

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

FOURTH DIVISION

Patricia Welsh, by her father and)
natural guardian, Richard Welsh,)
et al, on behalf of herself and all)
other persons similarly situated,)
Plaintiffs,)

vs.)

Arthur E. Noot, et al,)
Defendants,)

MEMORANDUM ORDER

No. 4-72-Civ. 451

A Consent Decree in this matter was approved by this Court on September 15, 1980. Dr. Lyle Wray serves as the appointed monitor pursuant to Part VII of the Consent Decree. This matter is now before the Court because of a difference between the parties as to whether the Consent Decree authorizes the monitor's receipt of funds from the McKnight Foundation, a charitable, non-profit organization.

In May 1981 the McKnight Foundation publicized its intention to review the field of mental retardation and developmental disabilities and to develop a plan to meet some of the needs in that field. After soliciting ideas from numerous interested parties, the Foundation asked Dr. Lyle Wray to submit a proposal for evaluation, since the long-term funding of the monitor in the Welsh decree was often mentioned as an area in which the Foundation could contribute. Foundation staff members then developed their own recommendations for additional funding in the amount of \$50,000 per year for the monitor position. In reviewing the Foundation staff's proposal with Commissioner Noot, however, it became apparent that Commissioner Noot opposed the monitor's receipt of any McKnight Foundation funding and viewed any increase in the monitor's budget as a violation of the Consent Decree. Prior to the consideration of the staff's proposal by the Foundation Board, plaintiffs brought this motion requesting an Order from the Court indicating that receipt of the McKnight Foundation grant by the monitor would not be in violation of the Consent Decree.

The dispute between plaintiffs and defendant requires the Court to interpret paragraph 97 of the Consent Decree, which provides for funding of the monitor position. The three sentences most relevant to the issues presented

provide as follows:

"The Commissioner of Public Welfare shall provide funding for the monitor in an amount of \$55,000 for the first year of service and an annual amount increased in subsequent years on the same basis as cost-of-living increases provided state employees The monitor shall not spend more money for his or her personal services, for consultant and support personnel, and for other expenses than is provided pursuant to this paragraph The defendants and counsel for the plaintiffs shall cooperate with the monitor should the monitor seek to employ persons under any program which requires a state agency or a non-profit corporation to be the sponsoring agency for such employment."

Plaintiffs assert that the last of these three sentences permits the monitor to obtain funding from a foundation that provides grants to non-profit corporations to supplement the amount provided by the State. Defendant suggests that the last sentence only permits the monitor's use of a "program," such as VISTA (Volunteers In Service to America), CETA (Comprehensive Education and Training Act), or Urban Corps, which would not provide the monitor with funds, but rather would provide personnel who necessitate the cooperation of a sponsoring agency or non-profit corporation. Defendant asserts that the \$55,000 limitation on the monitor's budget was approved by key legislators and the Governor in an effort to limit not only the cost to the State but also the size of the monitor's office.

Evidence that the monitor's budget is to be limited is found in several places in the Decree. The fourth sentence in paragraph 97 (the second sentence quoted above) specifically indicates that the monitor "shall not spend more money . . . than is provided pursuant to this paragraph." The first sentence of this paragraph contains a dollar limitation of \$55,000 plus an annual cost of living increase, which is precise, and paragraphs 95b and 96 authorize the monitor to retain consultants and support staff, but no reference is made to the equivalent of professionally trained, full-time "assistant monitors."

The Court does not doubt the monitor's need for additional funding and/or professional assistance to perform effectively all of the functions authorized by the Decree, but the Court must construe the Decree as it is written. In the Court's view, the last sentence in paragraph 97 only allows the monitor to employ additional staff that are financed by a third party and supervised by one of the parties to this lawsuit. It does not envision the monitor's direct receipt and use of additional funding from a source such as a private foundation.

Perhaps the parties did not anticipate this particular type of additional assistance when the Decree was drafted, but the changes in the original draft

referred to by plaintiffs' counsel do not support plaintiffs' argument that direct grants may be accepted by the monitor. Plaintiffs' counsel notes that the language in the last sentence of paragraph 97 was changed from "Both counsel for the plaintiffs and the defendants shall cooperate with the monitor as may be necessary should the monitor seek to employ persons under programs such as VISTA if a state agency or a non-profit corporation is required to be the sponsoring agency for such employment" to "The defendants and counsel for the plaintiffs shall cooperate with the monitor should the monitor seek to employ persons under any program which requires a state agency or a non-profit corporation to be the sponsoring agency for such employment." The final language used is broader, but the "sponsoring agency" concept still remains, which supports the defendant's contention that the use of outside personnel, not funds, was authorized. Plaintiffs also argue that the sentence limiting the funds available (the second sentence quoted above) was changed from "pursuant to the contract with the Commissioner" to "pursuant to this paragraph," but in the Court's view this change did not alter the substance of the sentence since, as defendant suggests, changes of this type were made throughout the Decree.

In sum, the limitation in paragraph 97 that the monitor "shall not spend more money . . . than is provided pursuant to this paragraph," coupled with the Court's interpretation of the last sentence of this paragraph as authorizing only the use of personnel whose salaries are paid by an outside source, compels the conclusion that the monitor is not authorized to accept direct, additional funding from a source such as the McKnight Foundation. Because there was a genuine dispute between the parties as to the interpretation of paragraph 97, no attorneys' fees will be awarded in connection with plaintiffs' motion.

IT IS ORDERED THAT:

1. Plaintiffs' motion for a declaration that the monitor may obtain additional funding is denied.
2. No attorneys' fees shall be awarded.

December 7, 1981.

/s/ Earl R. Larson

United States Senior District Judge