

DOCKET NO. HHD-CV-09-5033392-S

GARY BLICK, M.D. and RONALD	:	SUPERIOR COURT
LEVINE, M.D.	:	
	:	J.D. OF HARTFORD
VS.	:	AT HARTFORD
	:	
OFFICE OF THE DIVISION OF CRIMINAL	:	
JUSTICE, et al.	:	FEBRUARY 25, 2010

**PLAINTIFFS' OBJECTION TO MOTION FOR PERMISSIVE INTERVENTION**

Pursuant to Practice Book § 9-18, the plaintiffs, Gary Blick, M.D., and Ronald M. Levine, M.D., hereby oppose the motion to for permissive intervention filed by the Connecticut Catholic Conference, Inc. ("CCC"), and Paul F. Kelly, M.D. This court should deny the intervenors' motion because their claim to represent an interest distinct from that of the named defendants is essentially identical to the claim rejected by the Supreme Court in *Kerrigan v. Commissioner of Public Health*, 279 Conn. 447 (2006).

The standard for permissive intervention under § 9-18 is well-settled:

A trial court exercising its discretion in determining whether to grant a motion for permissive intervention balances several factors including: the timeliness of the intervention, the proposed intervenor's interest in the controversy, the adequacy of representation of such interests by other parties, the delay in the proceedings or other prejudice to the existing parties the intervention may cause, and the necessity for or value of the intervention in resolving the controversy before the court. . . . A ruling on a motion for permissive intervention would be erroneous only in the rare case in which such factors weigh so heavily against the ruling that it would amount to an abuse of the trial court's discretion.

*Kerrigan*, 279 Conn. at 461 (brackets omitted).

*Kerrigan* controls the outcome of the present case. In *Kerrigan*, the Supreme Court upheld the denial by the trial court of a request for permissive intervention filed by the Family Institute of Connecticut. The Court first held that "the institute's interest of defending

HORTON, SHIELDS & KNOX, P.C. ATTORNEYS AT LAW  
90 GILLET STREET HARTFORD, CT (860) 522-8338 JURIS NO. 38478

the constitutionality of the marriage laws would be adequately represented by the attorney general, whose defense of state statutes is 'presumed' to be adequate." *Id.* at 462. In so holding, the Court noted that "if disagreement with an actual party over trial strategy . . . were sufficient basis for a proposed intervenor to claim that its interests were not adequately represented, the requirement would be rendered meaningless." *Id.* at 463. Finally, the Court specifically "reject[ed] the institute's claim that it is not adequately represented in this action because of its 'unique position regarding the protection of Connecticut families and children.' To the contrary, this is not a case involving a multiplicity of divergent interests that need to be represented separately *because of different ways by which the merits might be resolved.*" *Id.* at 463 n.15 (emphasis added).

The proposed intervenors in this case have done nothing more than re-hash the rejected arguments made by the Family Institute in *Kerrigan*. The CCC and Dr. Kelly concede that the defendants will defend Conn. Gen. Stat. § 53a-56 from attack and oppose the plaintiffs' claims for relief. (Int. MOL, 5). Nonetheless, the CCC and Dr. Kelly assert that their interests diverge from those of the named defendants because those defendants "are ultimately neutral when it comes to the real intent of the plaintiffs, which is to legalize physician-assisted suicide." (Int. MOL, 4-5).

However, *Kerrigan* makes it clear that a difference in motivation for litigating is not a distinct interest so long as the desired outcome of the litigation is the same. *Kerrigan*, 279 Conn. at 462-63. Here, the defendants and the intervenors will ask the court to resolve the merits in exactly the same fashion – i.e., against the plaintiffs – and therefore do not have "divergent interests that need to be represented separately". *Id.* at 463 n.15. Indeed, this is borne out by the defendants' memorandum of law in support of their motion to dismiss, of

which the court may take judicial notice. In that memorandum, the defendants spend considerable time, as a part of their claim for sovereign immunity, arguing that the proper construction of § 53a-56 dooms the plaintiffs' claims for relief. There can be little doubt, therefore, that the defendants will vigorously contest the merits of the case and thereby adequately represent the interests of those citizens who oppose physician aid in dying. While the defendants may not approach the matter from the same moral viewpoint as the CCC and Dr. Kelly, under *Kerrigan* that is a distinction without a difference.<sup>1</sup>

Finally, the CCC and Dr. Kelly argue that their involvement "will serve as an aid in resolving the controversy before the court in that it will ensure that the medical, legal, moral, ethical, and public policy issues are fully litigated and adequately addressed." (Int. MOL, 3). If that is so, they are free to file an *amicus curiae* brief with the court – the precise involvement of the Family Institute permitted by the trial court, and upheld by the Supreme Court, in *Kerrigan*. 279 Conn. at 463-64 & n.16-17.

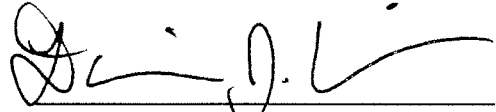
---

<sup>1</sup> The commentary to Rule 1.2 of the Rules of Professional Conduct makes it clear that the lawyer, not the client, is responsible for tactical decisions. Thus, the fact that the Attorney General may employ a particular strategy in defending § 53a-56 does not mean that the CCC and Dr. Kelly should be parties merely because they would go about defending the statute differently from the party charged by law with the responsibility. See *Kerrigan*, 279 Conn. at 462 (presumption of adequacy of Attorney General's defense of statutes).

For the foregoing reasons, this Court should deny the motion for permissive intervention.

PLAINTIFFS,  
GARY BLICK, MD, AND  
RONALD M. LEVINE, MD

By:



Daniel J. Krisch, Esq.  
HORTON, SHIELDS & KNOX, P.C.  
90 Gillett Street  
Hartford, CT 06105  
Juris No. 38478

Jamie L. Mills, Esq.  
LAW OFFICE OF JAMIE L. MILLS  
Ten Columbus Blvd., 3<sup>rd</sup> Floor  
Hartford, CT 06106  
Juris No. 307240

Kathryn Tucker, Esq.  
*Pro Hac Vice*  
COMPASSION & CHOICES  
P.O. Box 101810  
Denver, CO 80250  
Juris No. 430976

Their Attorneys

CERTIFICATION

I hereby certify that a true copy of the foregoing was mailed on February 25, 2010, to

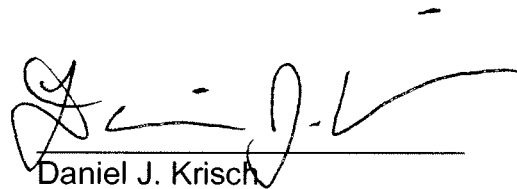
the following counsel of record:

Jane R. Rosenberg, Esq.  
*Assistant Attorney General*  
55 Elm Street  
P.O. Box 120  
Hartford, CT 06141-0120

Susan Quinn Cobb, Esq.  
*Assistant Attorney General*  
55 Elm Street  
P.O. Box 120  
Hartford, CT 06141-0120

Peregrine Zinn-Rowthorn, Esq.  
*Associate Attorney General*  
55 Elm Street  
P.O. Box 120  
Hartford, CT 06141-0120

Lorinda S. Coon, Esq.  
COONEY, SCULLY & DOWLING  
10 Columbus Blvd.  
Hartford, CT 06106



Daniel J. Krusch