

# Overview of Kenny A. v. Perdue

## Who are the parties in the case?

- Nine named plaintiff children represent a class that is defined as “all children who have been, are, or will be alleged or adjudicated deprived who (1) are or will be in the custody of any of the State Defendants; and (2) have or will have an open case in Fulton County DFCS or DeKalb County DFCS.”
- Some of the named plaintiffs also represent a subclass defined as “all children in the Class who are African-American and who have had, or are subject to the risk of having, their adoption delayed or denied on the basis of their race or color.”
- Defendants are Sonny Perdue, Governor of Georgia; B.J. Walker, Commissioner of the Georgia Department of Human Resources; Steve Love, the Acting Director of the Georgia Division of Family and Children Services; Beverly Jones, Director of Fulton County DFCS; Walker Solomon II, Director of DeKalb County DFCS; Fulton County; and DeKalb County.

## Who is representing the parties?

- Plaintiffs are represented by Children’s Rights, Inc., located in New York and Bondurant, Mixson & Elmore, LLP, located in Atlanta.
- Defendant counties are represented by their respective county attorneys; other defendants are represented by attorneys in the Office of State Attorney General and by Special Assistant Attorneys General hired by the state including Troutman Sanders, LLP, located in Atlanta and Davis & Davis, located in Decatur.

## Who is the judge in the case?

- The Honorable Marvin H. Shoob, U.S. District Senior Judge, Northern District of Georgia.

## What are the causes of action in the lawsuit?

- Plaintiffs assert fifteen causes of action under federal and state law.
- The federal law claims are brought pursuant to 42 U.S.C. § 1983 for alleged violations of plaintiffs' federal constitutional rights to substantive and procedural due process under the Fourteenth Amendment (Counts IV and XVII) and to liberty, privacy, and association under the First, Ninth, and Fourteenth Amendments (Count V); and for alleged violations of plaintiffs' federal statutory rights under the Adoption Assistance and Child Welfare Act of 1980, as amended by the Adoption and Safe Families Act of 1997 (Count VIII); the Multiethnic Placement Act of 1994, as amended by the Inter-ethnic Adoption Provisions of 1996 (Count XV); and the Early and Periodic Screening, Diagnosis, and Treatment Program of the Medicaid Act (Count XVI).
- The state law claims allege violations of plaintiffs' rights to substantive due process and equal protection under the Georgia Constitution (Counts III and XIV); violations of O.C.G.A. §§ 49-5-12, 15-11-58, 15-11-13, and 20-2-690.1 (Counts VI, VII, IX, and X); nuisance (Count XI); breach of contract(Count XII); and inadequate and ineffective legal representation (Count XIII).

### **What are the factual allegations in the lawsuit?**

Plaintiffs allege the following regarding the foster care systems in Fulton and DeKalb Counties (this list provides an example of the type of allegations and is not inclusive):

- Excessive numbers of cases assigned to inadequately trained and poorly supervised caseworkers
- Insufficient number of foster homes properly screened to ensure the plaintiff children's safety
- Failure to identify adult relatives who could care for the plaintiff children as an alternative to strangers or impersonal institutions
- Failure to provide relevant information and support services to foster parents in order to prevent foster placements from being disrupted
- Failure to develop administrative controls such as an information management system that ensures plaintiff children are expeditiously placed in a foster home matched to meet the children's specific needs
- Failure to provide timely and appropriate permanency planning, including failure to provide services that would enable plaintiffs to achieve their permanency planning goals
- Delays or denials of permanent placements for African-American children because of failure to place such children in permanent homes with parents who are not African-American
- Placement of plaintiffs in dangerous, unsanitary, inappropriate shelters and other placements
- failure to provide appropriate and necessary mental health, medical, and education services to children in their custody
- Separation of teenage mothers in foster care from their own children and separation of siblings in foster care from each other without providing visitation
- Failure to facilitate plaintiffs' prompt reunification with their families whenever safe and appropriate
- Failure to provide adequate, appropriate and meaningful legal representation for plaintiffs

### **What relief is being sought?**

- The suit seeks declaratory and injunctive relief to stop Defendants' ongoing violations of law and to ensure that Defendants provide proper care, protection, treatment and services to children in foster care as required by law.
- When adequate facts have been ascertained, Plaintiff's will seek a particularized order of permanent injunctive relief that will include professionally accepted standards that Defendants must meet.
- Reasonable costs and expenses for the Plaintiffs, including attorneys' fees

### **When and where was this lawsuit filed?**

- The case was originally filed on June 6, 2002 in the Superior Court of Fulton County. The case was later removed by Defendants to the United States District Court in the Northern District of Georgia.

**Why was this lawsuit filed?**

- Plaintiffs allege that Defendants have been operating an illegal and dangerous foster care system for years, that Defendants have known about the pervasive and systemic problems for years, and that despite repeated identification of the problems and recommendations for improvements, Defendants have failed to take actions to ensure that children in foster care are protected and cared for as required by law.

**What is the current status of the case (as of May 23, 2005)?**

- The case was set for trial on February 14, 2005 but the trial has been postponed due to the court ordering the parties into mediation.
- The parties are in court-ordered mediation/settlement discussions with the Honorable Dorothy Beasley, retired Court of Appeals Judge for the State of Georgia, serving as mediator.
- Some of the allegations in the original complaint were specific to the operation of the county emergency shelters. The Fulton County shelter was closed on December 27, 2002, the DeKalb County shelter was closed on February 14, 2003, and the new DeKalb Children's Center has since opened. Therefore, plaintiffs' claims relating to the emergency shelters are now moot.

**Is this litigation unique?**

- This lawsuit is not unique. Section 1983 class action civil rights cases are one of the ways in which the legal rights of marginalized and disenfranchised individuals and groups can be protected. For example, the U.S. Department of Justice Civil Rights Division sued the state of Georgia in 1997 under the Civil Rights of Institutionalized Persons Act because of inappropriate and illegal conditions in the juvenile justice system.
- Many states and municipalities have been engaged in systemic reform litigation. The National Center for Youth Law maintains a foster care litigation docket available at <http://www.youthlaw.org/fcrlidocket2000.pdf>.
- States and localities that have been sued regarding the operations of their child welfare systems include Alabama, Arizona, Arkansas, Florida, Illinois, Mississippi, New Jersey, New Mexico, New York City, Pennsylvania, Utah, Washington D.C. (this list is representative and not exhaustive).

**What are the possible outcomes of the case?**

- If the parties do not settle, the case will go to trial.
- Some of the allegations are only against the state defendants and some are only against the county defendants so it is possible that either the state or one or both counties could settle and the remaining parties could go to trial.
- If a settlement agreement is reached by the parties' representatives, it must be approved by the judge and by the members of the plaintiff class. The judge is likely to accept public comments on the settlement before it is given force of law.
- Oftentimes, the implementation of the settlement reached in a class action civil rights case is managed by a court-appointed monitor or an oversight committee charged with ensuring that all parties meet their obligations under the settlement.

### **Why is the potential impact of this lawsuit?**

- If the allegations in the suit are found to be true and the plaintiffs prevail, the state and counties will be forced to comply with existing state and federal law and will need to provide the resources necessary to comply with the law.
- Because the class is limited to children in Fulton and DeKalb Counties, it is unclear what impact a consent decree or trial order would have on children in the rest of the state. However, it is unlikely that children in the custody of the state would receive extremely differential treatment based on the county in which they were brought into foster care.
- The February 7, 2005 order dismissing Defendant counties' motion for summary judgment provides some indication of the potential impact of a judgment or settlement agreement that would occur if the plaintiffs prevail. In that order, Judge Shoob found that children in all deprivation proceedings in Georgia have a statutory and state constitutional right to effective assistance of counsel, a statutory right to a guardian ad litem, and that they are parties to these cases. In the order, Judge Shoob discussed some minimum tasks an attorney must perform to provide effective assistance of counsel and discussed the issue of caseload limits for attorneys representing children. This is the first opinion ever from a federal judge finding that children have a statutory and state constitutional right *to counsel* in child abuse and neglect proceedings and the first time a federal judge has addressed the issue of *effective* counsel in this context. Many national child advocacy organizations are watching this case closely because of the potential impact across the country on the role of children's attorneys.

In the order Judge Shoob stated that children have fundamental liberty interests in their safety, health, and well-being, and that they have an interest in maintaining the integrity of the family unit and in having a relationship with their biological parents. It is because these interests are at stake in deprivation proceedings that children have a right to counsel to receive the due process necessary to protect these interests. This is arguably the most expansive judicial interpretation of a child's liberty interests to date.

- The actual impact of the lawsuit depends on what is included in the final court order and what enforcement mechanisms are put into place. Litigation is just the first part of class-action reform. Implementation of the agreement and monitoring of the parties' compliance with the court order is an equally important part of the process.

## Sources of information:

### [Kenny A. v. Perdue](#)

CIVIL ACTION 1:02-cv-1686-MHS

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF  
GEORGIA, ATLANTA DIVISION

356 F. Supp. 2d 1353; 2005 U.S. Dist. LEXIS 1891

February 7, 2005, Decided, February 8, 2005, Filed

- Denial of County Defendants' Motion for Summary Judgment

### [Kenny A. v. Perdue](#)

CIVIL ACTION 1:02-cv-1686-MHS

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF  
GEORGIA, ATLANTA DIVISION

2004 U.S. Dist. LEXIS 27025, December 11, 2004, Decided, December 13, 2004, Filed

- Denial of State Defendants' Motion for Summary Judgment

### [Kenny A. v. Perdue](#)

CIVIL ACTION 1:02-cv-1686-MHS

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF  
GEORGIA, ATLANTA DIVISION

218 F.R.D. 277; 2003 U.S. Dist. LEXIS 21205

August 18, 2003, Decided, August 18, 2003, Filed; August 19, 2003, Entered on Docket

- Granting of Defendants' Motion to Dismiss claims with regard to emergency shelters in DeKalb and Fulton Counties
- Denial of Defendants' Motion to Dismiss other claims
- Granting Certification of Class
- Granting Plaintiffs' Motion to Amend Complaint to add claim re: insufficient foster care maintenance payments

### [Kenny A. v. Perdue](#)

CIVIL ACTION 1:02-cv-1686-MHS

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF  
GEORGIA, ATLANTA DIVISION

First Amended Complaint