UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Patricia Welsch, et al.,

Plaintiffs,

v.

Leonard W. Levine, et al.,

Defendants.

CIVIL 4-72-451

MEMORANDUM AND ORDER

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Luther A. Granquist, Legal Advocacy for Developmentally Disabled Persons in Minnesota, 222 Grain Exchange Building, 323 Fourth Avenue South, Minneapolis, MN 55415, for plaintiffs.

Hubert H. Humphrey, III, Attorney General, State of Minnesota, and Deborah L. Huskins, Special Assistant Attorney General, Second Floor Space Center Building, 444 Lafayette Road, St. Paul, MN 55101, for defendants.

Richard A. Cohen, Court Monitor, 106 Legal Education Center, 40 North Milton Street, St. Paul, MN 55104.

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This matter is before the Court on defendants' motion to alter or amend the Court's order of June 11, 1986, granting attorneys' fees to plaintiffs. Welsch v. Levine, CIVIL 4-72-451 (D.Minn. June 11, 1986). Defendants' motion will be denied. While defendants have raised many arguments in support of their motion to alter or amend, defendants misconstrue the nature of the Court's review under the two-part test of Nadeau v. Helgemoe, 581 F.2d 275, 281 (1st Cir. 1978). Under the "legal prong" of the Nadeau test the burden is on

the defendants to "demonstrate the worthlessness of the plaintiff's claims and [to] explain why he nonetheless voluntarily gave the plaintiffs the requested relief." Hennigan v. Ouachita Parish School Board, 749 F.2d 1148, 1153 (5th Cir. 1985). In Premachandra v. Mitts, 727 F.2d 717 (8th Cir. 1984), modified on rehearing en banc, 753 F.2d 635 (8th Cir. 1985), it was held that the legal Nadeau test had been met absent proof that plaintiff's position was "clearly devoid of merit under traditional constitutional theory," Mitts, 727 F.2d at 722, or was "so 'frivolous, groundless and unreasonable' that the [defendant's] voluntary compliance may be presumed to be gratuitous." Id. at 723. And in United Handicapped Federation v. Andre, 622 F.2d 342 (8th Cir. 1980) the Eighth Circuit stated that the "critical question [is] whether defendant's conduct can be viewed as 'gratuitous,' that is, whether plaintiffs' lawsuit was 'frivolous, unreasonable, or groundless.'" Andre, 622 F.2d at 347.

Whether defendants' obligations derive from Welsch v. Likins, 373 F.Supp. 487, 502 (D.Minn. 1974) or from an independently negotiated consent agreement, it cannot be gainsaid that plaintiffs' claims -- that the term "appropriate" implies a duty to provide CPR-trained staff -- are not "clearly devoid of merit," or "frivolous, groundless and unreasonable." Given the unrigorous nature of the legal prong of the Nadeau test, the Court concludes that defendants have failed to carry their burden of demonstrating "the worthlessness of plaintiffs' claims."

Accordingly, based on the foregoing, and upon review of all files, records, and proceedings,

IT IS ORDERED that defendants' motion to alter or amend the Court's Order of June 11, 1986 is denied.

Judge Harry H. MacLaughlin
United States District Court

DATED: July 23, 1986