City of New York v Maul
2006 NY Slip Op 30701(U)
October 13, 2006
Supreme Court, New York County
Docket Number: 400207/04
Judge: Marilyn Shafer
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. MARILYN SHAFER *Justice* PART 62

THE CITY OF NEW YORK, E.V., J.O., A.J., T.B., T.V., S.V., and K.D., by WILLIAM C. BELL, Commissioner, New York City Administrator for Children's Services,

Plaintiffs,

-against-

THOMAS A. MAUL, as Commissioner, New York State Office of Mental Retardation and Developmental Disabilities,

Defendant.

INDEX NO. 400207/04

MOTION DATE ____

MOTION SEQ. NO. 002

FILED OCT 20 2006 NEW YORK COUNTY CLERK'S OFFICE

The following papers, numbered 1 to 12, were read on this motion for summary judgment:

	PAPERS NUMBERED
Notice of Motion — Exhibits	1
Proposed Intervener Complaint	2
Affirmation In Support — Exhibits	3
Memorandum of Law in Support	4
Affidavit In Opposition — Exhibits	5
Memorandum of Law In Opposition	6
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Affirmation In Support	**11**
Reply Affirmation — Exhibits	**12**

Cross-Motion: ☐ **Yes** ☐ **No**

Upon the foregoing papers, it is ordered that the motion to intervene and for permission to proceed with an anonymous caption is granted.

Introduction

L.J., a nineteen-year-old quadriplegic who suffers from cerebral palsy and depression, brings this motion to intervene in an action by the City of New York against the State of New York for failures in the State's provision of services to mentally retarded and developmentally disabled children in New York State.[1] It is the latest episode in a decades-long interagency dispute over the respective responsibilities of the City and the State for the "comprehensively planned provision of services, including care, treatment, habilitation and rehabilitation" envisioned by the New York State Legislature in the Mental Health Law ("MHL").

L.J.'s personal history is a chronicle of missed opportunity – the result of inappropriate placement by the City and deficient services by the State. She moves to intervene in this action as of right, pursuant to CPLR §1012 (a), arguing that the extensive systemic failures of the City make it an inadequate representative of her interests against the State. In the alternative, she seeks to intervene by permission of the court, pursuant to CPLR § 1013, arguing that her claims against the State share common questions of law and fact with the pending claims.[2]

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[1] The statutes make no distinction between mental retardation and developmental disabilities.

[2] Movant additionally seeks permission to proceed with an anonymous caption, which request is unopposed.

Background

The Instant Litigation.

This action was initiated by the New York City Administrator for Children's Services (ACS), and 7 individual plaintiffs against the New York State Office of Mental Retardation and Developmental Disabilities (OMRDD), on January 26, 2004, to "challenge literally decades of failure by OMRDD to plan and provide placements or other services to mentally retarded and developmentally disabled ("MR/DD") individuals in the care or custody of the foster care system run by [the City]."*(Plaintiff's Memorandum of Law in Opposition to Motion to Intervene*, p.1). ACS' complaint states that more than 200 children referred by ACS to OMRDD are on the waiting list for admission to an OMRDD-certified residential facility; 55 of these children have been waiting between 1 and 2 years; 23 have been waiting between 2 and 3 years; 18 have been waiting between 3 and 4 years; and 31, including E.V., one of the named plaintiffs in this action, have been waiting for more than 4 years.

The Complaint sets forth four causes of action: (1) violation of OMRDD's duties under the MHL, by its failure to place, treat or care for disabled persons referred by ACS; (2) violation of the rights of the individually named plaintiffs under the MHL by OMRDD's failure to place, treat or care for them; (3) failure by OMRDD to formulate a comprehensive five-year plan, a three-year capital plan or to issue reports; and (4) violation of OMRDD's duties under MHL, Social Services Law ("SSL") and Medicaid for its failure to make Home and Community Board Waiver Services available to the City's foster children.

The Complaint seeks an order and judgment: (1) declaring that OMRDD's failure to plan, place, treat and care for the individual plaintiffs, and all other disabled persons referred by the

City, violates the MHL, SSL and Family Court Act ("FCA"); (2) requiring OMRDD to appropriately place the named plaintiffs immediately; (3) requiring OMRDD to establish procedures to ensure the prompt and appropriate placement of the named plaintiffs and all other disabled persons currently awaiting placement or who may be referred in the future; (4) ordering OMRDD to develop a comprehensive plan for its services; (5) ordering OMRDD to provide children in foster care the same community-based services it provides to other children; and (6) requiring OMRDD to reimburse ACS for the costs of continued care for the children who should have been placed into OMDRR facilities.

OMDRR has not disputed the systemic failures alleged in the Complaint but rather has sought to shift the blame, both generally and specifically. With respect to the general population of disabled persons in foster care who have not been placed, OMRDD states:

> Despite continued efforts by OMDRR to place referred ACS children in a manner consistent with the earlier protocol, difficulties arose when OMDRR employees responsible for evaluating referrals received inappropriate referrals from ACS. (*Broderick Affidavit*, ¶5).

With respect to L.J. in particular, OMRDD attributes its failure to place her to the absence of any ACS referral, since OMRDD is unable, by law, to initiate placement of any individual in foster care absent ACS referral. (*Brodrick Aff.* ¶¶ 10, 11).

OMRDD moved to dismiss the ACS's claims for immediate placement and reimbursement. Judge Ling-Cohan denied the motion in its entirety on Jan. 3, 2006.

Insofar as the claims for immediate placement were concerned, Judge Ling-Cohan held that OMRDD was correct that patients do not have the right to demand immediate placement. However, she held that the law is well-settled that dismissal of these claims is inappropriate. She

remanded the case, as two previous courts have done, for determination as to whether the failure to place the patients constituted an abuse of discretion. (*Savastano v Prevost*, 66 NY2d 47 [1985]; *City v Webb*, [Index No. 40313/86]).

Insofar as OMRDD's claim that ACS had no right to reimbursement or, in the alternative, that claims for money damages against the State should be brought in the Court of Claims, Judge Ling-Cohan held, as have previous courts, that the monies sought were incidental to the declaratory relief and properly brought in this court. (*Gross v Perales*, 72 NY2d 231 [1988]; *City of New York v New York State Department of Correctional Services*, 237 AD2d 160 [1st Dept. 1997]).

The Proposed Plaintiff-Intervener

L.J. is a qualified individual with a disability as defined by the Americans with Disabilities Act, 42 U.S.C. § 1213 (2), who was placed, by her parents, into the legal custody of ACS on October 12, 2001. One and a half years later, ACS placed L.J. at the Woods School, where she received specialized services and an individualized educational plan appropriate to her needs. A psychological evaluation of L.J. indicated that, with the proper instruction and support, L.J. was capable of successfully engaging in many more activities of daily living:

> These activities include going to both school and non-school events with friends, unsupervised, belonging to a club or organization and even going on dates.... [L.J. is a] highly motivated young woman who has many goals and dreams for the future, many of which are within reach. [L.J.'s] skills in adaptive functioning are influenced by her motor disabilities and limited access to more enriched environments offering higher levels of independent living skills and peer-appropriate socialization. (*Proposed Intervener Complaint, ¶ 32, Psychological evaluation report, August 5, 2003*)

The evaluation recommended that L.J. be placed in a less restrictive environment "more

conducive to personal growth commensurate with her abilities," together with a curriculum

> addressing her unique learning profile. All indicators would determine that [L.J.] can successfully transfer to a regular high school with special services tailored to meet her individual needs... [It is further recommended that she] exercise and develop her upper extremities so that she can be as independent as possible in activities of daily living with the least amount of dignity compromised. (*Supra*)

One year later, ACS transferred L.J. to the more restrictive environment of Bayview Manor Home, a skilled nursing facility. Bayview is licensed by the New York State Department of Health (DOH) which has detailed significant deficiencies in Bayview's provision of basic care.

L.J. was one of 11 residents placed in Bayview by ACS without pre-admission assessment or screening, although such screening is customary and necessary to determine the level of specialized services required. E.V., one of the named plaintiffs represented by ACS in this action, was similarly placed in Bayview without assessment or screening. ACS never provided educational placement for L.J. while she was at Bayview. She was without educational placement for a year, until a placement was provided by another source.

L.J.'s continued custody by ACS while she was a resident of Bayview is reflected in ACS documents, although ACS amended her Uniform Case Record form, on February 3, 2005, to indicate that her case had been closed as of the date of her admission to Bayview, September 14, 2004.

The Agencies' Opposition to the Motion

Both ACS and OMRDD oppose L.J.'s intervention.

In opposition, ACS argues that:

1. L.J. is an inappropriate intervener because she is not in ACS custody and is not

entitled to ACS services because she is over 18 and not "otherwise qualified" by being abandoned or abused;

2. The lawsuit will not adjudicate any of L.J.'s rights. It does not assert that any of the plaintiffs have rights to OMRDD services; it does not concern the quality or appropriateness of placements outside the OMRDD system; and it does not review ACS determinations as to whether to refer individuals to OMRDD;[3]

3. The motion is untimely because L.J.'s counsel was aware of the litigation for almost 2 years; and

4. Granting the motion will increase the scope of the litigation, to the prejudice of the existing parties, by seeking discovery concerning ACS case management, planning, placement and discharges of foster care children and requiring ACS to defend questions of its management and discharge of cases not referred to OMRDD.

In opposition, OMRDD, argues that:

1. L.J. is not a suitable representative of the "proposed class"because, having been placed by OMRDD, she has and has nothing in common with the named plaintiffs;[4]

2. The motion is improperly made in that it seeks to assert claims against both the plaintiff and the defendant;

3. The motion is untimely because L.J.'s counsel was aware of the litigation for

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[3] ACS asserts, in opposition to this motion, that "the City itself does not assert that it, or the named plaintiffs appearing through the Commissioner of ACS, have rights to OMRDD services." (*ACS Memorandum*, p.7). However, in its prayer for relief, ACS' complaint requests an order "[r]equiring OMRDD to place immediately in appropriate facilities the named plaintiffs." (*ACS Complaint*, p.16).

[4] The motion makes no request for class certification.

almost 2 years;

4. Granting the motion will increase the scope of discovery to include a full review of the procedures and settings in question.

Prior Litigation Between the Agencies

A series of lawsuits, spanning a period of 25 years, has been initiated by the City against the State for its alleged failure to provide appropriate placements and treatment for disabled children in foster care.

The City sued the State for the first time in 1981 (*Flowers v Webb*, 575 F.Supp 1450 [EDNY 1983]). The case was settled in 1983. The second action, *City v Webb* [Index No. 40313/86], was brought two years later. ORMDD moved, in that action, to dismiss the complaint and ACS cross-moved for immediate placement of certain children. Both motions were denied .

> [W]hile "children in City facilities have no absolute right to demand immediate placement or treatment in ORMDD facilities, (*Savastano v Prevost*, 66 NY2d 47 [1985]), OMRDD's failure to accept the patients referred by the City may constitute an abuse of discretion. (*Unpublished Decision*, Hon. W.J. Cotton, Nov. 10, 1986)

The *Flowers v Webb* action continued for 5 years after the denial of the cross motions, until the parties reached a settlement in 1991. They entered into a stipulation which limited the number of children ACS could refer, and that OMRDD was obliged to accept, every year for 5 years. The stipulation was extended for one year, until 1997.

The instant litigation was commenced 7 years after the stipulation expired.

The Statutory Framework

In order to create a comprehensive and integrated system of shared responsibility and

joint planning, care for the disabled is regulated by both state and local statute:

> The State of New York and its local governments have a responsibility for the prevention and early detection of mental retardation and developmental disabilities and for the comprehensively planned provision of services, including care, treatment, habilitation and rehabilitation of their citizens with mental retardation and developmental disabilities. (MHL §13.01)...... Each person receiving such services is entitled to "receive care and treatment that is suited to his needs and skillfully, safely, and humanely administered with full respect for his dignity and personal integrity (MHL § 33.03(a)).

The extensive responsibilities of each entity for planning and coordination are overlapping. The State, through OMRDD, is mandated to *inter alia* (1) develop plans, programs and services in cooperation with local governments (MHL§ 13.07(a)); (2) insure the high quality and effectiveness of such services; and (3) insure that the personal and civil rights of persons receiving such services are protected. (MHL§ 13.07(c)).

The City of New York, as a local government and a statutory "public welfare district", through ACS, is under the mandates of MHL §§ 13.01 et seq., 41.13 (a); Social Services Law §§ 395, 397, 398; Family Court Act §§ 115 et seq. and Education Law, Articles 81, 89.

The Social Services Law requires ACS to care for, treat and rehabilitate children under the age of 18 with mental retardation and/or developmental disabilities within its geographic area, including children in City foster care. (SSL §§ 395, 398). When such children reach the age of 18, ACS must refer them to OMRDD if it is anticipated that they will need continued residential care after they reach the age of 21. (SSL § 398(14)(b)). ACS is charged with the responsibility of ensuring that the placement offered to children in foster care is the "most appropriate and least restrictive level of care" available. (SSL § 398(6)(g)(1)).

Under the Mental Health Law, ACS is to:

require the development of a written treatment plan as provided in rules and regulations

of the commissioner which shall include, but not be limited to, a statement of treatment goals; appropriate programs, treatment or therapies to be undertaken to meet such goals; and a specific timetable for assessment of client progress as well as for periodic mental physical reexaminations. (MHL § 41.13(a) (14)).

Discussion

The CPLR provides two different bases for the intervention of a non-party into a pending lawsuit: as of right and by permission. Historically, leave to intervene has been liberally granted. (*Teleprompter Manhattan CATV Corporation v State Board of Equalization and Assessment*, 34 AD2d 1033 [3d Dept. 1970]). Distinctions between the two bases of intervention were not sharply applied. (Siegel, *New York Practice, 4th Ed.*, § 178). However, that does not mean that the motion is automatically granted.

The agencies raise two threshold issues in opposition to L.J.'s intervention:

(1) L.J. is an inappropriate intervener; and

(2) the motion is not timely made.

Appropriateness of L.J. as Intervener

With respect to the appropriateness of L.J. as an intervener, both ACS and OMRDD rely upon ACS' termination of its custody of L.J. in 2004. However, a question of fact exists as to if and when ACS terminated its custody of L.J.[5] The 2004 termination is reflected in an internal ACS document, dated Feb. 2, 2005, which retroactively terminated ACS custody of L.J. as of the date of her admission to Bayview, September 14, 2004 (*Mueller Aff. Ex. C*). L.J. argues that she continued to be in ACS custody following her admission to Bayview, referencing ACS internal documents dated before and after Feb. 3, 2005.

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[5] Social Services Law §398(6)(h) imposes a duty upon ACS even if L.J. was discharged from custody. (*Palmer v Cuomo*, 121 AD2d 194 [1st Dept. 1986]).

The purpose of requiring proposed pleadings to be annexed to a motion to intervene is to enable the court to determine whether the intervener states a cause of action.(*Sterling National Bank & Trust Company of New York v Ambassador Factors Corporation*, 86 AD2d 547 [1st Dept. 1982]). In determining whether a pleader states a cause of action, the factual allegations of the pleading are presumed to be true. (*Shisgal v Brown*, 21 AD3d 845 [1st Dept. 2005]). L.J.'s assertion of continued custody by ACS must be accepted as true for the purposes of this motion and her proposed complaint is thereby sufficient.

OMRDD further relies upon its having placed L.J. OMRDD's chronology shows that L.J. has been placed in a facility that will not open for almost 2 years from the date of placement. As of the date of this motion, L.J. continued to be in temporary placement.

Moreover, the agencies' defense, that termination of their obligations destroys a disabled individual's standing to assert claims against it, was specifically rejected by the Court of Appeals 20 years ago. (*Savastino, supra)*. In *Savastino*, OMRDD was sued by City agency, the Mental Health Information Service, seeking appropriate placements for 25 inappropriately placed patients in its custody. The Court held:

> While all 25 patients who are the subject of the petition have by now been transferred to an OMRDD facility, we retain jurisdiction because of the substantial issues raised, the likelihood of repetition, and the fact that these issues may otherwise evade review (see, Matter of Hearst Corp. v Clyne, 50 NY2d 707, 714-715). (*Savastino, supra*).

Thus, as a matter of law, L.J.'s current status is irrelevant to her suitability as an intervener. By attempting to reassert this rejected argument, the agencies seek to arrogate to themselves total control over their obligations. Since it is in the agencies' discretion to alter, modify or terminate the status of any disabled person, they could, thereby, completely shield

themselves from any claims by simply altering the claimant's status. Neither the Legislature nor the Court has been willing to grant the agencies such unfettered freedom from accountability.

Timeliness of the Motion

The agencies challenge the timeliness of L.J.'s motion to intervene because counsel for L.J. was aware of the lawsuit since its inception, two years ago. However, the mere fact that a motion to intervene might have been made sooner is not a basis for denying it absent a showing of prejudice resulting from delay. (*Norstar Apartments, Incorporated v Town of Clay et alia,* 112 AD2d 750 [4th Dept. 1985]). Neither the City nor the State has articulated any actual prejudice arising from L.J.'s intervention into this action. It does not appear that either has substantially changed its position in reliance upon the presence of 7 rather than 8 disabled persons as named parties to the litigation. Neither agency has cited a single case in which a motion to intervene, made while discovery was on going, was denied as untimely.

Insofar as the status of the instant proceedings, although it was started two years ago, a good deal of time has been spent in motion practice which revisited previously litigated issues. The City and State have been litigating the issues involved in this lawsuit for 25 years. The last action between them, *City v Webb*, was settled 6 years after it was commenced. The instant lawsuit was initiated 7 years after the stipulation, which resolved *City v Webb,* expired. It is the disabled who have been prejudiced by the passage of time, not the governmental agencies charged with their care.

Intervention as of Right

Since L.J.'s motion satisfies the threshold issues of timeliness and appropriateness, we turn to the consideration as to whether it meets the statutory requirements for a motion to

intervene.

CPLR § 1012(a), Intervention as of right, provides, in relevant part:

> Upon timely motion, any person shall be permitted to intervene in any action:
>
> 2. When the representation of the person's interest by the parties is or may be inadequate and the person is or may be bound by the judgment.

The statute thus creates a two-pronged requirement for determining a motion to intervene as of right: (1) the adequacy of the person's representation; and (2) the binding nature of the judgment upon her.

That disabled persons are dependant upon both ACS and OMRDD for their care is amply confirmed by the papers submitted by all parties to this motion. OMRDD attributes significant responsibility for the systemic failures to ACS, which allegation is confirmed by the inadequate and inappropriate services ACS provided to L.J. Moreover, L.J.'s experience does not appear to be unique. The law guardian for a mildly retarded 20-year old in ACS custody has detailed a pattern of inappropriate placements with disturbing parallels to those of of L.J. (*Affirmation of Melinda L. Andra*).

The disabled are receiving inadequate services from both ACS and OMRDD and the outcome of this lawsuit will certainly affect their rights against both agencies. ACS cannot be expected to represent the rights of disabled persons against itself. Its representation is inadequate by definition. Moreover, decades of litigation, in which the interests of disabled persons were represented by ACS, have failed to achieve any meaningful change in the adequacy of their care and treatment

However, the inadequacy of ACS representation only satisfies the first requirement of

CPLR § 1012 (a). As the City properly argues, and the proposed intervener has failed to consider, the Court of Appeals has restrictively defined the second prong:

> [W]hether the [person seeking intervention] will be bound by the judgment within the meaning of that subdivision is determined by its res judicata effect. (*Vantage Petroleum v Board of Assessment Review of the Town of Babylon*, 61 NY 2d 695 [1984]).

This holding by the Court of Appeals creates a logical dilemma. Adequate representation is a requirement of *res judicata* (*Martin v Wilks*, 490 US 755 [1989]). Therefore, it appears that the factor which gives rise to the right to intervene at the same time destroys it. (*See, e.g., Sam Fox Publishing Company v United States*, 366 US 683 [1961][commenting on a similarly worded version of Fed.R.Civ.P. Rule 24 (a)]). It was obviously neither the role nor the intention of the Court of Appeals to render the statute meaningless, and courts have resolved this dilemma in various ways.[6]

ACS argues that L.J. may not intervene as of right because she lacks privity. This argument fails because the situation at bar is distinguishable from the cited cases and neither the statute nor the definition of privity is so narrow.

To establish privity, the connection between the parties must be such that the interests of the non-party can be said to be represented in the proceeding (*Green v Sante Fe Industries, Inc.*, 70 NY2d 244 [1987]). ACS, as a governmental service provider to the disabled appears in this lawsuit in a representative capacity for the disabled. Where, as here, the proposed interveners

[6] One court has avoided the entire problem, not without wisdom, by holding: "The answer appears to lie in the words "may be", which by requiring a less than conclusive determination of adequacy and binding effect give a litigant the option of avoiding multiplicity of action and possible inconsistent results by intervening." (*Unitarian Universalist Church v Shorten*, 64 Misc. 2d 851 [Sup. Ct., Nassau County, 1970]).

seek to protect their rights, even though they are supposedly represented by a governmental agency already a party, intervention as of right should be granted. (Siegel, *New York Practice, 4th Ed.*, § 180; *Village of Spring Valley v Village of Spring Valley Housing Authority*, 33 AD2d 1037 [2d Dept. 1970]; *New York State Public Employment Relations Board v Board of Education of the City of Buffalo*, 46 AD2d 509 [4th Dept. 1975] [intervention by unions granted on finding that the interests of their workers were not identical to those of PERB, the labor agency]; *Teleprompter Manhattan CATV Corporation v State Board of Equalization and Assessment, supra.* [whenever a party to the suit is not "the real party in interest", the real one may intervene]).

Since ACS is an inadequate representative of the disabled, unable to represent their interests against itself, L.J. is entitled to intervene as of right.

Intervention By Permission

CPLR § 1013, intervention by permission, provides, in relevant part:

> Upon timely motion, any person may be permitted to intervene in any action ... when the person's claim or defense and the main action have a common question of law or fact. In exercising its discretion, the court shall consider whether the intervention will unduly delay the determination of the action or prejudice the substantial rights of any party.

Unlike § 1012, this section sets a low threshold for permitting intervention. It articulates a single requirement – a common question of law or fact – after which the court has broad discretion to grant the motion. Siegel compares the standard for establishing a common question of law or fact with an application for leave to file a brief *amicus curiae* or for consolidation under CPLR § 602. He terms the latter a "favored remedy today because it fuses separate actions

into one and relieves judicial calendars accordingly." Siegel, *supra*, § 182.[7] The First Department has agreed. Overturning a decision denying intervention, the Court held:

> In view of the broad language of the statute (CPLR § 1013) and the mandate for liberal construction (CPLR §104), the application to intervene should have been granted"]).(*United Services Automobile Association v Graham*, 21 AD2d 657 [1st Dept. 1964] [

The existence of common questions of law or fact should be determined from the allegations in the proposed intervener complaint. (*Berry v Saint Peter's Hospital of City of New York*, 250 AD2d 63 [3d Dept. 1998]). L.J.'s complaint raises questions as to the duty of each agency to plan and provide appropriate services for disabled children in foster care. These questions echo ACS' complaint as well as positions taken by OMRDD's in its motion to dismiss.

L.J.'s complaint is substantially related to the claims asserted by ACS on behalf of the individually named plaintiffs against OMRDD. The commonality of the questions of fact and law raised in her complaint would certainly satisfy the requirements of CPLR § 602 for consolidation if she were to file a separate action, as suggested by ACS. Judicial economy would favor consolidation.

The agencies oppose L.J.'s intervention because her claims are not identical to those already raised by ACS. However, the law does not require identical claims between the intervener and the underlying action. Interveners are considered parties for all purposes, including their rights to assert counterclaims and cross-claims.(*Siegel, New York Practice, § 183*; *New York Central Railroad Company v Lefkowitz*, 19 AD2d 548 [2d Dept. 1963]) Moreover,

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[7] Significantly, ACS opposes intervention on the ground *inter alia* that: "L.J. has an adequate remedy available in that she could bring a separate lawsuit against ACS and/or OMRDD claiming that her rights are currently being deprived" (*Plaintiff's Memorandum*, p.11).

there is a single allegation which gives rise to all of the claims asserted by L.J., ACS and the named plaintiffs – that disabled children in ACS custody have not received appropriate services from OMRDD.

Upon the showing of a common question of law or fact, the statute specifies three factors relevant to the court's exercise of discretion: (1) the potential for undue delay in the prosecution of the case; (2) the potential for substantial prejudice to one of the parties; and (3) timeliness. (*McKinney's CPLR, vol.7B,* Practice Commentary 1013 [1997]). For the reasons set forth above, the Court finds that these factors do not weigh against intervention.

Conclusion

The question underlying this motion is who provides the most effective voice for the voiceless? ACS itself has articulated the reason for granting L.J.'s motion:

> L.J.'s intervention would transform this case from an interagency dispute to resolve each agency's relative responsibilities into a broad forum for determining how any individual who interfaces with either ACS or OMRDD should be evaluated, cared for and placed. (*Plaintiff's Memorandum,* p.11)

Perhaps the creation of such a broad forum will rescue a generation of disabled children from the stalemate of twenty-five more years of inter-agency disputes. Accordingly, it is hereby

ORDERED that L.J.'s motion to intervene and for permission to proceed with an anonymous caption is granted; and it is further

ORDERED that L.J. be and hereby is permitted to serve her complaint upon the attorneys for the plaintiff and defendant within 20 days from service of a copy of this order with notice of entry; and it is further

ORDERED that the attorney for the Intervener shall serve a copy of this

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order with notice of entry upon the Clerk of the Court and upon the Clerk of the Trial Support Office (Room 158), who are directed to amend their records to reflect such change in the caption herein as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE CITY OF NEW YORK, E.V., J.O., A.J., T.B., T.V., S.V., and K.D., by WILLIAM C. BELL, Commissioner, New York City Administrator for Children's Services,

INDEX NO. 400207/04

Plaintiffs,

-against-

THOMAS A. MAUL, as Commissioner, New York State Office of Mental Retardation and Developmental Disabilities,

Defendant.

L.J. and other similarly situated,

Plaintiff-Interveners and Plaintiffs,

-against-

JOHN B. MATTINGLY, in his official capacity as COMMISSIONER, NEW YORK CITY, ADMINISTRATION FOR CHILDREN'S SERVICES

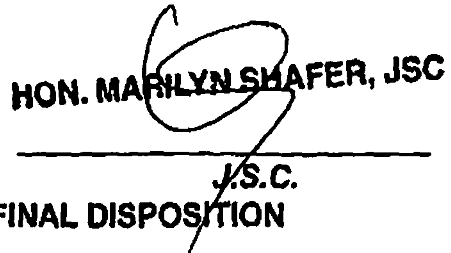
-and-

THOMAS A. MAUL, as Commissioner, New York State Office of Mental Retardation and Developmental Disabilities,

Defendants.

This reflects the decision and order of this Court.

Dated: 10/17/06



HON. MARILYN SHAFER, JSC

J.S.C.

Check one: [ ] FINAL DISPOSITION [X] NON-FINAL DISPOSITION

FILED
OCT 20 2006
NEW YORK
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