

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

BRIAN A., ET AL.)		
)		
Plaintiffs)		Civ. Act. No. 3:00-0445
)		Judge Todd Campbell
v.)		
)		
PHIL BREDESEN, ET AL.)		
)		
Defendants)		
)		

**STIPULATED MODIFICATIONS TO THE SETTLEMENT AGREEMENT
AND REQUEST FOR COURT APPROVAL OF THE JANUARY 2009
MODIFIED SETTLEMENT AGREEMENT**

I. OVERVIEW OF STIPULATED MODIFICATIONS

This case was settled by a Settlement Agreement approved by the Court on July 27, 2001 (the “Settlement Agreement”). Section XVI of the Settlement Agreement set forth a number of “Outcome and Performance Measures” that Defendants were required to achieve for three different 18-month periods, defined as Periods I, II and III. *See* Settlement Agreement § XVI.

On November 20, 2003, Plaintiffs filed a motion seeking to hold Defendants in contempt of court for failing to implement the terms of the Settlement Agreement. By “Stipulation of Settlement” approved by the Court on December 29, 2003, the parties resolved the contempt motion. (*See* Stipulation of Settlement of Contempt Motion, Dec. 29, 2003 (attached as Exhibit A)). The Stipulation of Settlement extended Period II under the Settlement Agreement by 15 months and redefined Period III to be the 18-

month period beginning December 1, 2005, and ending May 31, 2007. (*See id.* at 11). The Stipulation of Settlement also provided that, for a defined term, the *Brian A.* technical assistance committee (the “TAC”) “will function as the independent monitor” for purposes of Section XV of the Settlement Agreement. (*See id.* at 9).

By “Stipulation Extending Monitoring,” entered by the Court on February 28, 2006, it was agreed and ordered, in pertinent part, that “[t]he TAC shall continue in the role of independent monitor, as defined in Section XV of the Settlement Agreement, at least for the duration of Period III (as redefined in the Stipulation of Settlement, December 1, 2005 – May 31, 2007) plus an additional three months (the ‘Continuation Period’).” (Stipulation Extending Monitoring at 3, Feb. 28, 2006 (attached as Exhibit B)).

By “Stipulated Modifications to the Settlement Agreement and Request for Court Approval of Modified Settlement Agreement,” filed with the Court on May 8, 2007 (“Stipulated Modifications of 2007”), Period III was extended by a period of 13 months, such that Period III began on December 1, 2005, and ended on June 30, 2008. (*See Stipulated Modifications of 2007* at 2, May 8, 2007 (attached as Exhibit C)). It was agreed and ordered, in pertinent part, that the TAC continue in its role as independent monitor at least for the duration of the redefined Period III, plus an additional three month Continuation Period. (*See id.* at 3). The TAC was to report on performance under the entire Settlement Agreement during and after the end of the redefined Period III. (*See id.*).

By “Stipulated Modifications to the Settlement Agreement and Request for Court Approval of the 2008 Modified Settlement Agreement,” entered by the Court on October

1, 2008 (“Stipulated Modifications of 2008”), a Period IV was created under the Settlement Agreement, which began on July 1, 2008, and shall end on December 31, 2009 (*See* Stipulated Modifications of 2008 at 3, October 1, 2008 (attached as Exhibit D)). It was agreed and ordered, in pertinent part, that the TAC shall continue in its role as independent monitor for at least for the duration of the Period IV, plus an additional six-month Continuation Period. (*See id.*) The TAC shall report on performance under the entire Settlement Agreement during and after the end of the Period IV. (*See id.* at 4). The Settlement Agreement shall remain in full force and effect until at least the conclusion of Period IV. (*See id.* at 4).

The parties agreed to separately present the Period IV outcome and performance measures to the Court for review and requested approval. (*See id.* at 3 n.1) Pursuant to Section XVII of the Settlement Agreement providing for modification “on the consent of the parties,” the parties now stipulate and agree to, and request Court approval of, certain modification to Sections VI, XII and XVI of the Settlement Agreement, which will best further the purposes of the Settlement Agreement.¹

II. STIPULATION MODIFYING SUBSTANTIVE PROVISIONS OF THE 2008 MODIFIED SETTLEMENT AGREEMENT

Pursuant to Section XVII of the Settlement Agreement, the parties agree to modify the Settlement Agreement, and request Court approval, as follows:²

¹ After extensive discussions concerning the Period IV outcome and performance measures, the parties have not yet been able to agree upon the addition or terms of Period IV measures for adoptive placement disruption (§XVI.A.6) and placement in an adoptive home (§ XVI.B.5). The parties have agreed to further discuss and attempt to agree upon modifications for a period of 120 days.

² Enclosed as Exhibit E (“January 2009 Red-Lined Modified Settlement Agreement”) is a red-lined version of the Settlement Agreement, which presents the proposed modifications set forth herein. Enclosed as Exhibit F is a final “clean” version of the

1. Delete the text of Section VI.C.7 of the Settlement Agreement in its entirety and replace it with the following language:

No child shall be placed in a foster home if that placement will result in more than three foster children in that foster home, or a total of six children, including the foster family's natural and/or adopted children. No placement will result in more than 3 children under the age of 3 residing in a foster home. An exception in the best interests of the child shall apply under which the regional administrator will be allowed to make an exception on an individual basis that is documented in the child's case file. Such exception shall not be made in more than 10% of all placements made annually in each grand region. All such exceptions in each grand region and the detailed reasons justifying each exception shall be reported by the regional administrator to the Monitor annually, from the date of this Settlement Agreement. The only other exception to these limits shall be in those instances in which the placement of a sibling group in a foster home with no other children in the home would exceed these limits.

(See Exh. E at Section VI.C.7, p. 15; Exh. F at Section VI.C.7, p. 15). The parties agree that the designation of regional administrator is adequate to further the principles of this provision.

2. Delete the text of Section XII.D of the Settlement Agreement in its entirety and replace it with the following language:

Alleged abuse or neglect of children placed with a contract agency must be reported by the agency to the DCS central intake unit. Additionally, alleged abuse or neglect concerning children placed with any contract agency shall be reported to the central office resource management unit and the quality assurance unit. DCS shall incorporate these reports, and their findings, into the annual review of each contract agency. DCS will evaluate carefully those reports and consider prior corrective actions, the history of the agency and determine if there are serious problems that place children at serious risk of harm and prevent further contracts from being issued.

2009 Modified Settlement Agreement ("January 2009 Modified Settlement Agreement"), which incorporates all prior modifications to the Settlement Agreement approved by the Court and the proposed modifications set forth herein. For ease of reference, citations are provided to both the January 2009 Red-Lined Modified Settlement Agreement and the January 2009 Modified Settlement Agreement for all language discussed herein.

(See Exh. E at Section XII.D, p. 36; Exh. F at Section XII.D, p. 36). The parties agree that the central intake unit now conducts the activities pertinent to this provision.

3. Add the following language to the end of Section XVI.A.1 of the Settlement Agreement:

Period IV

At least 80% of children entering care after September 1, 2001, who are reunified with their parents or caretakers at the time of discharge from custody, shall be reunified within 12 months of the latest removal date.

Of the remaining children (i.e. those who are not reunified with their parents or caretakers at the time of discharge from custody within 12 months of the latest removal date), 75 % shall be reunified within 24 months of the latest removal date.

(See Exh. E at Section XVI.A.1, p. 41; Exh. F at Section XVI.A.1, p. 41).

4. Add the following language to the end of Section XVI.A.2 of the Settlement Agreement:

Period IV

For children whose parental rights have been terminated or surrendered during the period from January 1, 2008 through and including December 31, 2008 (i.e., those who entered full guardianship), 75% shall have their adoption finalized or permanent guardianship transferred within 12 months of being in full guardianship.

(See Exh. E at Section XVI.A.2, p. 42; Exh. F at Section XVI.A.2, p. 42).

5. Add the following language to the end of Section XVI.A.3 of the Settlement Agreement:

Period IV

At least 90% of children in care at any time during the reporting period shall have had two or fewer placements within the previous 12 months in custody, not including temporary breaks in placement for children who run away or require emergency hospitalization not exceeding 30 days.

At least 85% of children in care at any time during the reporting period shall have had two or fewer placements within the previous 24 months in custody, not including temporary breaks in placement for children who run away or require emergency hospitalization not exceeding 30 days.

(See Exh. E at Section XVI.A.3, p. 43; Exh. F at Section XVI.A.3, p. 43).

6. Add the following language to the end of Section XVI.A.4 of the Settlement Agreement:

Period IV

This measure shall include all children who entered care after October 1, 1998 and either left care at any time during the reporting period or are still in care at the end of the reporting period. Measurement shall exclude children still in care at the end of the reporting period who have a permanency goal of Planned Permanent Living Arrangement.

At least 75% of the children in placement shall have been in placement for two years or less.

No more than 20% of the children in placement shall have been in placement for between 2 and 3 years.

No more than 5% of the children in placement shall have been in placement for more than 3 years.

(See Exh. E at Section XVI.A.4, p. 44; Exh. F at Section XVI.A.4, p. 44).

7. Add the following language to the end of Section XVI.A.5 of the Settlement Agreement:

Period IV

Measures in this section apply to children who are discharged from foster care at any time during the calendar year 2008 (January 1, 2008 through and including December 31, 2008). For each child, reentry shall be determined from the date of discharge for a period of 12 months.

No more than 5% of children who are discharged from foster care at any time during calendar year 2008 shall reenter custody within 12 months after the discharge date from the prior custody episode.

(See Exh. E at Section XVI.A.5, p. 45; Exh. F at Section XVI.A.5, p. 45).

8. Add the following language to the end of Section XVI.A.7 of the

Settlement Agreement:

Period IV

At least 90% of the children who are discharged from foster care during the reporting period because they reached the age of 18 shall have at least one of the following apply at the time of discharge: earned a GED, graduated from high school, enrolled in high school or college or alternative approved educational program for special needs children, currently enrolled in vocational training, or employed full time.

(See Exh. E at Section XVI.A.7, p. 46; Exh. F at Section XVI.A.7, p. 47).

9. Add the following language to the end of Section XVI.B.1.b of the

Settlement Agreement:

Period IV

50% of all class members with a goal of reunification shall be visited at least twice per month.

For the remaining class members with a goal of reunification who are not visited twice per month, at least 60% shall be visited once a month.

(See Exh. E at Section XVI.B.1.b, p. 48; Exh. F at Section XVI.B.1.b, p. 48).

10. Add the following language to the end of Section XVI.B.2.b of the

Settlement Agreement:

Period IV

90% of all children in the class in placement who have siblings with whom they are not living shall visit with those siblings at least once a month.

Of the remaining children in the class in placement who have siblings with whom they are not living and with whom they did not visit at least once a month, at least 90% shall visit at least once every two months.

(See Exh. E at Section XVI.B.2.b, p. 49; Exh. F at Section XVI.B.2.b, p. 49-50).

11. Add the following language to the end of Section XVI.B.3.b of the Settlement Agreement:

Period IV

At least 85% of all siblings who entered placement during the reporting period shall be placed together in the same foster home or other placement.

(See Exh. E at Section XVI.B.3.b, p. 50; Exh. F at Section XVI.B.3.b, p. 50).

12. Add the following language to the end of Section XVI.B.4.b of the Settlement Agreement:

Period IV

At least 65 % of children in the class with a sole permanency goal of adoption during the reporting period shall have a petition to terminate parental rights filed within 3 months of when goal was changed to adoption.

Of the remaining children in the class with a sole permanency goal of adoption during the reporting period who did not have a petition to terminate parental rights filed within 3 months, at least 75% shall have a petition for termination of parental rights filed within 6 months of when the goal was changed to adoption.

(See Exh. E at Section XVI.B.4.b, p. 51-52; Exh. F at Section XVI.B.4.b, p. 52).

13. Delete the text of Section XVI.B.6 of the Settlement Agreement in its entirety and replace it with the following language:

6. Goal of permanent or long term foster care or Planned Permanent Living Arrangement

a. The standard:

No child shall be assigned a permanency goal of permanent foster care unless a) the child is at least 15 years old; b) DCS has made every reasonable effort, documented in the record, to return the child home, to place the child with appropriate family members or to place the child for adoption; and c) the person to whom DCS proposes to

assign permanent caretaker status has demonstrated a commitment to assuming long-term responsibility for the child.

b. Measurement period/ compliance levels

Period I

No more than 10% of children in the plaintiff class shall have a goal of permanent or long term foster care.

Period II

No more than 8% of children in the plaintiff class shall have a goal of permanent or long term foster care.

Period III

No more than 5% of children in the plaintiff class shall have a goal of permanent or long-term foster care.

Period IV

No child shall be assigned a permanency goal of Planned Permanent Living Arrangement except as pursuant to the TAC's 2007 recommendations on the use of this goal.

No more than 5% of children in the plaintiff class shall have a goal of Planned Permanency Living Arrangement.

(See Exh. E at Section XVI.B.6, p. 53-54; Exh. F at Section XVI.B.6, p. 53-54).

14. Add the following language to the end of Section XVI.B.7.b of the Settlement Agreement:

Period IV

At least 85% of children in the class shall be placed within the region from which they entered placement or within a 75 mile radius of the home from which the child entered custody.

(See Exh. E at Section XVI.B.7.b, p. 54-55; Exh. F at Section XVI.B.7.b, p. 55).

15. The proposed modifications outlined above will best further the purposes of the Settlement Agreement.

16. The January 2009 Modified Settlement Agreement, attached as Exhibit F hereto, replaces and supersedes the 2008 Settlement Agreement entered by the Court on October 1, 2008. Other than as set forth herein, previous stipulations and orders in this action shall remain in full force and effect.

Dated: January __, 2009

SO ORDERED:



HONORABLE TODD J. CAMPBELL, U.S.D.J. DATE

APPROVED FOR ENTRY:

ATTORNEYS FOR PLAINTIFFS:

/s/ Marcia Robinson Lowry
MARCIA ROBINSON LOWRY (*pro hac vice*)
IRA LUSTBADER (*pro hac vice*)
CHILDREN'S RIGHTS, INC.
330 Seventh Avenue, 4th Floor
New York, NY 10001
(212) 683-2210

/s/ David L. Raybin
DAVID L. RAYBIN (TN BPR #003385)
JACQUELINE B. DIXON (TN BPR #012054)
HOLLINS, WAGSTER,
WEATHERLY & RAYBIN, P.C.
22nd Floor Sun Trust Center
424 Church Street
Nashville, Tennessee 37219
(615) 256-6666

OF COUNSEL FOR PLAINTIFFS:

RICHARD B. FIELDS (TN BPR #4744)
688 Jefferson
Memphis, TN 38105
(901) 578-7709

JOHN W. PIEROTTI (TN BPR #7851)
ROBERT LOUIS HUTTON (TN BPR #15496)
Glankler Brown, PLLC
Suite 1700, One Commerce Square
Memphis, TN 38103
(901) 525-1322

WADE V. DAVIES (TN BPR #016052)
Ritchie, Fels & Dillard, P.C.
606 W. Main Street, Suite 300
Knoxville, TN 37902
(865) 637-0661

ATTORNEYS FOR DEFENDANTS:

/s/ Elizabeth C. Driver
DOUGLAS E. DIMOND (TN BPR #017953)
ELIZABETH C. DRIVER (TN BPR #019363)
Office of the Attorney General
General Civil Division
2nd Floor, Cordell Hull Building
425 Fifth Avenue North
Nashville, TN 37243
(615) 532-7913