

07-3403-cv
McCoy v. Belmont

MANDATE

CT / New Haven
85-cv-465
Burns
Garfinke

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

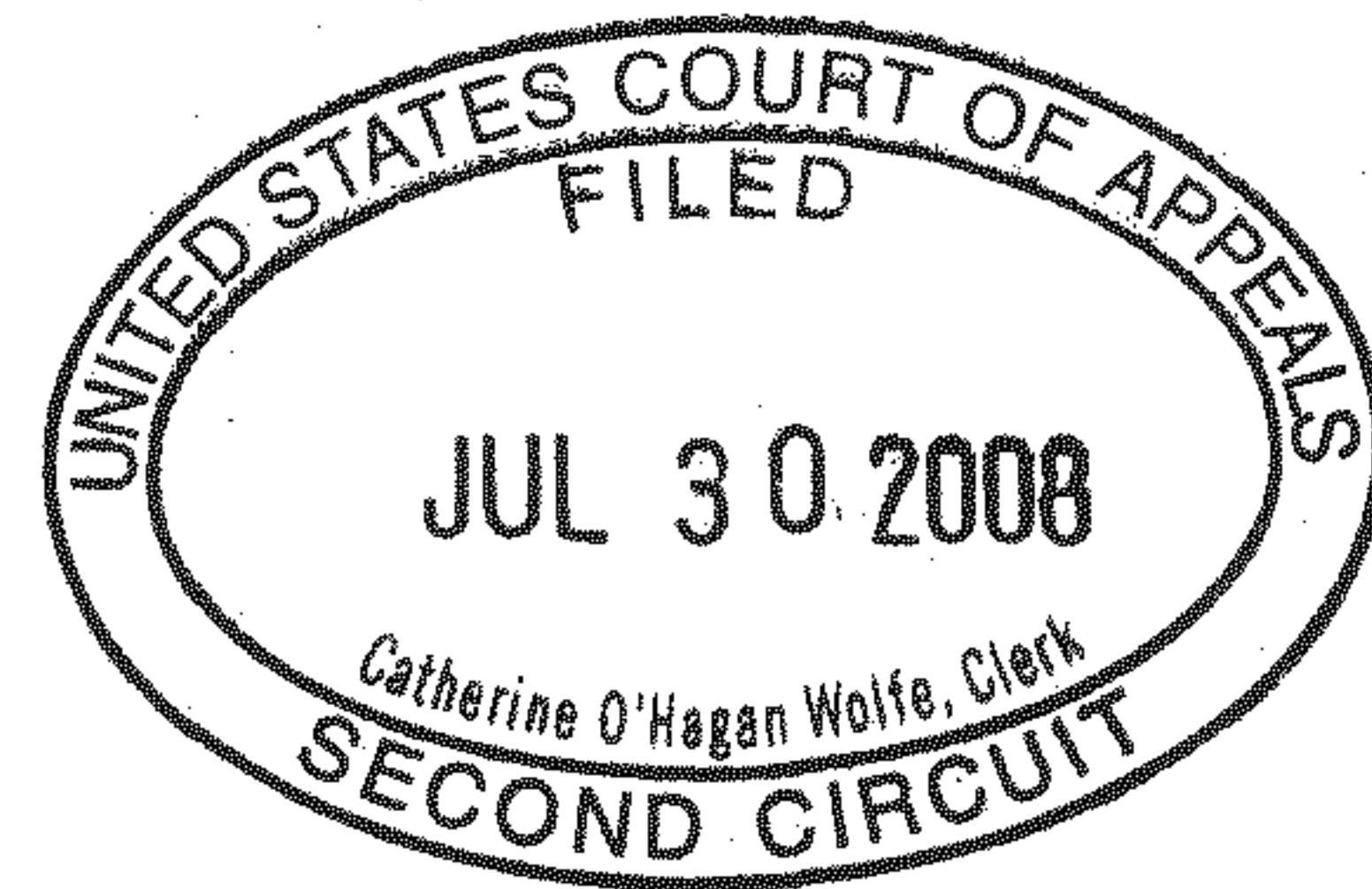
SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV](http://www.ca2.uscourts.gov)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 30th day of July, two thousand and eight.

PRESENT:

HON. GUIDO CALABRESI,
HON. CHESTER J. STRAUB,
HON. BARRINGTON D. PARKER,
Circuit Judges.



LEO McCOY, by parent and guardian ESTHER McCOY,
WILLIAM McCOY, by parent and guardian ESTHER McCOY,

Plaintiffs-Appellants,

ESTHER McCOY,

Plaintiff,

-v.-

No. 07-3403-cv

MICHAEL BELMONT, Supt., Southbury Training School, I/O, JEAN GINO, M.D., Med. Director, Southbury Training School, I/O, BRIAN LENSINK, Comm. Ct Dept of Mental Retardation, OFELIA TEE KING, M.D., PHILADELPO GUEVARRA, M.D., PAUL BRUCH,

*Defendants-Appellees.**

Issued as Mandate:

SEP - 4 2008

*We direct the Clerk of the Court to amend the official caption as noted.

1 For Plaintiffs-Appellants: JENNIFER L. ZITO, Law Offices of Jennifer L. Zito,
2 Meriden, Conn.

3
4 For Defendants-Appellees: THOMAS B. YORK, The York Legal Group, LLC,
5 Harrisburg, Pa.
6

7
8
9 **AFTER ARGUMENT AND UPON DUE CONSIDERATION** of the appeal from the United
10 States District Court for the District of Connecticut (Burns, *J.*) **IT IS HEREBY ORDERED,**
11 **ADJUDGED, AND DECREED** that the ruling of the district court is **AFFIRMED.**
12
13
14

15 Plaintiffs-Appellants, two disabled adults represented by their mother, appeal a ruling of
16 the United States District Court for the District of Connecticut (Burns, *J.*) modifying the parties'
17 consent decree and authorizing Defendants-Appellees to appoint a new independent advocate for
18 Appellants. On appeal, Appellants assert that that the District Court (1) used the wrong standard
19 to determine whether the modifications were proper, (2) erred in finding under the standard it
20 used that the modifications were warranted, and (3) lacked subject matter jurisdiction to
21 authorize the Appellees to remove the advocate. We assume the parties' familiarity with the
22 facts and procedural history of the case.

23 We conclude that the District Court did not err on any of the grounds Appellants raise.
24 The consent decree provides that the District Court "shall retain jurisdiction over this dispute to
25 oversee implementation of this Consent Decree, to enforce its provisions and to enter such other
26 and further orders as the court deems necessary." Given the plain language of the consent decree,
27 the District Court was authorized to grant the Appellees' motion to appoint a new advocate. We
28 need not decide which standard is appropriate for modifying consent decrees under the
29 circumstances of this case because the uncontested facts established by the District Court indicate
30 that the modifications would have been appropriate under any of the standards suggested by the
31 parties.

1
2
3
4
5
6
7
8

We have considered all of Appellants' claims, and we find them to be without merit.

Accordingly, the ruling of the District Court is AFFIRMED.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of the Court

By: Lucille Carr

A TRUE COPY
Catherine O'Hagan Wolfe, Clerk
by M. Polak
DEPUTY CLERK