eleventh hour attempt to define much of the monitor's work--for which the department both engaged and paid Ms. Smith and Ms. Fager--as "beyond the scope of the Decree." The recommendations in fact are carefully tailored to respond to the very practical day-to-day operational problems of DCFS which impede the agency from meeting its mandates under the Decree and Order. The plaintiffs regret that defendant has chosen to meet this thorough and practical report with a litigation-type defense, rather than with the sort of negotiation the Decree contemplates.

Plaintiffs suggest that the issues raised by the report, its reply and their response only heighten the need for monitoring by the mutually selected and qualified individual who did this and prior reports. Instead of debates of compliance and disputes over the scope of the decree, real benefits to the plaintiffs and defendant would be achieved if that process were to continue.

Yours truly,

Diane Redleaf

Laurene Heybach

DRAFT

From Child Protective Services to Family Intervention:

Redesigning the Front Door

Concept Paper

for the

Illinois Department of Children and Family Services
Jess McDonald, Director

February 1996

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Part I. Reasons for Redesigning the Front Door

The Illinois Department of Children and Family Services has embarked on an effort to redesign the way the initial services are delivered to families who have been the subject of an abuse allegation. The project most directly impacts the investigative function and in-home services but also affects prevention and out-of-home services. Its genesis is a series of issues that have been articulated by planning groups, agency administrators, caseworker staff and community leaders. For example, the July 1994 **Framework for Illinois Child Welfare System** cites, as one of its central themes, the need for "Front Door" improvements to the child and family services system.

In the current model, the State Central Register receives a report of abuse and/or neglect and assigns a specific allegation to the report which is then transmitted to the Child Protection Investigator (CPI). The investigator goes out to evaluate the situation, focusing on the specific allegations. His or her goal is essentially to verify the truth in the allegations. Because of this single focus, the investigator provides few if any links to services to the family. At the conclusion of the investigation, the investigative worker passes the case on to the Division of Child Welfare if additional services are needed.

Statute requires that the investigation worker not only establish the truth of the allegations but also conduct a safety assessment. There is, however, no direct connection between the simple truth of an allegation and the jeopardy to the child's current safety. The safety assessment is therefore a distinct function performed by the investigator which requires consideration both of the immediate dangers the child faces and of the resources that may eliminate that danger. In short, the safety assessment is a casework function, yet the investigator has neither access to nor training in the use of services other than out of home placement. Thus the separation between the investigative and the casework functions and the simultaneous assignment of the assessment to the investigator leaves only two strictly correlated choices: either the child is safe and can remain in the home or the child is not safe and must be removed.

To evaluate the proposed model adequately, it is important to understand the problems the model is attempting to address, the goals of the system of which it will be part, the theoretical framework behind the solution, the objectives of the model, the strategies for pursuing those goals and the questions which have to be resolved before implementation can be completed. This paper provides an overview of these points.

Problems to be Addressed by Model

Between fiscal years 1990 and 1994, the number of child abuse and neglect reports accepted by the State Central Register (SCR) rose by 24 percent, from 60,737 to 75,514. Because the indication rate has remained constant during that period, the number of families needing services has risen by an equal proportion.

Many of the families coming into the child protective system in Illinois require more intensive interventions than those seen in early times. While child abuse reports were rising by one-quarter, the number of protective custodies taken by DCFS rose by more than 40 percent. Moreover, families who receive services are staying in the system longer now than previously, whether they are served while intact or while a child is placed in foster care.

No change the agency can make will have an impact on the numbers and types of families appearing before it. What the agency can do, however, is create mechanisms through which it is better able to respond to families in need. DCFS now struggles with its ability to respond to the families in greatest need, to select the most appropriate service strategy, and to define the specific outcomes which it can reasonably expect to achieve. The model proposed here is intended to address internal barriers to DCFS' ability to provide responsive and effective services. Some of these barriers include the following.

Investigative approach towards families: Perhaps the biggest problem to be addressed by the model is a problem endemic in child protective services nationally, the approach public agencies take towards the families they serve, spawned by the investigatory function of the state. Since the federal adoption of the Child Abuse Prevention and Treatment Act in 1974 child protective services have gradually and consistently evolved toward a quasi-police function in many states. Under current rules the investigator is responsible for deciding what happened, who did it, what are the safety and risk issues, and what resources should be employed to assure the *immediate safety* of the child. The initial investigatory process which focuses on substantiating or proving an allegation of abuse can be a process which alienates families, placing them on the defensive and making it difficult to establish a helping relationship once the agency has decided to intervene.

Lack of capacity for differential treatment: At present there is little differentiation in the way investigations are conducted or in the decisions that are made, even when different family issues are discovered. That means that if a family's primary needs result from poverty and not abuse, they receive the same type of investigation as a sexual perpetrator. Conversely, if a family has committed egregious acts against a child and does not acknowledge them and has no prospects of improving, they too are treated in the same manner as anyone else. DCFS has not taken a position on what are acceptable levels of risk and what service strategies should be used under different family scenarios. Except for the selective involvement of law enforcement and the state's attorney, there is no mechanism for the differential handling of cases which results in an inefficient use of resources and delays in identifying children for whom reunification is not an option.

Delays in helping families: Because the current process focuses on investigating the allegation, there are few up-front efforts to provide social services to families, unless there is an immediate need for removal. Moreover, because the need for services is determined by the staff in the Child Welfare unit who do not receive or consider the case for days or weeks after the investigation is completed, the family's situation can actually deteriorate before services are forthcoming. For both reasons, the state loses the opportunity to engage a client who may be motivated to change in a time of crisis.

Inefficient use of community resources: Because service recommendations come late in the process, the natural supports available in the community are often not used to the family's best advantage. In addition, by the time more formalized services are offered, such as family counseling and parent education, the immediate family crisis may have abated, with a concomitant loss in motivation on the part of the family.

Nebulous follow-up: In Illinois, as in many other child protective service systems, the heavy focus on abuse investigations has resulted in a watered-down focus on follow-up services. Investigations are specific, time-limited functions carried out by highly-trained staff. However, investigations serve no function if the state has not the will, the ability or the service resources to act. Assessments of family needs and follow-up services must be as professionally rendered, as well defined, and as guided by a sense of urgency as are investigative services.

Waste of resources in investigating new reports of abuse: Often DCFS receives a new report of abuse or neglect on a family who has already been identified. This may occur during either the investigative or the ongoing phases. At present a new

Minute Order Form (rev. 12/90)

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS

Name of Assigned Judge or Magistrate Judge	WILLIAM T. HART	Sitting Judge if Other Than Assigned Judge	
Case Number	89 C 1624	Date	October 26, 1995
Case Title	Norman v. McDonald		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd-party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "MOTION" box above]

(2) ☐ Brief in support of motion due _____

(3) ☐ Answer brief to motion due _____ Reply to answer brief due _____

(4) ☐ Ruling / ☐ Hearing on _____ set for _____ at _____

(5) ☐ Status hearing ☐ held ☐ continued to ☐ set for ☐ re-set for _____ at _____

(6) ☐ Pretrial conf ☐ held ☐ continued to ☐ set for ☐ re-set for _____ at _____

(7) ☐ Trial ☐ Set for ☐ re-set for _____ at _____

(8) ☐ Bench Trial ☐ Jury Trial ☐ Hearing held and continued to _____ at _____

(9) ☐ This case is dismissed ☐ with ☐ without prejudice and without costs ☐ by agreement ☐ pursuant to ☐ FRCP 4(j) (failure to serve) ☐ General Rule 21 (want of prosecution) ☐ FRCP 41(a)(1) ☐ FRCP 41(a)(2)

(10) ☒ [Other docket entry] No separate monitoring report covering the period January 1, 1995 through June 30, 1995 is to be filed. A consolidated report covering the period January 1, 1995 through December 31, 1995 shall be filed after the completion of that time period.

(11) ☐ [For further detail see ☐ order on the reverse of ☐ order attached to the original minute order form.]

☐ No notices required, advised in open court		number of notices
☐ No notices required.		
☐ Notices mailed by judge's staff.	OCT 30 1995	date docketed
☐ Notified counsel by telephone		
☒ Docketing to mail notices		docketing dpty initials
☐ Mail AO 450 form	OCT [illegible]	date mailed notice
☐ Copy to judge/magistrate judge		
courtroom deputy's initials	Date time received in central Clerk's Office	mailing dpty initials

Document #

APPENDIX -D-

CERTIFICATE OF SERVICE

This is to certify that the undersigned served the attached Notice of Filing and REPLY MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR CONTINUED MONITORING AND/OR DECLARATORY AND INJUNCTIVE RELIEF, by hand delivery this 11th day of March, 1996 to the persons listed above at the addresses stated.

Laurene M. Heybach

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