

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

BELINDA DUPUY, et al.,)

)
Plaintiffs,)

)
v.) No. 97 C 4199

)
BRYAN SAMUELS, etc.) Judge Pallmeyer

)
Defendant.)

**NOTICE TO PLAINTIFF CLASS MEMBERS CONCERNING THE PROPOSED
DISMISSAL OF CERTAIN CLAIMS IN THE CASE, WITHOUT PREJUDICE**

I. Introduction

The federal court case with the caption above (Dupuy) was filed in June 1997. In general, there are two groups of people who make up the class of persons who are plaintiffs in the suit (.plaintiff class.), which is against the Director of the Illinois Department of Children and Family Services (.defendant. or the .DCFS Director.). First, the plaintiff class includes people who have been or will be indicated as perpetrators of child abuse or neglect, at any time on or after June 17, 1995. Second, it also includes people who have been or will be subject to certain so-called .safety plans. that DCFS uses during its investigations of child abuse and neglect. (Section VI below explains, among other things, how to review or secure a copy of the complete class definition). The presiding judge in the case is the Hon. Rebecca R. Pallmeyer, who is referred to in this notice as .Judge Pallmeyer. or .the court..

This notice: (a) summarizes briefly the history of the lawsuit, see Â§II below; (b) identifies the attorneys for the plaintiff class, including their names, addresses, and phone numbers, see Â§III below; (c) specifically describes the claims the plaintiffs are asking to have the court voluntarily dismiss without prejudice, see Â§IV below; (d) explains why plaintiffs. attorneys believe that the dismissal of these claims without prejudice to any class member is fair, reasonable, and adequate, see Â§V below; (e) explains why this notice is being published on the World Wide Web see Â§VI below; (f) explains how class members can object to the proposed dismissal of the referenced claims if they wish to do so, see Â§VII below; and (g) explains how to get more information about the case, other than by reviewing this notice, see Â§VI, VIII below.

Plaintiff class members in Dupuy are encouraged to read this notice carefully.

II. This Lawsuit

This case is about whether DCFS provides .due process. under the Fourteenth Amendment to the United States Constitution for people who are accused of abuse or neglect of children. The plaintiffs have asked the court to make a number of orders directing changes in DCFS procedures, and DCFS has opposed these requests. There have been two lengthy trials in which the court has made preliminary rulings in the case. These rulings have required DCFS to make changes in its investigation procedures and its procedures for permitting individuals to contest actions DCFS takes during or as the result of investigations. Plaintiffs did not seek any money damages from defendant, but only so-called declaratory and injunctive relief. In other words, the plaintiffs have asked for orders finding that DCFS violated their constitutional rights and orders requiring defendant to make policy and practice changes concerning investigations and challenges to DCFS decisions.

Judge Pallmeyer.s principal preliminary rulings in this case can be found at Dupuy v. McDonald, 141 F. Supp. 2d 1090 (N.D. Ill. 2001) (Dupuy I, concerning people who work in the child care field, such as social workers) and Dupuy v. Samuels, 2005 WL 588997 (N.D. Ill. 2005) (Dupuy II, concerning safety plans). The federal court of appeals addressed some of the relief issues in Dupuy I in Dupuy v. Samuels, 397 F. 3d 393 (7th Cir. 2005)

The first set of preliminary rulings the court made (the Dupuy I rulings) concern people who are child care employees and against whom DCFS has issued indicated reports, which are findings that the employee is guilty of child abuse or neglect. The court ruled, among other things, that DCFS.s indicated report decision-making policies, which permitted DCFS to indicate plaintiffs for abuse or neglect, without considering all of the evidence in their cases, both for and against them, were unconstitutional. In these rulings, the court also ruled that DCFS.s notice and hearing policies for contesting indicated reports were unconstitutional; it ordered DCFS to use different notices and afford timely hearings. However, in the same set of preliminary rulings, the court also ruled for defendant as to several challenged .special policies..

The second set of preliminary rulings the court made (Dupuy II rulings) concern class members who have been, are, or will be subject to certain safety plans that DCFS imposes. The Dupuy II plaintiffs claimed that DCFS imposed safety plans through unlawful threats, without evidence of wrongdoing, and failed to afford them an opportunity to contest safety plans, all in violation of their constitutional rights. After a trial in 2002-2003, Judge Pallmeyer entered a ruling that was in plaintiffs. favor in part, finding that certain DCFS policies and practices violated plaintiffs. constitutional rights when safety plans last more than several days. This is the decision reported at Dupuy v. Samuels, 2005 WL 588997 (N.D. Ill. 2005). Subsequently, the court entered an order requiring a new process, called the Safety Plan Team Assessment, after a safety plan is in place for ten days. Preliminary Injunction Order (December 7, 2005). Because the plaintiffs believe that the December 7, 2005 Order does not afford them sufficient due process, they have appealed that order and their appeal (Dupuy II appeal.) is pending. The

plaintiffs are asking the court to make final rulings in Dupuy I and Dupuy II and to order changes in the notices issued to non-child care employees who are indicated for abuse or neglect. A final trial date for these requested rulings is now set for July 24, 2006.

At the same time as the parties are preparing for a final trial, plaintiffs have asked the court voluntarily to dismiss certain of their claims without prejudice. They made this request under Rule 41(a)(2) of the Federal Rules of Civil Procedure (.Rule 41(a)(2) Motion.). They call the claims they seek voluntarily to dismiss the .Rule 41(a)(2) Claims..

On January 23, 2006, the court granted the Rule 41(a)(2) Motion, .subject to notice to class members to the extent appropriate and necessary.. Later, the court set a .fairness hearing. on the dismissal of the Rule 41(a)(2) Claims; the date of the fairness hearing, as noted below, is June 23, 2006 at 10 a.m.

III. The Attorneys Representing The Plaintiff Class

The court has approved several attorneys as representing the plaintiff class at this time. These attorneys include:

Diane L. Redleaf
THE REDLEAF LAW FIRM
1325 S. Wabash Ave., Suite 100
Chicago, IL 60605
312/356-3201

Jeffrey B. Gilbert
JOHNSON, JONES, SNELLING,
GILBERT & DAVIS, P.C.
36 S. Wabash Ave., Suite 1310
Chicago, IL 60603
312/578-8100

Robert E. Lehrer
LAW OFFICES, ROBERT E. LEHRER
36 S. Wabash Ave, Suite 1310
Chicago, IL 60603

Andrew L. Mathew
SACHNOFF & WEAVER LTD.
10 S. Wacker Dr., Suite 4000
Chicago, IL 60606

No class member has ever been charged for the services of these attorneys for their work on behalf of the class in this litigation since the case was filed in June 1997. Nor do plaintiffs' counsel expect that any class member be charged in the future for such work.

IV. The Claims That Plaintiffs Are Asking Be Dismissed

The claims that plaintiffs are asking be dismissed, without prejudice or other conditions, are as follows:

(a) The claims of Dupuy class members who are not child care employees (i.e., who are not Dupuy I class members) and who are indicated for child abuse or neglect to have the same enforceable rights as child care employees to have DCFS employ a heightened decision making standard for indicating reports against them, adequate notice of those indicated reports, and an adequate, including timely, opportunity to contest the indicated reports;

(b) The right of Dupuy class members who are children, including children who are state wards, and who are named as indicated perpetrators to have appointed counsel in appealing indicated reports against them;

(c) The right of Dupuy I class members who seek administrators' conferences not to have DCFS amend the indicated finding against them without a new notice of the amended finding and an opportunity to be heard (before an administrator) respecting that finding;

(d) The right of Dupuy class members to certain procedures at or directly in connection with the conduct of administrative appeal hearings themselves, including: the right to secure subpoenas enforceable by the administrative law judge in indicated report proceedings (without having to institute a separate action for enforcement of a subpoena); the right to adequate notice that DCFS has decided that an administrative appeal from an indicated report is untimely or has been waived, and an adequate opportunity to contest that decision; the right of any Dupuy class member to proceed to administrative hearing despite a pending criminal, juvenile or other court case in which the same allegations as gave rise to an indicated report are being heard; the right of Dupuy class members to call children ages 13 and under either as witnesses in their defense or to subpoena them as adverse witnesses.

(e) The right of Dupuy class members who are parents or guardians not to submit their children to a Victim Sensitive Interviews (.VSI.) or physical examinations during investigations;

(f) The right of Dupuy class members to certain procedures and certain substantive standards governing DCFS's determination to indicate reports of child abuse and neglect, including: the right not to have the same persons who investigate reports of abuse and neglect also make the indicated determinations of abuse and neglect as to such reports; the right not to have DCFS indicate a report absent evidence showing that the alleged abuse and neglect on which the indicated report was based was one they allegedly committed by action or inaction that DCFS has defined in clear terms and in terms defining abuse and neglect as constituting more than mere negligence..

(g) The right of Dupuy class members to notice and an opportunity to be heard in connection with mandated reporter appeals, which are appeals that certain reporters of allegations of abuse and neglect can take from agency decisions favorable to alleged perpetrators of abuse or neglect.

(h) The right of Dupuy class members not to have protective plans to which they are subject in employment settings imposed against them, absent the provision of procedural due process rights comparable to those afforded the

Dupuy II class members as to safety plans;

(i) The right of Dupuy class members not to be subject to foster care holds. (or comparable adverse action, such as suspension of a foster care license, resulting in the removal and/or refusal to place foster children in the home), based on the issuance of an indicated report against the class member.

(j) The right of any Dupuy class member to prospective injunctive and reparative relief for injuries suffered prior to the effective date of the preliminary injunction orders in Dupuy I and Dupuy II or prior to the effective date of any permanent injunction entered as part of a final judgment in this case.

V. Why Plaintiffs. Attorneys Believe That The Dismissal Of The Rule 41(a)(2) Claims Is Fair, Adequate, And Reasonable

The federal court of appeals recently stated its expectation that the parties will cooperate fully with the district court to bring this litigation to a prompt end. Dupuy v. Samuels, 423 F. 3d 714, 725 (7th Cir. 2005). This case has been pending for almost nine years and has yet to reach a final judgment.

As plaintiffs asserted in their Rule 41(a)(2) Motion, dismissal of the Rule 41(a)(2) Claims is the only fair and practicable course that will achieve the court of appeals. stated expectation that, by the cooperation of the parties with the court, this litigation will be brought to a prompt end. This is principally because the litigation of the Rule 41(a)(2) Claims (which would be the result if the claims were not dismissed without prejudice) would be overwhelmingly likely to embroil the parties in protracted discovery (the legal process by which adverse parties find out information about each other's claims and defenses), and embroil the court in the resolution of many contentious disputes respecting discovery. This result is predictable in part because of the past history in Dupuy I and Dupuy II. The indirect result of any protracted discovery and discovery disputes would be a much delayed trial on the merits of all the other claims in the case, which, as noted, the district court has set for trial in July 2006. Plaintiffs. attorneys estimate such delay would likely be one to two years at least, meaning that the final provision of relief to plaintiff class members on the claims in the case that will be the subject of the trial set to commence in July 2006 (if they ultimately prevail as to such claims) would be delayed by a corresponding period. Such delay in the provision of final relief to plaintiff class members would be injurious to them, especially because the claims that will be the subject of the trial set to commence in July 2006 are all major ones, meaning that they seek relief for what plaintiffs. attorneys believe are constitutional violations that give rise to substantial and serious injury to class members.

In addition, while the plaintiffs believe all of the Rule 41(a)(2) Claims are meritorious, the court has given some preliminary rulings that cast doubt on whether plaintiffs would succeed as to some of these claims (including the claims described at Â§IV(e)(h), (i) and (j) above) should they proceed with them. The wisdom of proceeding on such claims is therefore doubtful, because the time and expense necessary to litigate them, would detract from the time and expense plaintiffs. attorneys could devote to other and major claims in the case.

In addition, as to one of the claims being dismissed (the one described at Â§IV(a) above), Illinois state court decisions may provide to some class members, in part, the relief that plaintiffs might secure if they litigated that claim, and prevailed upon it in this lawsuit.

Most importantly, the claims that plaintiffs have asked be dismissed and whose dismissal the court has already preliminary approved, if in fact ultimately dismissed by order of the court, would be dismissed without prejudice and without other conditions (such as, for example, the payment of costs to defendant). A without prejudice. dismissal means that any individual class member would not be adversely affected by the dismissal of any of the Rule 41(a)(2) claims in terms of his or her right to litigate the same claims against defendant if (s)he so chooses in a separate lawsuit. In other words, each class member would maintain his or her right to litigate the claims being dismissed if (s)he so chooses in a separate lawsuit. The right to litigate a claim in a separate lawsuit does not mean, of course, that this class member will necessarily prevail on the claim, but if (s)he does not prevail, it will not be because of the court.s dismissal of the claim in this suit. In this context, plaintiffs. attorneys believe that a principal reason why the dismissal of the Rule 41(a)(2) Claims is fair, adequate and reasonable is that individual class members, while they

will not prevail on these claims in this lawsuit, are not barred from winning them and may win them in a separate lawsuit. Of course, the right to litigate the dismissed claims in another lawsuit, like the right to litigate any claims in any lawsuit, is subject to statute of limitations rules. But the law is that, for so long as a case brought as a class is pending, the statute of limitations is tolled.--does not run--for persons included within the proposed definition of the class or, once the class is certified, for persons included within the class definition. The claims in this type of action are subject to a two-year statute of limitations. So, if a class member seeks to bring one of the claims that would be dismissed here, but that claim arose either after June 17, 1997 (the date this class action suit was filed), or, as to the claims described at Â§IV(e)(h) and (j), arose after June 17, 1999 (the date a motion to amend the class definition was filed), that person would still have two years from the date of the court's order dismissing that Rule 41(a)(2) claim in this case to bring that same claim against the defendant.

VI. This Notice And Its Publication

The court has ordered that this notice be published on the World Wide Web. The Web address at which the notice itself is published is www.dupuyclassnotice.com. (But this notice, if you are reading it in hard copy, is a duplicate of the notice that appears on the Web). The court made this order because the law requires that, before plaintiffs are permitted voluntarily to dismiss any claims in a class action suit, the court must: (a) give reasonable notice to class members of plaintiffs proposed voluntary dismissal of the claims in question; (b) afford plaintiff class members an opportunity to object to the dismissal; (c) conduct a fairness hearing respecting the dismissal of the claims to consider any objections to the dismissal that class members file; and (d) approve the dismissal of the claims as fair, reasonable, and adequate.

Class members are being advised of the publication of this notice on the Web by several means. DCFS's own website includes a short statement about the notice, stating the web address (www.dupuyclassnotice.com) at which the notice is being published. The court's web site includes a comparable short statement about the notice, and also sets forth the www.dupuyclassnotice.com web address. Plaintiffs' lead attorneys include a similar statement about the notice and a reference to the www.dupuyclassnotice.com web address on the web sites for their law offices and such a statement and reference also appears on the statewide legal services website, www.illinoislegalaid.org. Also, each of the attorneys for the class members, as listed in Â§III above, include, as part of the voice mail message on their phone systems, a reference to the notice and the www.dupuyclassnotice.com web address, as well as to a dedicated phone line class members or their attorneys may call (312/651-1801) to secure a hard copy of the notice or the complete class definition or to ask questions about the case.

This notice, publicized and published as described just above, is the reasonable notice to class members that the law requires be given. The court has approved the notice and the means of publicizing it. Among other things, the notice tells class members how to object to the proposed dismissal if they so desire, see Â§VII below.

VII. Objecting To The Dismissal Of The Rule 41(a)(2) Claims And Court Approval Of The Dismissal Of These Claims

1. When and where will the court decide whether finally to dismiss the Rule 41(a)(2) Claims? The court will hold a fairness hearing at 10 a.m. on June 23, 2006 in Room 2119 of the Dirksen Federal Building (the federal court house) at 219 S. Dearborn St., Chicago, IL 60604. At this hearing, Judge Pallmeyer will consider whether the proposed dismissal, without prejudice, of the Rule 41(a)(2) Claims, as described above, is fair, reasonable and adequate and whether to approve it. (By authorizing this notice to be published, Judge Pallmeyer has already preliminarily approved the proposed dismissal). If there are any objections from class members to the dismissal, Judge Pallmeyer will consider them. After the fairness hearing, the court will issue its ruling, though it is not known how long after the hearing such a ruling will come.

2. How to object to the dismissal. If you are a plaintiff class member, you can tell the court that you object to the dismissal of the Rule 41(a)(2) Claims, and the reasons for your objections. To object, you or your lawyer must send a letter to any one of the class counsel listed above in Â§III that includes the following: the name and number of the lawsuit (Dupuy v. Samuels, 97 C 4199 (N.D. Ill.)); a statement of each objection you have and a summary of the

basis for the objection; a description of any support for the objection(s) you wish to provide; a statement of whether or not you or your lawyer will appear at the fairness hearing to talk about your objections, and how long you need to present your objections; copies of any documents you or your lawyer will present at the fairness hearing.

Class members. objection letters and any other materials must be mailed and postmarked not later than June 16, 2006, which is a week before the fairness hearing. Any objections that plaintiffs. counsel receive will, promptly after their receipt of them, be submitted to the court and to defendant.s counsel.

3. Do class members and objectors have to come to the fairness hearing? No. Class counsel will answer any questions the court may have; those questions, if any, may be based on class members. objections, but may also be based on any factors the court deems relevant. However, whether or not you object, you may come to the hearing, but at your own expense. However, only plaintiff class members or their lawyers will be permitted to speak at the hearing, and then only if they have filed a timely written objection and stated in that objection that they want to be heard orally at the fairness hearing, as described in Â§VII.2 above.

VIII. Getting More Information

This notice only summarizes briefly the history of this litigation and plaintiffs. claims that will be the subject of the trial that is scheduled to commence in July 2006. But it describes with reasonable specificity the Rule 41(a)(2) Claims--i.e., the claims plaintiffs seek to dismiss, and the consequences of any dismissal. If any class member wishes to find out more about the history of the litigation, which is complex, and plaintiffs. claims (both those that remain for final resolution, and those that plaintiffs are asking to dismiss and will be the subject of the fairness hearing) and the complete class definition, then (s)he or his or her lawyer is free to examine the voluminous court file in the case, which, because of the pending Dupuy II appeal, is lodged principally in the United States Court of Appeals for the Seventh Circuit, Dirksen Building, 219 S. Dearborn St., 27th Floor, Chicago, IL 60604. The Clerk of the Court of Appeals, whose office is on the 27th Floor of the Dirksen Building, maintains the court file. Moreover, if, after reviewing the notice (either on the World Wide Web, or in hard copy) and/or having accessed the dedicated phone line described in Â§VI above, class members or their attorneys still have questions about the notice or the case, they may phone Diane L. Redleaf, one of plaintiffs. attorneys, whose phone number is listed in Â§III above. **However, neither class members nor their lawyers should contact the court directly about this case generally, about the Rule 41(a)(2) Claims, or about the fairness hearing.** Nor should such class members or their lawyers contact DCFS investigators or other employees, or employees doing work under contract for DCFS (usually referred to as .Purchase of Service., or POS agencies) with questions about this case or this notice, or expect DCFS or POS employees to offer information about this case or this notice.

Notice Approved By:

Dated: April 20, 2006

s/Rebecca R. Pallmeyer

Rebecca R. Pallmeyer
United States District Court Judge