

Final Report to the Barbara McDowell & Gerald S. Hartman Foundation Children's Rights

Case Background

In March 2011, Children's Rights filed a class action in federal court seeking reform of the Texas child welfare system on behalf of approximately 12,000 abused or neglected children in long-term foster care statewide. The lawsuit, known as *M.D. v. Perry*, charges Texas's Department of Family and Protective Services (DFPS) with violating the constitutional rights of children who generally have been in foster care for at least a year, by routinely failing to find them safe, appropriate, and permanent new families—and therefore failing to meet its legal obligation to ensure the safety, permanency, and well-being of all children in its custody.

The core of the case concerns harms and risks of harm suffered by children in the “permanent managing conservatorship” of Texas, or “PMC” (children who have been in foster care for at least 12-18 months). For years, the Texas child welfare system has effectively written off these children, exposing them to poor oversight by an overburdened workforce, a grossly inadequate number of foster homes, frequent placement moves, inappropriate use of group facilities and institutions, the separation of siblings, the placement of children far from home and a lack of contact with parents even when the goal is reunification, and years in state custody with little hope of finding a permanent loving family. ✓

Progress Report

As noted in Children's Rights' March 2015 progress report, in December 2014, trial was held in federal court in Corpus Christi, where Children's Rights presented evidence of dangerous structural failings and their impact on the 12,000 children in PMC status in the custody of the state's child welfare system. During the two-week-long trial, with our local co-counsel, we presented expert witnesses, former foster youth, key employees and officials from the state's child welfare agency, front-line advocates and service providers, and other local stakeholders, who revealed the profound harm and risks of harm children are exposed to in the Texas system due to longstanding institutional failings.

The evidentiary portion of the trial concluded in late December and, in early May, closing oral arguments were held before Judge Janis Graham Jack in Dallas. Although Judge Jack cautioned that she has not made up her mind on all of our claims and proposed remedies, she expressed shock at some of the evidence she heard at trial. She pored over the 5,000 page record of one child-plaintiff for several days and wondered how workers with 20-plus children on their caseload could possibly keep up and do all the things necessary to keep children safe. She recalled details of the testimony by former foster children and called their stories of physical and sexual abuse “not forgettable.” Children's Rights subsequently submitted a supplemental brief to expand on some issues raised during the oral argument, including the Court's authority to grant remedies that can resolve the constitutional violations proven at trial. We expect a decision in late summer or early fall.

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