

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA

v.

THE STATE OF GEORGIA, et. al.,
Defendants.

CIVIL ACTION
NO. 1:09-CV-119-CAP

O R D E R

The purpose of this order is to summarize the rulings made by the court at the September 23, 2010 status conference as well as address pending discovery issues.

I. Pending Motions

A. Parties' Settlement Agreement [Doc. No. 2] and Motion to Amend [Doc. No. 53]

On the same day this lawsuit was filed, the parties submitted their executed settlement agreement [Doc. No. 2] to the court for approval. The court temporarily adopted the agreement as the order of the court pending final approval [Doc. No. 9]. Because there is no reason to withhold final approval, the court HEREBY ADOPTS the settlement agreement as the order of this court. The court finds that the scope of the settlement agreement entered into between the parties [Doc. No. 2] does not include the Olmstead issues the plaintiff seeks to raise in the proposed amended complaint.

Moreover, these claims have been raised in a later-filed case involving the same parties. See United States v. State of Georgia, Civil Action No. 1:10-CV-0249-CAP (N.D. Ga. Jan. 28, 2010) (hereinafter "2010 Case"). Through the 2010 Case, the plaintiff may pursue the claims it seeks to add by amendment to this case. Therefore, the motion to amend [Doc. No. 53] is DENIED. As a result, the defendant's motion to dismiss [Doc. No. 81], which the State filed "in an abundance of caution" in the event the proposed amended complaint is found to be properly filed, is now moot, and it is therefore DISMISSED.

B. Motion to Consolidate with the 2010 Case [Doc. No. 54]

The plaintiff has moved to consolidate the instant case with the 2010 Case. Pursuant to Rule 42(a), whether to consolidate cases is within the discretion of the court. Under the circumstances of this case and the 2010 Case, the court finds that in order to avoid confusion and in the interests of judicial economy and efficiency, the two cases should be maintained as separate and distinct civil actions. Accordingly, the motion to consolidate [Doc. No. 54] is DENIED. This ruling does not, however, preclude the parties from utilizing the same discovery in each civil action. Additionally, the evidentiary hearing scheduled for November 8, 2010, will encompass issues from both cases.

C. Enforcement of the Settlement Agreement

The defendant has moved to enforce the settlement agreement [Doc. No. 62]. To the extent this motion seeks the court's final approval of the agreement, the motion is GRANTED. Furthermore, the court recognizes that the plaintiff contends the State is not in substantial compliance with the agreement, and the parties will be heard on these issues at the November 8, 2010 hearing. To the extent that the motion to enforce seeks a ruling that the settlement agreement encompasses Olmstead compliance and thus provides the State with an additional four years to be in compliance with Olmstead, the motion is DENIED. As set forth above, the settlement agreement does not extend to Olmstead issues. Additionally, there is nothing within the settlement agreement that precludes the filing and litigation of the 2010 Case.

D. Immediate Relief Sought by the Plaintiff [Doc. No. 55]

The plaintiff has filed a motion for preliminary injunction [Doc. No. 55] in the instant case that includes allegations of non-compliance with the settlement agreement as well as Olmstead issues. In the motion, the plaintiff notes that if this court determines that the settlement agreement is still in effect, the United States seeks to file the claims raised in this motion as a motion for immediate relief in the 2010 Case [Doc. No. 55 at 4].

Because the court has determined that the settlement agreement is in effect, the instant motion should be filed in the 2010 case as a motion for immediate relief. Therefore, the clerk is DIRECTED to file a copy of the motion for preliminary injunction and all attachments and exhibits thereto [Doc. No. 55] in the 2010 Case as a pending motion for immediate relief. Additionally, the clerk is DIRECTED to file a copy of the State's response to the motion for preliminary injunction and all attachments and exhibits thereto [Doc. No. 71] as the responsive filing to the motion for immediate relief in the 2010 Case.

II. Discovery Issues

A. Schedule

With respect to the updated joint preliminary report and discovery plan [Doc. No. 137], the proposed deadlines are adopted with the following exceptions:

1. trial briefs on the issues to be presented at the hearing shall be submitted no later than October 18, 2010 with responses due no later than October 28, 2010. At the conclusion of the hearings, the court will determine whether there will be a need for supplemental briefings by the parties.
2. by October 25, 2010, the parties shall exchange lists of any exhibits and/or discovery material as to which they do not stipulate authenticity.
3. all motions objecting to witnesses, exhibits, discovery material, or expert testimony to be introduced

at the hearing, as well as other motions in limine shall be filed by October 29, 2010. Responses to the filings (if desired) shall be filed by November 3, 2010.

4. The parties shall jointly file a proposed schedule for Phase Two of discovery within 14 days of the date the court issues a ruling regarding the issues presented at the November 8, 2010 hearing.

B. Protective Order

The proposed consent protective order [Doc. No. 131] is adopted with the exception of paragraph 7. That paragraph is replaced as follows:

As a general matter, this court will seal only those items enumerated in the court's Standing Order 04-02 regarding sensitive information and public access to electronic case files. If a party has very good cause to request the sealing of information beyond those items covered by Standing Order 04-02, the party shall first present to chambers a motion to file under seal. The party shall indicate by entry of a "notice" on the CM/ECF docket that a motion to seal has been presented to the chambers. Attached to the motion should be the material desired to be sealed. The court will review the material in camera and make a decision whether to grant or deny the motion to seal. If the court determines that the motion is to be granted, the court will forward the signed motion and accompanying materials to the Clerk of the Court for entry of the motion on CM/ECF docket and appropriate filing of the sealed materials. If the court determines that the motion is to be denied, the court will contact the filing party which may then retrieve the motion and materials.

C. Access to Discovery by the Amici Curiae

Finally, the court finds insufficient need on the part of the amici curiae to have access to the limited amount of confidential

documents reviewed by the parties' experts and other witnesses. Therefore, the motion for order directing the parties to provide copies of discovery to counsel for the amici curiae [Doc. No. 136] is DENIED. There is no prohibition on the plaintiff sharing discovery responses that are not confidential as defined by the protective order [Doc. No. 131].

III. Conclusion

- (1) the motion to amend complaint [Doc. No. 53] is DENIED;
- (2) the motion to consolidate cases [Doc. No. 54] is DENIED;
- (3) the motion for enforcement of the settlement agreement [Doc. No. 62] is GRANTED in part and DENIED in part;
- (4) the motion to dismiss [Doc. No. 81] is DISMISSED as moot;
- (5) the motion for order directing the parties to provide counsel for the amici curiae with copies of discovery [Doc. No. 136] is DENIED;
- (6) the proposed updated joint preliminary report and discovery plan [Doc. No. 137] is adopted with the exceptions noted in Paragraph II(A) above;
- (7) the proposed protective order [Doc. No. 131] is adopted with the exception noted in Paragraph II(B) above;

(8) the Clerk is DIRECTED to file the motion for immediate relief and the response thereto in the 2010 Case as explained in Paragraph I(D) above.

SO ORDERED, this 24th day of September, 2010.

/s/ Charles A. Pannell, Jr.
CHARLES A. PANNELL JR.
United States District Judge