

Interim Report to the Barbara McDowell & Gerald S. Hartman Foundation Children's Rights

Case Background

In February 2015, Children's Rights and the Arizona Center for Law in the Public Interest filed a class action lawsuit, *B.K. v. McKay*, against the state of Arizona on behalf of the over 18,000 children in the custody of its Department of Child Safety (DCS). Perkins Coie LLP, an international firm with offices in Arizona, joined the case as co-counsel in April. The suit charges DCS, the Department of Health Services (DHS), and the Arizona Health Care Cost Containment System (AHCCCS) with violating the plaintiff children's constitutional and federal statutory rights by failing to: (i) maintain an adequate number and array of licensed family foster homes, (ii) provide needed health care services, (iii) preserve family ties once children are in foster care, and (iv) conduct timely investigations into reports that children have been maltreated while in state care.

Progress Report

Since the filing of our lawsuit in February 2015, multiple changes in agency leadership have further destabilized a system in crisis. The Director of DCS was replaced, and DHS is currently being led by its third director in a year. Press reports continue to describe a child welfare system overwhelmed by the number of children in foster care, a severe shortage of placements, delays in accessible health care services, as well as high rates of employee turnover and crushing caseloads diminishing caseworkers' ability to work with families and investigate allegations of abuse and neglect.

In May 2015, DCS, DHS and AHCCCS filed a joint motion to dismiss Children's Rights' complaint on the ground that the federal court should defer to the state juvenile court, which is tasked with overseeing individual children's dependency cases. In September 2015, the federal judge denied the State's motion, rejecting the state's position that the suit would interfere with foster children's individual state family court proceedings. The opinion states that dismissal would have been "a wrong result" because "the effect would be that Plaintiffs would not be allowed to seek relief in federal court for alleged egregious broad and systemic federal constitutional violations." This legal victory set the stage for Children's Rights and our local partners at the Arizona Center for the Public Interest to begin formal fact-finding to support our allegations.

In December 2015, the parties had their first conference with the federal judge, who is permitting Children's Rights to engage in full fact-finding on the merits of Plaintiffs' claims, even before the court has ruled on Plaintiff's motion for class certification. In February 2016, after the defendants challenged the suitability of the adults who represent the Named Plaintiffs in our suit ("Next Friends"), we made a formal motion to have the Next Friends approved by the Court. The motion details how each of these individuals has devoted their careers to children and families in Arizona. In the meantime, we are engaging in fact-finding to develop the evidence we need to support the Plaintiffs' claims, along with our partners at Perkins Coie and the Arizona Center for Law in the Public Interest.

Anticipated Future Activities

Children's Rights expects to file a motion for class certification in late summer 2016.

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