

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Patricia Welsch, et al.,

4-72 Civ. 451

Plaintiffs,

vs.

NOTICE OF MOTION

Sandra Gardebring, et al.,

Defendants,

and

Minnesota Chapter, Congress
of Advocates for the Retarded,
Inc., Dean F. Thomas as legal
guardian of Terry P. Thomas, and
Melvin D. Heckt as parent and
next friend of Janice M. Heckt,

Intervenors.

TO: Legal Advocacy for Persons with Developmental
Disabilities, Luther A. Granquist and Anne L. Henry, 222
Grain Exchange Building, 323 Fourth Avenue South,
Minneapolis, Minnesota 55415, its attorneys; and Hubert
H. Humphrey, III, Attorney General, State of Minnesota,
Beverly Jones Heydinger, Assistant Attorney General, and
Maureen W. Bellis, Special Assistant Attorney General,
Suite 200, 520 Lafayette Road, St. Paul, Minnesota 55115

PLEASE TAKE NOTICE, that the undersigned will bring the
attached Motion for Leave to Intervene on for hearing before
this court at Room 612, Federal Courts Building, 316 North
Robert Street, St. Paul, Minnesota 55101, on the 20th day of
May, 1987, at 10:00 a.m., or as soon thereafter as counsel

can be heard.,

Dated: 5/4/87

CHESTNUT & BROOKS, P. A.

By

Karl L. Cambronne (#14321)
Attorneys for MN Chapter
Congress of Advocates for
the Retarded, Inc., Dean F.
Thomas as legal guardian of
Terry P. Thomas, and Melvin
D. Heckt as parent and next
friend of Janice M. Heckt
900 Norwest Midland Building
Minneapolis, Minnesota 55401
(612) 339-7300

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

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4-72 Civ. 451

Plaintiffs,

vs.

MOTION TO
INTERVENE

Sandra Gardebring, et al.,

Defendants,

and

Minnesota Chapter, Congress
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Inc., Dean F. Thomas as legal
guardian of Terry P. Thomas, and
Melvin D. Heckt as parent and
next friend of Janice M. Heckt,

Intervenors.

Applicant intervenors, Minnesota Chapter, Congress of Advocates for the Retarded, Inc., Dean F. Thomas as legal guardian of Terry P. Thomas, and Melvin D. Heckt as next friend of Janice M. Heckt, move the Court for an order allowing them to intervene as parties in this action pursuant to F.R.C.P. 24(a) and (b), in order to assert the issues set forth in their proposed answer, a copy of which is attached to this Motion.

Applicant intervenors are a Minnesota non-profit corporation whose members are parents, relatives, and friends of mentally retarded persons residing in Regional Treatment

Centers in Minnesota; a parent and guardian of one such resident; and a parent who has nominated the State to be the legal guardian of his adult daughter, another Regional Treatment Center resident. Applicant intervenors have recently learned that the parties to this action have entered into a settlement agreement which affects applicants' interests under state law. The failure to permit intervention would as a practical matter impair and impede the ability of intervenors to protect their interests.

Dated: 5/4/87

CHESTNUT & BROOKS, P. A.

By

Karl L. Cambronne (#14321)
Attorneys for MN Chapter
(Congress of Advocates for
the Retarded, Inc., Dean F.
Thomas as legal guardian of
Terry P. Thomas, and
Melvin D. Heckt as parent
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900 Norwest Midland Building
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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Patricia Welsch, et al.,

4-72 Civ. 451

Plaintiffs,

vs.

ORDER GRANTING
LEAVE TO INTERVENE

Sandra Gardebring, et al.,

Defendants,

and

Minnesota Chapter, Congress
of Advocates for the Retarded,
Inc., Dean F. Thomas as legal
guardian of Terry P. Thomas, and
Melvin D. Heckt as parent and
next friend of Janice M. Heckt

Intervenors.

The Motion of Minnesota Chapter, Congress of Advocates for the Retarded, Inc., Dean F. Thomas, and Melvin D. Heckt, for leave to intervene in this action is hereby granted. The Answer of the proposed defendants, which was attached to and filed with their Motion for Leave to Intervene, shall be deemed filed and served and shall be treated for all purposes as the Answer of the intervenors.

Dated: _____
U.S. Magistrate

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Patricia Welsh, et al.,

4-72 Civ. 451

Plaintiffs,

vs.

INTERVENORS' ANSWER

Sandra Gardebring, et al.,

Defendants,

and

Minnesota Chapter, Congress
of Advocates for the Retarded,
Inc., Dean F. Thomas as legal
guardian of Terry P. Thomas, and
Melvin D. Heckt as parent and
next friend of Janice M. Heckt,

Intervenors.

Intervenors for their Answer in this action, state as follows:

1. The Minnesota Chapter, Congress of Advocates for the Retarded, Inc., is a Minnesota non-profit corporation formed pursuant to the provisions of M.S.A. 317.
2. Dean F. Thomas is the legal guardian of his adult son, Terry P. Thomas. Terry P. Thomas is a retarded citizen currently residing in the Faribault Regional Center.
3. Melvin D. Heckt is a parent and next friend of Janice M. Heckt, a retarded, adult individual residing at the

Faribault Regional Center. Janice M. Heckt is a ward of the State.

4. The plaintiffs and defendants in this litigation have agreed to a "Negotiated Settlement" dated April 14, 1987. On information and belief, plaintiffs and defendants intend to notify the class of the proposed settlement and seek court approval of the settlement pursuant to Rule 23 of the Federal Rules of Civil Procedure.

5. The text of the final Negotiated Settlement was made available to intervenors on or about April 20, 1987.

6. Plaintiffs and defendants in the present action intend to have the Negotiated Settlement replace the provisions of the 1980 consent decree entered in this matter. (Part I)

7. The Negotiated Settlement is premised on the appropriation of state funds. (Part I)

8. The Negotiated Settlement is premised on certain legislation being passed by the Minnesota Legislature. (Part III)

9. It is the intent of the plaintiffs and defendants to submit to the Court a form of order seeking approval of the Negotiated Settlement. Intervenors have not been provided with a copy of the proposed Order.

10. The Negotiated Settlement requires court approval of procedures whereby individual habilitation plans are created, community service needs of persons in regional

treatment centers are evaluated, etc. (Part V) This court lacks jurisdiction to approve of the procedures being proposed by plaintiffs and defendants in this action.

11. The Negotiated Settlement erects specific barriers for minors to reside in regional treatment centers. This court lacks the jurisdiction to approve of the provisions relating to placement of children in regional treatment centers. (Part VI)

12. The Negotiated Settlement requires the adoption of certain state regulations governing services provided to retarded citizens of this state. The court lacks jurisdiction to approve said intended rule making. (Part IX)

13. The Negotiated Settlement obligates the state to seek the least restrictive habilitation for persons with mental retardation. The Court lacks jurisdiction to approve said policy. (Part IX)

14. Because the objectives of the 1972 lawsuit have been substantially accomplished, this court should dismiss the pending action.

15. The State of Minnesota has not waived its 11th Amendment immunity with respect to the issues raised in this litigation. (Part XIII)

16. Intervenor's have no objection at the present time to the provisions of the Negotiated Settlement relating to the payment of attorney's fees.

17. Pursuant to the 11th Amendment to the United States

Constitution, the Federal Court lacks jurisdiction to approve, pursuant to F.R.C.P. 23, the Negotiated Settlement dated April 14, 1987.

~~WHEREFORE~~, intervenors request that the court dismiss this action because it lacks subject matter jurisdiction to approve the above-mentioned portions of the Negotiated Settlement.

Dated: 5/4/87

Respectfully submitted,
CHESTNUT & BROOKS, P.A.

Karl L. Cambronne (#14321)
Attorneys for MN Chapter
Congress of Advocates for
the Retarded, Inc., Dean F.
Thomas as legal guardian of
Terry P. Thomas and Melvin
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STATE OF MINNESOTA)

COUNTY OF HENNEPIN)

The Minnesota Chapter, Congress of Advocates for the Retarded, Inc., Dean F. Thomas, and Melvin D. Heckt, being first duly sworn upon oath, depose and say that they are seeking to intervene in the above entitled action; that they have read the foregoing Answer, know the contents thereof and

that the same is true and correct to the best of their knowledge.

MINNESOTA CHAPTER, CONGRESS OF
ADVOCATES FOR THE RETARDED,
INC.

By Norman K. Bailey, Pres
John L. Holakos, Sec

Subscribed and sworn to before
me this 2 day of May, 1987.

Notary Public



Dean F. Thomas

Dean F. Thomas

subscribed and sworn to before
me this 3rd day of May, 1987.

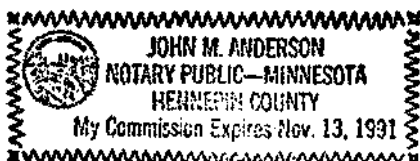
Notary Public



Melvin D. Heckt

Subscribed and sworn to before
me this 4th day of May, 1987.

Notary Public



UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Patricia Welsh, et al.,

4-72 Civ. 451

Plaintiffs,

vs.

MEMORANDUM IN SUPPORT
OF APPLICANTS'
MOTION TO INTERVENE

Sandra Gardebring, et al.,

Defendants,

and

Minnesota Chapter, Congress
of Advocates for the Retarded,
Inc., Dean F. Thomas as legal
guardian of Terry P. Thomas, and
Melvin D. Heckt as parent and
next friend of Janice M. Heckt,

Intervenors.

In 1972, plaintiffs, a class of mentally retarded residents committed to Regional Treatment Centers (RTC's) in Minnesota, which were then called state hospitals, brought suit against various state officials, and, effectively, the State of Minnesota, seeking medical and rehabilitative treatment consistent with principles of due process under the United States Constitution. Plaintiffs also sought specific reforms in the state's administration of its treatment program for retarded citizens, including the pursuit of "least restrictive habilitation."

In April, 1987 the parties executed a Negotiated

Settlement Agreement which purports to resolve this protracted suit in a manner acceptable to each party. In the Settlement Agreement, the state, while reserving its right to assert its immunity to suit in federal court agreed, inter alia, to discharge severely disabled, retarded people from the RTC's to community-based service centers.

Applicants are a non-profit corporation and two individuals who are vitally concerned about the approximately 1600 current residents of the seven RTC's, and who will be affected by the proposed Settlement Agreement between the parties. Applicants seek to intervene in this action at the Hearing on the Negotiated Settlement to raise substantial constitutional issues pursuant to the Eleventh Amendment of the Constitution of the United States, issues the present parties to the litigation are ignoring. Pennhurst v. Halderman, 465 U.S. 89, 104 S.Ct. 900, 79 L.Ed.2d 67 (1984); Lelsz v. Kavanagh, 807 F.2d 1243 (5th Cir. 1987).

APPLICABLE LAW

Rule 24 of the Federal Rules of Civil Procedure sets out the factors on which a court must base a decision on a motion to intervene. Rule 24(a), which is captioned "Intervention of Right," provides:

"Upon timely application anyone shall be permitted to intervene in an action: . . . (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented

by existing parties."

And, Rule 24(b), on "Permissive Intervention," states:

"Upon timely application anyone may be permitted to intervene in an action: . . . (2) when an applicant's claim or defense and the main action have a question of law or fact in common . . . In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties."

ARGUMENT

Applicants qualify as intervenors in this action under either of the provisions of Rule 24 cited above. This motion to intervene is timely for the purposes of Rule 24.

Applicants scheduled a hearing on this motion less than two weeks after the parties signed the Negotiated Settlement to which applicants object. The court has not yet entered judgment on the Negotiated Settlement, and all parties still have time to prepare arguments which will allow the court to evaluate the proposed settlement fully and properly. For these reasons, the court should grant applicants' motion to intervene in this action under either the rightful or the permissive standards in Rule 24.

A. INTERVENTION OF RIGHT

Applicants should be allowed to intervene because they claim an interest in the subject of this action; disposition of this action will impair their ability to protect that interest; and the plaintiffs' attorney and the state do not adequately represent applicants' interest. Applicants claim an interest in "the property or transaction which is the

subject of" this action as guardians or close relatives of members of the plaintiff class and simply as citizens of Minnesota who are concerned about the care which the state provides to members of the plaintiff class.

Applicant Dean F. Thomas is the legal guardian of his adult son, Terry P. Thomas, a retarded resident of the RTC at Faribault, Minnesota. As legal guardian, Mr. Thomas has a duty to provide for Terry's "care, comfort and maintenance needs" (Minn. Stat. Sec. 525.56 Subd. 3(2) (1986)), and that duty gives him a personal interest in the benefits and services which Minnesota provides for his son.

Similarly, applicant Melvin D. Heckt, whose retarded adult daughter, Janice M. Heckt, is a ward of the State of Minnesota and a resident of the RTC at Faribault, has an interest in this action. Although Mr. Heckt has no legal duty to provide for his daughter, Minn. Stat. Sec. 252A.15 Subd. 1 (1986) requires the commissioner, who acts as Ms. Heckt's public guardian, to "permit and encourage involvement by the parents . . . in planning and decision making on behalf of the ward." Therefore, Mr. Heckt also has a personal interest in the benefits and services which Minnesota provides for his daughter.

The last of the three applicants bringing this motion to intervene, The Minnesota Chapter, Congress of Advocates for the Retarded, Inc., (MN-CAR) claims an interest in the subject of this action which requires the court to grant its

motion for intervention as of right, as well. MNCAR is a duly registered Minnesota non-profit corporation whose purpose is "to promote the general welfare and quality of life of mentally retarded persons who are residing in the State of Minnesota." One of MN-CAR's primary goals in pursuing its corporate purpose is "to defend, promote, and enhance" the ability of the RTC's to provide "quality care and training to mentally retarded persons in the State of Minnesota." Obviously, the fate of the RTC's is a subject of this action in which MNCAR can claim an interest entitling it to intervene.

A second requirement for allowing an applicant to intervene as a matter of right is that, without intervention, disposition of the action may "impair or impede" the protection of the applicant's interest. In this case, a court order entering judgment based on the Negotiated Settlement would automatically cut off any input applicants might otherwise have on the issue of Minnesota's operation of the RTC's. Necessarily, then, approval of the proposed settlement would "impair or impede" applicants' ability to protect their interests in Minnesota's system for providing care and treatment to some of its mentally retarded citizens.

The final requirement for intervention as a matter of right under Rule 24(a) is that the existing party or parties do not adequately represent the applicant's interests. The fact that applicants seek to intervene at all should be

sufficient evidence that the existing parties do not adequately represent their interests. In fact, characterizing the interests of the parties to this action broadly, the present parties seek to close the RTC's. Applicants, however, favor the continued existence and further improvement of the RTC's as a vehicle for providing care to the approximately 1600 mentally retarded citizens of Minnesota who personally reside therein.

Applicants submit that their interests diverge from those of the state and counsel for the class. The differences include the fact that the present parties seek to phase out RTC's, while applicants maintain that the federal court is without jurisdiction to approve such relief. (See Answer of Intervenors). This court should find that the present parties do not adequately represent applicants' interest in this action, and therefore order intervention.

B. PERMISSIVE INTERVENTION

If applicants are not entitled to intervene as a matter of right, the court should exercise its discretion to allow intervention in this action. Applicants meet both of the conditions in Rule 2Mb) for permissive intervention: common questions of law and fact exist and intervention would not unduly delay or prejudice the rights of the original parties.

The questions which applicants present in common with the original parties involve the nature and scope of the state's role in providing care and treatment for retarded

citizens.

Allowing applicants to intervene in this action cannot possibly cause delay or prejudice which could reasonably be characterized as "undue," if, indeed, it causes any delay or prejudice at all. It appears that the class has not yet been formally notified of the pending settlement. The settlement hearing which we understand is scheduled for June 5, 1987, is designed to allow the court an opportunity to thoroughly consider the fairness and propriety of the settlement.

F.R.C.P. 23. Intervenors desire to raise issues important to the court's consideration of that issue.

The jurisdictional issue, which is critical to the proper disposition of this suit, will not require additional discovery. The parties may simply brief the issue for the court. It is difficult to imagine prejudice or delay under such circumstances

Rule 24 has historically been interpreted to permit intervention in most circumstances. Wright, Miller & Cain, Federal Practice and Procedure 2d Sec. 1904 (1986). Public interest groups should be afforded an opportunity to intervene in cases raising constitutional issues. *Washington State Building and Construction Trades v. Spellman*, 684 F.2d 627 (1982). Furthermore, intervention by the applicants would expedite the proper resolution of the pending case. *Flowers v. Webb*, 575 F.Sup. 1450 (D.C.N.Y. 1983). As such, this court should exercise its discretion to permit the

proposed intervention.

CONCLUSION

It is respectfully requested that intervention be granted.

Dated **5/4/87**

Respectfully submitted,

CHESTNUT & BROOKS, P. A.

By 

Karl L. Cambronne (#14321)
Attorneys for MN Chapter
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