

Honorable Ronald B. Leighton

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

THERESA DOE, parent and legal guardian for
M.D., a minor,

Plaintiff,

v.

GRAYS HARBOR COUNTY, a municipality;
GERALD MURPHY, GREG REYNVAAN,
and JOHN and JANE DOES, in their individual
capacity,

Defendants.

No. 3:17-cv-05186 RBL

PLAINTIFF'S MOTION FOR APPROVAL
OF MINOR SETTLEMENT ON BEHALF
OF MINOR CHILD. M.D.

Noted for November 9, 2017

Plaintiff respectfully asks the Court under LCR 17 to consider the adequacy of a proposed minor settlement of all claims in the above-captioned matter and hereby move for an order to approve such settlement, based on the Report of Guardian Ad Litem (GAL), Jo-Hanna Read, on behalf of the minor child, M.D. Defendants have been notified of this Petition and do not oppose the terms of the proposed disbursement.

Plaintiff files this as a same-day motion under LCR 7(d)(1).

I. Summary of Recommendations

On March 14, 2017, Plaintiffs M.D. and his mother, Theresa Doe as parent and legal guardian, filed constitutional claims with this Court under 42 U.S.C. § 1983 that arose out of Defendants' alleged placement of M.D. in "isolation" during different periods of detention at the Grays Harbor County's juvenile detention facility. The parties mediated on May 30, 2017, and

1 Defendants agreed to pay \$45,000 to settle the claims for compensation and to make certain
2 policy changes discussed below to settle the injunctive claims.

3 Of the \$37,296.47 remaining from the gross settlement proceeds after deduction of
4 reasonable litigation costs, the GAL recommends using \$25,000.00 to fund a structured
5 settlement; \$1,000 for the immediate purchase of clothing for M.D.; \$399.00 to pay for M.D.'s
6 driver education; and \$10,897.00 to be paid into a blocked account until M.D. reaches 18 years
7 old on July 21, 2018. The GAL recommends that the Court approve the settlement based on
8 these terms for applying the settlement proceeds, in addition to the proposed policy changes
9 discussed below. *See generally* Ex.1 (GAL Report).¹

10 II. Background of Minor and Claims

11 M.D., now seventeen years old, was in and out of custody of the Grays Harbor County
12 Detention Facility (“the Facility”) from November 2013 to April 2016, largely because of
13 contempt orders that issued amid a series of At-Risk Youth (ARY) petitions filed by his mother.
14 During this period, M.D. claims Facility staff routinely placed him in “cell confinement”, “room
15 restriction”, “24-hour lock”, or other forms of “isolation.” On March 14, 2017, Plaintiff filed
16 suit under 42 U.S.C. § 1983, alleging that Facility staff imposed this sanction approximately 75
17 times during the period in question, including from February 21, 2016 to approximately March
18 26, 2016, when the County’s former Detention Director, Gerald Murphy, kept M.D. in isolation
19 continuously, eight days of which were in the “Padded Room” that is ordinarily reserved for
20 violent or suicidal detainees.² Dkt. 1. Plaintiff also claimed that during this 8-day period, the
21 former Detention Director also restricted M.D.’s diet to provide for only peanut butter and jelly
22 sandwiches three times daily, in contravention of the Grays Harbor County Juvenile Detention
23 Facility Policy Manual (“Policy Manual”).

24
25 _____
26 ¹ “Ex.” or “Exhibit” refers to the Exhibits attached to the Declaration of David Whedbee, filed herewith in
support of this Petition.

27 ² At mediation, Defendants denied liability and disputed *inter alia* that the period in the “Padded Room”
was in fact 8 days.

1 Plaintiff alleged that Facility staff resorted to these forms of solitary confinement
2 pursuant to the Policy Manual and related practices as a response to mundane instances of
3 teenage misbehavior, instead of reserving isolation for extreme circumstances where the juvenile
4 has placed himself or others in serious risk of physical harm. Plaintiff claimed that Defendants'
5 uses of isolation were improper forms of solitary confinement of juvenile detainees that violated
6 the Eighth and Fourteenth Amendments, and sought compensatory and injunctive relief.

7 As the GAL has noted, M.D. (and his mother) initiated this lawsuit with the main
8 objective to change County policy so other juveniles would not experience the same treatment
9 M.D. did. *See* Ex. 1 at 3. On May 30, 2017, the parties mediated the case with former King
10 County Superior Court Judge Paris Kallas. Plaintiff pressed for the County to stop its practices
11 and revise its Policy Manual accordingly, and additionally for compensation for the mental
12 distress M.D. experienced on account of the solitary confinement.

13 **III. M.D.'s Injuries and Damages**

14 M.D. has described his experience in "solitary confinement" as frightening, lonely, and
15 isolating him from his peers, as alleged in the Complaint. M.D. also described filthy conditions
16 in the Padded Room, including blood and feces smeared on the floor and walls that staff refused
17 to clean when requested. From the Padded Room M.D. wrote a letter to his mother to alert her to
18 his situation in which he described that he was losing weight because of the restricted diet during
19 the 8 days in the "Padded Room."

20 M.D. was released from detention for the last time in late April 2016, and has not
21 returned. M.D. claims the experience at the County's Facility left him more mistrustful and
22 anxious than before the last stint in isolation. His mother describes him as withdrawn socially.

23 Though M.D. did not allege that any particular physical or psychological condition
24 resulted from these conditions, Plaintiffs' expert, Dr. Louis Kraus, Professor and Chief of Child
25 and Adolescent Psychiatry at Rush University Medical Center in Chicago, recognized under the
26 prevailing contemporary scientific standards that these practices are harmful to juveniles who are
27 still developing socially, psychologically and neurologically. Ex. 2. Dr. Kraus cited extensive

1 research that indicates removing juveniles like M.D. from their regular routines (as Plaintiff
 2 claims occurred here) can worsen or precipitate mental health issues such as depression and
 3 anxiety, in addition to causing long-term lack of trust, hypervigilance and paranoia. *Id.* at 7.

4 **IV. Settlement Offer**

5 The County's settlement offer had two components. *See* Ex. 3. The County made an
 6 offer of \$45,000.00 to settle M.D.'s compensatory damage claims, in addition to paying the cost
 7 of mediation and \$1,500 to cover any GAL costs. With respect to Plaintiff's injunctive relief, the
 8 County also agreed to do the following:

- 9 • revise its juvenile detention policy regarding discipline and the use of isolation and
 10 room restriction to be consistent with the Washington State Juvenile Justice &
 11 Rehabilitation Administration Policy 22, Assigning Room Confinement, Programmed
 12 Room Confinement and Isolation, ("JRA Policy.22") [*see* Ex. 4];
- 13 • provide M.D. with a copy of its training protocols and curriculum related to the policy
 14 change within 120 days of the Settlement Date;
- 15 • certify by December 1, 2017 that it has trained all existing Juvenile Detention Center
 16 staff using the training protocols and curriculum which were provided to M.D.;
- 17 • certify by December 1, 2017 that it will train all newly hired Juvenile Detention
 18 Center staff on the revised policy and provide refresher training to all Staff regarding
 the revised policy once every 12 months;
- provide verification that its practices comply with the revised policy, which may take
 the form of expedited provision of a juvenile detainee's file to the detainee and/or the
 detainee's legal guardian or legal representative.

19 *See* Ex. 3.

20 On August 24, 2017, Judge David L. Edwards, who presides over the County's juvenile
 21 court and serves as the administrative head of the Detention Facility, notified Plaintiffs that the
 22 County had revised its policies "regarding discipline and use of room restriction, confinement
 23 and isolation" in conformity with the parties' settlement agreement. Ex. 4. In this
 24 correspondence, Judge Edwards advised that staff are completing any training per the revised
 25 policies, and that the County would certify by December 1, 2017 that staff had completed the
 26 training as agreed. *Id.* Defendants have provided to Plaintiff the agreed upon revisions to
 27 Policies and Procedures for the Grays Harbor Juvenile Detention Center. *See* Exs. 5-6. Defense

1 counsel has informed Plaintiff that the new Detention Director, David Christianson, will conduct
2 the training. *See* Ex. 6. Plaintiff anticipates receipt of the training curriculum before training
3 occurs, as per the Settlement terms.

4 **V. Apportionment Issues**

5 There are no apportionment issues.

6 **VI. Fees, Costs, and Subrogation**

7 Plaintiffs' counsel did not take any attorneys' fees in connection with M.D.'s
8 representation in this matter. As set forth in the GAL's Report, there were expert fees and costs
9 incurred from depositions, travel, medical records requests, and other matters, which are to be
10 paid from the settlement proceeds. *See* Ex. 1 at 5. These totaled \$7,703.53, which the GAL
11 determined to be reasonable. There are no subrogation claims.

12 The GAL has also requested \$1,500.00 to cover her time and services incurred in this
13 matter. As mentioned, the County's insurer pledged per the settlement agreement to cover this
14 expense and it will not be deducted from any net proceeds to go to M.D.

15 **VII. Proceeds of Settlement**

16 The gross proceeds from the settlement are \$45,000.00, as noted. After deduction of
17 reasonable costs (\$7,703.53), the total net proceeds to go to M.D. amount to **\$37,296.47**, to be
18 disbursed as outlined below.

19 **VIII. Application of Proceeds**

20 The GAL recommends a structured settlement as to the majority of the funds, to provide
21 a cushion for M.D. to pursue education and/or training after he turns 18 years of age. Ex. 1 at 6.
22 The proposed structured settlement (through Pacific Life rated A+ 15 by AM Best) would pay
23 out as follows: \$8,339.37 payable annually, guaranteed for 3 years, beginning on 07/21/2019,
24 with the last guaranteed payment on 07/21/2021. *Id.* The cost of the above structured settlement
25 would be **\$25,000.00**, with an annual interest rate 0.03%. *Id.*

26 The GAL proposes disbursement of the remaining \$12,296.47 as follows:
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- \$1,000 to be spent on clothing, which the SGAL believes should be permitted after consulting with M.D.'s mother;
- \$399.00 to be allotted for payment toward a driver's education course;
- The remaining \$10,897.00 to be placed in a blocked account until M.D. reaches 18.

Ex. 1 at 6.

IX. Disbursement of Funds

Petitioner requests that the Court enter an order as follows:

1. Approving the settlement offer set forth above;
2. Authorizing the guardian ad litem to execute releases of the claim of the minor;
3. Approving GAL fees as set forth above;
4. Directing disbursement of funds as set forth above;
5. For other and further relief as the Court may deem just and proper.

Respectfully submitted this 9th day of November, 2017.

MacDONALD HOAGUE & BAYLESS

By: s/David Whedbee

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I certify that on the date noted below I electronically filed this document entitled **Plaintiff's Motion for Approval of Minor Settlement of Behalf of Minor Child** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following persons:

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DATED this 9th day of November, 2017, at Seattle, Washington.

s/Terri Flink
Terri Flink, Legal Assistant