

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

JEANINE B.
by her next friend Robert Blondis, *et al.*,

Plaintiffs,

v.

Case No. 93-cv-547-pp

TONY EVERS, *et al.*,

Defendants.

**ORDER GRANTING JOINT MOTION TO TERMINATE SETTLEMENT
AGREEMENT AND CONSENT DECREE ON GROUNDS OF SUBSTANTIAL
COMPLIANCE (DKT. NO. 586)**

On February 3, 2021, the parties filed a joint motion asking the court to terminate the parties' modified settlement agreement, which had been approved by consent decree on December 2, 2002 (Dkt. No. 508) and later modified on November 14, 2003 (Dkt. No. 517) and May 31, 2012 (Dkt. No. 569). Dkt. No. 586.

The brief accompanying the joint motion explained the history of this litigation, most of which occurred before the undersigned became a federal judge. Dkt. No. 588. It described how, in the summer of 1993, the Children's Rights Project of the American Civil Liberties Union initiated the lawsuit on behalf of a class of thousands of children receiving child welfare services in Milwaukee County. *Id.* at 1. The complaint alleged staggering deficiencies in the child welfare system—failures to investigate claims of abuse and neglect,

overworked case workers (some of whom had as many as one hundred families assigned to them), failure to train and supervise case workers, underfunding of the child welfare system. Id. at 2.

What followed was a series of events involving almost every facet of the community. In 1998, the Wisconsin legislature enacted a statute by which the state took over the responsibility of administering and funding Milwaukee County's child welfare system. Id. at 3 (citing Wis. Stat. §48.48(17)). The state then began the work of reforming that system, leading to this court's approval in December 2002 of a settlement agreement through a consent decree that required the state defendants to meet nineteen benchmarks intended to measure whether the state was effectively addressing the deficiencies alleged in the original complaint (and the subsequent amended complaints). Id. at 3-4.

The brief gives examples of some of these benchmarks:

that adoption be finalized for at least 30% of children within two years of entry into care . . . , that no more than 0.6% of children in [Bureau of Milwaukee Child Welfare] custody experience substantiated abuse or neglect allegations by a foster parent or staff of a licensed facility . . . , and that at least 90% of reports referred for independent investigation be assigned within three business days of that agency's receipt of the referral from BMCW

Id. at 4.

In the nineteen years since the first consent decree, the defendants "have been released from 18 of the 19 benchmarks established in the Settlement Agreement, as well as the named plaintiff requirements." Id. at 5. The one unmet benchmark requires that

[a]t least the following percentages of children in [the Department of Children and Family Services' Division of Milwaukee Child Protective

Services'] custody within the period shall have had three or fewer placements during the previous 36 calendar months of their current episode in [DMCPS] custody. The number of placements will exclude time-limited respite care placements and returns to the same caregiver after an intervening placement during the same out-of-home care episode. Those children in [DMCPS] custody through the Wraparound Milwaukee program shall be excluded from this calculation. Initial assessment center placements also will be excluded from the calculation.

Id. at 7. The referenced percentage is greater than or equal to 90%; the parties report that since 2010 the annual percentage has been at least 80% and since 2013, has met or exceeded 87% each year. Id.

The result? The number of children in foster care has decreased to just under 2,000 (as reported by plaintiffs' counsel at the September 29, 2021 hearing on the motion). Permanent placements, such as adoptions, have increased. Id. at 7. Policies—local and national—have shifted to protecting children in their homes, with their parents, through increased resources, rather than removing children from their homes. Id. The defendants continue to work on stable placement, as the improvement in the above-described benchmark percentage demonstrates. Id. at 8.

The parties argue that the defendants have demonstrated over the past two decades that they are committed to satisfying all the benchmarks in the settlement agreement (and going beyond them), to improving the child welfare system in Milwaukee County and thus the lives of children and families in Milwaukee County. Id. at 10-11. They argue, both in the joint brief and in remarks to the court at the September 29, 2021 hearing, that the defendants and countless community partners—from faith communities to medical

providers to law enforcement to non-profits to the courts—have achieved permanent reform “so that similar issues would not arise in the future.” Id. at 11. They argue that, in meeting eighteen of the nineteen benchmarks and coming increasingly close to meeting the nineteenth, the defendants have “substantially complied” with the settlement agreement and the consent decree. Id. at 10-12. They also argue that the underlying objectives of the settlement agreement have been met—medical, dental and other services to children have improved, children involved in the welfare system have access to services previously not available to them, caseworker caseloads have stabilized—and the defendants have continued to meet the benchmarks even under the stresses of the COVID-19 pandemic. Id. at 12-15.

The parties also point out that even if the court terminates the settlement agreement and the consent decree, DCF plans to continue publishing the DMCPS performance monitoring metrics and other metrics through 2022 through the meetings of the Milwaukee Child Welfare Partnership Council, a group of governmental and community organizations interested in reforming the Milwaukee child welfare system. Id. at 14-15. They emphasize that Wisconsin is also subject to review by the U.S. Department of Health and Human Services’ Children’s Bureau of the Administration for Children & Families. Id. at 15.

On June 9, 2021, this court entered a scheduling order, requiring the parties to provide notice (in Spanish and English) in eight local publications and to various community and government organizations (including officials at

“Children’s Court”—the Vel R. Phillips Youth and Family Justice Center—the Legal Aid Society of Milwaukee, the Milwaukee Bar Association, the Milwaukee Child Welfare Partnership Council, the Hmong Chamber of Commerce, the coordinator of the Milwaukee American Indian Resource Center and the editor of *Milwaukee Independent.com*) of their request to terminate the settlement agreement and the consent decree. Dkt. No. 595. The order described a schedule by which non-parties who wished to be heard on the motion could submit written comments or could ask to be heard at the September 29, 2021 hearing on the motion. Id. Since the court issued that order, the parties have filed various affidavits certifying that they have complied with the notice requirements. See, e.g., Dkt. Nos. 601, 602, 603, 606. The deadlines for non-parties to file written comments, or to notify the Clerk of Court that they wished to be heard at the September 29, 2021 hearing, passed with no non-party filing written comments or asking to be heard.

At the September 29, 2021 hearing—a hybrid hearing open to the public in person in the courtroom and via videoconference—the court heard from the plaintiffs’ counsel, Attorney Eric E. Thompson of Children’s Rights, Inc., and the defendants’ counsel, Corey F. Finkelmeyer of the Wisconsin Department of Justice. It also heard from Emilie Amundson, Secretary of the Wisconsin Department of Children and Families, and Sarah Henery, Administrator of the Wisconsin Department of Children and Families. The plaintiffs’ counsel recommended “without reservation” that the court approve the motion, commending and applauding the many people who had worked over the years

to reform and improve what had been a “broken” child welfare system. Attorney Finkelmeyer, Secretary Amundson and Administrator Henery each emphasized the hard work, not just of the defendants’ staff, but of community organizations and regular citizens to achieve those reforms and emphasized that the defendants remain committed to the principles that guided that reform and to continued improvements on behalf of Milwaukee County’s children and their families.

The court finds that the defendants have substantially complied with the terms (and goals) of the settlement agreement and the various iterations of the consent decree. The court finds that under Fed. R. Civ. P. 60(b)(5), the agreement and the consent decree have been “substantially satisfied” and “discharged,” and that applying them prospectively “is no longer equitable” because it is not required. The court will grant the motion and will dismiss the case.

This order is the culmination of years of work and commitment by people determined to “fix” the “broken” Milwaukee County child welfare system. It is a reminder of Margaret Mead’s famous admonishment: “Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it is the only thing that ever has.” The undersigned joins Attorney Thompson in applauding and commending every person who worked—officially or unofficially, in capacities large and small, through government agencies or through community organizations or as individuals—to achieve compliance with the settlement agreement and the consent decree to make children in the

Milwaukee County welfare system safer and healthier and to explore ways to keep them safe and healthy while keeping them with family, whether adopted or biological. The court is grateful to have witnessed the fruits of their labors.

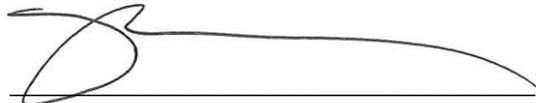
The court **GRANTS** the Joint Motion to Terminate Settlement Agreement and Consent Decree on Grounds of Substantial Compliance. Dkt. No. 586.

The court **ORDERS** that the Consent Decree is **TERMINATED**. Dkt. Nos. 508, 516, 569.

The court **ORDERS** that this case is **DISMISSED WITH PREJUDICE**.

Dated in Milwaukee, Wisconsin this 29th day of September, 2021

BY THE COURT:

A handwritten signature in black ink, appearing to read 'P. Pepper', written over a horizontal line.

HON. PAMELA PEPPER
Chief United States District Judge