

United States Court of Appeals For the First Circuit

No. 13-8014

CASSIE M., by her next friend Kymberli Irons, ET AL.,

Plaintiffs, Petitioners,

v.

LINCOLN D. CHAFEE, in his official capacity as
Governor of the State of Rhode Island, ET AL.,

Defendants, Respondents.

Before

Lynch, Chief Judge,
Howard and Kayatta, Circuit Judges.

JUDGMENT

Entered: June 7, 2013

Plaintiff-petitioners in this litigation concerning the Rhode Island foster care system have filed a petition seeking leave to appeal under Fed. R. Civ. P. 23(f), or, in the alternative, to obtain a writ of mandamus. The nub of their claim is not that the district court erroneously denied their class certification motion, but, rather that the court decided to address issues of class certification after it addresses issues relating to the individual plaintiffs. Plaintiffs claim that, as a result of the court's approach, they run the risk that the case will become moot before class certification is determined.

The specific order plaintiffs challenge is not the district judge's directive setting the order in which the issues will be considered, which was made over a year ago, but rather, an order simply setting a deadline for defendants to respond to plaintiffs' second motion for class certification for a date fourteen days after the court rules on dispositive motions, presently scheduled for filing in October. Such an order is not appropriate for consideration under Rule 23(f), as the order neither granted nor denied class certification.

As to plaintiffs' request for mandamus, it is hornbook law that mandamus is an extraordinary remedy that will not be granted where a court has merely exercised its discretionary authority. In re Bushkin Assocs., Inc., 864 F.2d 241, 245 (1st Cir. 1989). No judicial usurpation is evident on this record and we therefore decline to issue the writ. See FedEx Ground Package Syst., Inc. v. U.S. Judicial Panel on Multidistrict Litig., 662 F.3d 887, 891 (7th Cir. 2011) (choice between two methods of case management for MDL litigation was discretionary matter best left to lower courts); In re Huertas, 274 F. App'x 118, 120-21 (3d Cir. 2008) (unpublished per curiam) (how district court controls its docket is committed to its sound discretion, unless undue delay amounts to a failure to exercise jurisdiction and rises to the level of a due process violation) (citing In re Fine Paper Antitrust Litig., 685 F.2d 810, 817 (3d Cir. 1982)). Consequently, the petition is denied.

By the Court:

/s/ Margaret Carter, Clerk.

cc:

Brenda D Baum
Jared Bobrow
John W. Dineen
Miriam Ingber
Neil F. X. Kelly
James R. Lee
Marcia Robinson Lowry
Kevin J. Aucoin
Ira Lustbader