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SUPERIOR COURT OF WASHINGTON FOR WHATCOM COUNTY

JESSICA BRAAM, a minor child, by and through her guardians, Dale and Vickie Braam; et al.,

Plaintiffs,

v.

STATE OF WASHINGTON, et al.,

Defendants.

No. 98-2-01570-1

DEFENDANTS' OPPOSITION TO CHILDREN'S ALLIANCE'S MOTION TO INTERVENE

L FACTS

Plaintiffs filed this lawsuit in September 1998, two years and @xe months ago. The parties have completed considerable discovery and the Court has heard and ruled upc;~n numerous pre-trial motions. Since its inception, this lawsuit has been in the public's eye, receiving regular media attention. NOW, less than four months before trial is set to bl gin, the Children's Alliance ("the Alliance") se&~ 10 intervene, inserting new parties, both plaintiff and defendant, and new legal issues &I this lawsuit.

The Alliance is an advocacy organization comprised of roughly 150 member organizations. No members of the Alliance are foster children, or even children. Rather, the Alliance's members are organization such as the League of Women Voters of Washington and the Fremont Public Association.

In addition to adding the AILL~cx as a piainm, the Complaint in Intervention seeks to add Dennis Braddock as a defendar!:. Bradd.-,;k is not currently a party to this la\A suit

1 The Complaint in Intemention also raises new factual allegations and legal issues. For
 2 example, the Alliance's Complaint alleges that Defendsnts failed to provide adequate
 3 medical care to foster children-a claim against which Defendants have not defended

4 **IL ARGUMENT**

5 **A. The Alliance cannot intervene because it does not have standing to sue.**

6 An intervener **must** have standing to sue. Ynkuez v. Arizona, 939 F.2d 727,731
 7 (9th Cir. 1991)-1 A litigant does not have standing to sue unless he or she has a personal
 8 stake in the outcome of the case and would benefit fkom the relief requested. Erection Co.
 9 v. Deuarlment of Labor & Indus., 65 WIL App. @X,467,828 P.2d 657 (1992), *c&d*, 121
 10 Wn.2d 513 (1993). The Alliance does not have a personal stake in the **outcome** of this case,
 11 and would not benefit f?om the relief requested. The Alliance's Complaint in Intervention
 12 reveals this. The Alliance does not claim that Defendants owed any duty to it- It &es not
 13 claim that Defendants breached any duty to it. It does not claim that Defendants harmed **it**
 14 in any way. It does not claim that it has any rights at issue in this litigation. Rather, it
 15 alleges that that Defendants owe and keached duties to foster children, harmed foster
 16 children, and infringed upon the rights of foster children. However, de Alliance's
 17 membership is not comprised of foster children. The Alliance do& not have standing to
 18 bring the claims they have alleged.

19 The Alliance also does not have standing to bring these claims on behalf of foster
 20 children A litigant can raise ck.ns on behalf of another only if: (1) the plaintiff has
 21 suffered an injury-in-fact, (2) the plaintiff and the third party have a close relationship, and
 22 (3) the third party is somehow hindered f&m raising the claim on his or her own. Meams
 23 v- Scharback 103 Wn. App. 498,512,12 P.3d 1048 (2000). All three requirements must

24 - _ - _____
 25 ' h Washington's CR 24 mirrors FRCP 24, Washington courts follow fkderd court
 precedent. Kreicler v. Eikenbenv. 111 Wn.2d 828,,X32,766 P.2d 438 (1989).

1 be met before third party standing can be granted. The Alliance utterly fails to meet these
2 requirements. Most obviously, the Alliance can't show that the foster children are
3 hindered from raising their own claims, as this lawsuit which the Alliance seeks to join was,
4 in fact, brought by, for, and on behalf of foster children. Additionally, the Alliance has not
5 suffered any injury-in-fact.

6 **B. The Alliance fails to meet the requirements for permissive intervention under**
7 **CR 24(b) because Defendants would be prejudiced by its intervention at this**
8 **late stage of the proceedings. ii**

9 **1. The petition for intervention is untimely.**

10 Under CR 24(b), a potential party must make a "timely application" to intervene.
11 "Efficient management of litigation can be achieved only by timely application"
12 Chemical Bank v. Washington Public Power Supply System, 102 Wn.2d 874,888,691
13 P.2d 524 (1984), *overruled in part* on *other* grounds, Scott Feker Co. v. Weeks, 114 Wn2d
14 109,786 P.2d 265 (1990). See also Kreidler, 111 Wn2d at 832 (stating that timeliness is a
15 "critical element" of CR 24). In fact, if the petitioner knew the case was
16 pending, yet failed to request intervention before a ruling on the merits, denial of
17 intervention is appropriate absent extraordinary circumstances. Kreidler, 111 Wn.2d at
18 833.

19 The Alliance has not timely applied for intervention. This lawsuit has been pending
20 for two years and nine months. The three-month trial is less than four months away. The
21 parties have completed voluminous discovery-nineteen (19) witnesses have been deposed,
22 twenty (20) sets of written discovery have been propounded and answered, and over
23 eighteen (18) filing buckets (redwells) full of **documents** have been produced. The Court
24 has ruled upon significant motions, made decisions on the merits, and narrowed the issues
25 to be tried. This lawsuit has received significant media attention, and the Alliance cannot

1 plausibly contend that it was unaware of the suit until this late date. In a lawsuit of this
2 magnitude, an application for intervention less than four months prior to trial is not timely.

3 ***2. Defendants would be unduly prejudiced by intervention.***

4 CR 24(b) also requires the court to “consider whether the intervention will unduly
5 delay or prejudice the adjudication of the rights of the original parties.” Delay and
6 prejudice will undoubtedly result if the Alliance is permitted to intervene. The Alliance
7 asserts that no additional discovery will be required because it will be content with the
8 discovery conducted by current Plaintiffs. This argument overlooks the fact that
9 Defendants will seek, and be entitled to, discovery from the Alliance if it is permitted to
10 intervene. The insertion of a new defendant, Dennis Braddock, also inserts a new set of
11 legal and factual issues. The addition of new claims, such as the claim that Plaintiff
12 received inadequate medical attention, also inherently adds new questions of law and fact.
13 Additionally, if the Alliance’s counsel is allowed to participate in the trial, the trial—which
14 is already scheduled for three months—could increase substantially in length by the
15 Alliance calling its own witnesses and cross-examining other witnesses.

16 ***3. The Alliance’s interest, if existent, is outweighed by the prejudice to***
17 ***Defendants.***

18 Although no balancing is required, this prejudice surely outweighs any interest the
19 Alliance may have in this lawsuit. As established above, the Alliance makes no claims of its
20 own, but solely states claims on behalf of foster children. This lawsuit has already been
21 certified as a class action, and the National Center for Youth Law is already involved. The
22 foster children’s interests are fully and adequately represented by the existing parties. The
23 Alliance attempts to distinguish its interest by stating that it is interested only in injunctive
24 relief. However, the class was certified solely on claims for injunctive relief. The Alliance
25

1 has no claims or interest of its own, and adds nothing to the interests of the foster children
 2 If the Alliance believes it has something meaningful to contribute, it may attempt to do so
 3 as amicus curiae. The Alliance may also act as a legal **consultant as Evergreen Legal**
 4 **Services** has done throughout the proceedings.
 5

6 In fact, to the extent that some of the Alliance's members are themselves
 7 organizations that place foster children perhaps more than three times, their interests
 8 conflict with the foster children's, and intervention is inappropriate. See In re G.C.B., 73
 9 Wn App. 708,719 n.10,870 P.2d 708 (1994) (Visiting agencies have equal status
 10 with the Department for purposes of custody and placement of dependent children") citig
 11 In re Ramouist, 52 Wn. App. 854, 859,765 P.2d 30 (1989). See also In re Coverdell, 39
 12 Wn App. 887,890-91,696 P.2d 1241(1984) (holding that foster parents could not
 13 intervene in dependency action where their legal rights conflicted with those of biological
 14 parents); In re J-H., 117 Wn2d 460,471-72,815 P.2d 1380 (1991) (upholding denial of
 15 foster parents' request for permissive intervention in dependency action).
 16

17 **C. At the very least, the Court should withhold ruling on intervention so that**
 18 **Defendants may conduct discovery to determine how long the Alliance waited**
 19 **to petition for intervention after knowing the lawsuit was pending, in**
 20 **accordance with Kreidler.**

21 As CR 24 and Washington caselaw establish, the timeliness of the petition to
 22 intervene is *crucial*. Kreidler cautions courts against permissive intervention when the
 23 petitioning intervener was aware the lawsuit was pending, yet waited to apply for
 24 intervention. With the media attention this lawsuit has received it seems highly likely that
 25 the Alliance, or at least some of its member organizations, has been aware of the pending

suit since its inception, Defendants should at kut be permitted to conduct discovery to show that the Alliance's failure to intervene sooner is not excusable.

m. CONCLUSION


For the foregoing reasons, Defmdants respectfully request that the Alliance's Motion to Intervene be denied.

RESPECTFULLY SUBMI'TED this 22 day of hne, 2001.

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