

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DWAYNE B., by his next friend, John
Stempfle; et al.,

Case No. 06-13548

Plaintiffs,

Honorable Nancy G. Edmunds

v.

RICK SNYDER, et al.,

Defendants.

**ORDER DENYING DEFENDANTS' MOTION FOR CLARIFICATION OF CERTAIN
PROVISIONS OF THE MODIFIED SETTLEMENT AGREEMENT [217]**

At a hearing held on March 20, 2013, this matter came before the Court on Defendants' motion for clarification of certain provisions of the Modified Settlement Agreement (MSA) that was approved and entered as a binding consent decree by this Court on July 18, 2011. (See Modified Settle. Agree. and Consent Order, ECF No. 195.) For the reasons set forth below and on the record at the hearing, Defendants' motion is DENIED.

I. Background

On August 8, 2006, Plaintiffs commenced suit alleging that the DHS was causing harm to the children under its care due to myriad systemic deficiencies that violated constitutional, statutory, and common law mandates. These harms included the plight of hundreds of children who were "aging out" of foster care each year ill-prepared to make the transition to independent adult life and lacking needed supports to assure basic housing

and medical care. (Class Action Compl. (“Compl.”) ¶ 187, ECF No. 1-1.) Following two years of discovery, and on the eve of trial, the parties settled Plaintiffs’ claims. This Court approved the settlement agreement and entered it as a binding consent decree on October 24, 2008.

In 2011, with a new Governor and newly appointed DHS Director, the parties undertook extensive, arms-length negotiations and reached a Modified Settlement Agreement setting forth commitments and deadlines. The MSA set forth various ways in which DHS must act to expand foster care options and ensure access to a range of supportive services for youth “up to age 21.” (MSA § VIII.C.1.)

II. Analysis

Defendants’ motion asks this Court to issue an order declaring that young adults aged 18 to 20, who are no longer wards of the State, i.e., no longer in State or foster care *custody*, and have voluntarily entered into “foster care arrangements with the Department of Human Services” (where the Department agrees to provide certain services), are no longer subject to monitoring under the terms of a Modified Settlement Agreement (MSA) that was approved and entered as a binding consent decree by this Court on July 18, 2011.

The issue arises because on November 22, 2011, Michigan’s “Young Adult Voluntary Foster Care Act” was signed into law. See Mich. Comp. Laws Ann. §§ 400.641-400.671. The legislation required the Department of Human Services (DHS) to launch a new program described as “Young Adult Voluntary Foster Care” (YAVFC) that offers 18 to 20 year olds who are no longer in state-supervised foster care the option of living in (a) a licensed foster family home, (b) a child care institution, or (c) an approved setting in which the individual may live independently until age 21. Before any voluntary agreement can be

entered into between an 18 to 20 year old and the DHS, a court must dismiss the state wardship creating legal custody of the young adult. Funding for the YAVFC program under Title IV-E became available in April 2012.

On August 31, 2012, Michigan's DHS wrote to the Monitors in this matter, explaining that, due to their age (18 to 20) and the voluntary nature of their agreements, all 18 to 20 year olds in the YAVFC program are not subject to the MSA's compliance measures. Defendants reiterate this position in their motion.

Plaintiffs disagree with Defendants' position. They argue that it ignores the plain language of the MSA, and narrowly construes the term "state ward" in a way that violates the parties' intent. Plaintiffs concede that, at the time the MSA was negotiated and executed, there was no basis in Michigan law for juvenile court jurisdiction to extend to youths beyond the age of nineteen. (See Resp. at 2 n.1.) Nonetheless, Plaintiffs argue, the parties agreed in the MSA that services to "state wards" were to be "up to age 21." (MSA, § VIII.C.1.) Thus, this clearly indicates that the parties did not contemplate the requirement of an ongoing juvenile court action in order for services discussed in Section VIII.C.1 of the MSA to be required.

To further illustrate this point, Plaintiffs point to Section VIII.C.1.c.i. That subsection of the MSA requires DHS to "make available independent living services through the age of 21," and explicitly differentiates the group of youth who are to receive these services from youth in "foster care custody." It is Plaintiffs' position that this language belies Defendants' assertion that Section VIII.C.1 of the MSA applies strictly to children in involuntary "foster care custody." In sum, Plaintiffs argue that the MSA – the agreement of the parties – expressly includes services for youth up to age 21. This language controls

and must be enforced. The Court agrees with Plaintiffs.

Plaintiffs also persuasively argue that Defendants' arguments about the scope of the certified Plaintiff Class ignore claims asserted in Plaintiffs' complaint that gave rise to the MSA, i.e., that Plaintiffs are third-party beneficiaries of Michigan's state plan under Title IV-E of the Social Security Act. Plaintiffs emphasize that the YAVFC program was enacted to implement Michigan's Title IV-E state plan, see Mich. Comp. Laws Ann. § 400.645 (West 2011), and entitles the State to receive matching Title VI-E funds to extend care payments for youth aged 18, 19, and 20.

Finally, Plaintiffs persuasively argue that Defendants have not met their burden under Fed. R. Civ. P. 60(b) and thus are not entitled to relief from the July 2011 consent decree.

In their Reply, Defendants concede that their motion cannot satisfy Rule 60(b)'s requirements for relief and recast their motion as one seeking declaratory relief under Fed. R. Civ. P. 57 and thus ask the Court to declare the meaning of the MSA. Relying on the State's subsequent creation of the YAVFC program, Defendants ask the Court to issue an order that modifies the MSA, declares that § VII.C.I does not apply to youths "up to age 21" enrolled in the YAVFC program in the absence of an open juvenile court case, and declares that the Monitors are no longer obligated under the MSA to investigate, verify, or report on these youths.

Having considered the parties' arguments, the pleadings and MSA entered in this matter, and having spoken with the Monitors, this Court denies Defendants' motion. Although Defendants argue that 18, 19, and 20-year olds that enter the YAVFC program voluntarily are not under court supervision or jurisdiction, it does appear that they are still subject to DHS monitoring and mandates. DHS explains that it does monitor youths in the

voluntary YAVFC program, i.e., that it must determine whether they are substantially complying with parts of the program, and if not, are removed from the YAVFC program. (Reply at 4.) These DHS monitoring obligations likely flow from the State's requirements to obtain continued federal funding for the YAVFC program under Title IV-E. As third-party beneficiaries of those federal Title IV-E funds, Plaintiffs argue that continued monitoring is required to ensure that youths in the YAVFC program obtain the services that federal funding is paid to provide. Thus, rather than modify the MSA to eliminate all monitoring obligations of youths in the YAVFC program, this Court ORDERS the parties to adopt monitoring obligations that tailor the Monitors' task to achieve the goal of ensuring that youths in the YAVFC program obtain the services that federal funding under Title IV-E is paid to provide. Because the parties have resolved far more difficult monitoring issues in the MSA, this should not be an insurmountable task.

III. Conclusion

For the above-stated reasons, Defendants' motion is DENIED. It is further ORDERED that the parties shall adopt monitoring obligations that tailor the Monitors' task to achieve the goal of ensuring that youths in the YAVFC program obtain the services that federal funding under Title IV-E is paid to provide.

s/Nancy G. Edmunds
Nancy G. Edmunds
United States District Judge

Dated: March 20, 2013

I hereby certify that a copy of the foregoing document was served upon counsel of record on March 20, 2013, by electronic and/or ordinary mail.

s/Carol A. Hemeyer
Case Manager