

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

RICHARD P. CARO, a State of Illinois Taxpayer;)
on behalf of and for the benefit of the taxpayers of)
the State of Illinois; RONALD GIDWITZ; and)
GREGORY BAISE,)

Plaintiffs,)

v.)

ROD R. BLAGOJEVICH, Governor of the)
State of Illinois; THE ILLINOIS DEPARTMENT OF)
PUBLIC HEALTH; DAMON ARNOLD, Director of)
The Illinois Department of Public Health;)
THE ILLINOIS DEPARTMENT OF)
HEALTHCARE AND FAMILY SERVICES;)
BARRY S. MARAM, Director of The Illinois)
Department of Healthcare and Family Services; and)
DANIEL W. HYNES, Comptroller)

Defendants.)

Case No. 07 CH 34353

The Honorable James R. Epstein
Presiding Judge

GREGORY JACAWAY, and ROBIN JACAWAY,)
Petitioners.)

EMERGENCY PETITION TO INTERVENE AS DEFENDANTS

Petitioners, Gregory Jacaway, and Robin Jacaway (collectively, "Petitioners"), by their attorneys and pursuant to Section 2-408 (a)(2) and (b)(2) of the Illinois Code of Civil Procedure, respectfully petition to intervene as Defendants in the above-captioned matter, and in support thereof, state as follows:

1. Petitioners should be allowed to intervene as Defendants because they receive health coverage under the new eligibility expansion of the FamilyCare Program that Plaintiffs seek to have this Court enjoin and roll back. They have a specific interest in the continued receipt of health coverage, and they are exposed to specific hardships that no other party can

claim in this case. Petitioners should be allowed to intervene as a matter of right because their interests are not adequately represented, and they may be bound by a judgment in this matter. In the alternative, Petitioners should be allowed permissive intervention because their defense against Plaintiffs' action poses questions of fact and law in common with the pending matter. None of the Defendants object to Petitioners' intervention.

2. Effective November 7, 2007, the Illinois Department of Healthcare and Family Services issued a Notice of Emergency Amendment for 89 Ill. Adm. Code §120.33, which, in pertinent part, provides:

Complete Description of the Subjects and Issues Involved. This emergency rulemaking preserves FamilyCare benefits for approximately 15,000 to 20,000 parents and other caretaker relatives with income above 133 percent up to and to include 185 percent of poverty who were previously covered under 89 Ill. Adm. Code 125. Further, the emergency rulemaking expands FamilyCare to cover an additional 147,000 uninsured parents and other caretaker relatives with income up to and including 400 percent of poverty.

See 31 Ill. Reg. 15854. FamilyCare provides comprehensive health insurance to beneficiaries, who pay premiums and co-payments on a sliding scale.

3. On December 18, 2007, Plaintiffs, Richard P. Caro, Ronald Gidwitz, and Gregory Baise ("Plaintiffs"), filed a Second Amended Complaint for declaratory and injunctive relief seeking to declare illegal and enjoin the expenditure of public funds in relation to the expansion of the FamilyCare program.

4. Petitioners Gregory and Robin Jacaway reside in Springfield, Illinois. They are recipients of health care coverage under the FamilyCare program. They had previously been insured through Gregory's employment, but because his employer downsized and Gregory lost his job, his employer-sponsored insurance coverage ended at the end of October 2007. The

Petitioners became eligible for FamilyCare on December 1, 2007, as a result of the program expansion challenged in this case. Petitioners are parents of two minor children whose family income is below 400 percent of the official Federal Poverty Level for their family size.

5. Petitioners seek to intervene in this case because they have a vital interest in sustaining their health coverage and health care, made possible by the FamilyCare program changes in the administrative rules challenged by the Plaintiffs. If Defendants are enjoined from continued implementation of those rules or from expending any public funds related to rules, Petitioners would be deprived of important rights and benefits and their health and well-being would be directly threatened.

6. “Statutes providing for intervention are remedial and are liberally construed.” *Bredberg v. City of Wheaton*, 24 Ill.2d 612, 623, 182 N.E.2d 742, 747 (1962). “A trial court’s decision to allow leave to intervene will not be disturbed absent an abuse of discretion.” *Board of Trustees of the Village of Barrington Police Pension Fund v. Department of Ins.*, 211 Ill.App.3d 698, 711, 57 N.E.2d 622, 629 (1st Dist. 1991). “The purpose of the intervention is to expedite litigation by disposing of the entire controversy among the persons involved in one action to prevent a multiplicity of lawsuits.” *Id.* To intervene, “[a] party need not have a direct legal interest in the pending suit but it must have an interest greater than the general public, so that the party may stand to gain or lose by the direct legal operation and effect of a judgment in the suit.” *Id.* (quoting *Caterpillar Tractor Co. v. Lenckos*, 84 Ill.2d 102, 112, 417 N.E.2d 1343 (1981)).

7. Petitioners are entitled to intervene in this case as a matter of right under Section 2-408(a)(2) of the Code of Civil Procedure. That section provides:

- (a) Upon a timely application anyone shall be permitted as of right to intervene in an action: ... (2) when the

representation of the applicant's interest by existing parties is or may be inadequate and the applicant will or may be bound by an order or judgment in the action...

735 ILCS 5/2-408(a)(2).

8. In order to satisfy the requirement that a person "will or may be bound by an order or judgment in the action," a person must have "an interest greater than that of the general public, such that a party will stand to benefit or suffer by the legal operation of a judgment...." *City of Chicago v. J. Hancock Mut. Life Ins. Co.*, 127 Ill. App. 3d 140, 150, 468 N.E.2d 428 (1st Dist. 1984). *See also, Caterpillar Tractor Co. v. Lenckos*, 84 Ill.2d 102, 112, 417 N.E.2d 1343 (1981); *Maiter v. Chicago Board of Educ.*, 82 Ill.2d 373, 382-383, 415 N.E.2d 1034, 1038 (1980).

9. Petitioners' interest in the subject matter of this dispute is greater than the interest of the general public because they are recipients of the healthcare benefits made available to them under the administrative rules challenged by the Plaintiffs, unlike other members of the general public and unlike the named Defendants in this matter. Indeed, Petitioners' interest is distinct from that of the Defendants, and the representation of Petitioners' interest by Defendants is or may be inadequate. *See J. Hancock, supra*, 127 Ill. App. 3d at 144-147 (holding that the city's public health interest in a building code case was or may be inadequate to protect a condominium owner's more specific private health interests); *see also Bredberg*, 24 Ill.2d 612, 623, 182 N.E.2d 742, 747 (1962)(allowing intervention of individual landowners and explaining that "the city, the only defendant named in the counterclaim, is primarily concerned with the citywide zoning pattern and cannot be guided solely by a consideration of *individual hardships*")(emphasis added). Indeed, Petitioners' interest in the subject matter of this dispute may only be protected by their intervention in this case.

10. Petitioners benefit from their health coverage and will be seriously adversely affected if the challenged rules are invalidated and enjoined. Petitioners, thus, stand to either benefit or suffer by the legal operation of a judgment or order in this case. Moreover, Petitioners may be bound by a judgment or order in this case under the doctrine of res judicata, to the extent that a subsequent court finds that Defendants were in privity with Petitioners. *City of Rockford v. Unit Six of Policemen's Benevolent*, 362 Ill.App.3d 556, 840 N.E.2d 1283 (2d. Dist. 2005)(stating that “[a] nonparty may be bound under privity if his interests are so closely aligned to those of a party that the party is the virtual representative of the nonparty.”)

11. In the alternative, Petitioners should be permitted to intervene under Section 2-408(b)(2) of the Code of Civil Procedure, which, in pertinent part, provides:

(b) Upon timely application anyone may in the discretion of the court be permitted to intervene in an action: ... (2) when an applicant’s claim or defense and the main action have a question of law or fact in common.

735 ILCS 5/2-408(b)(2).

12. Petitioners’ defense against Plaintiffs’ challenge to the administrative rules has questions of law and fact in common with those in the main action. There is “a minimal ‘commonality’ requirement for permissive intervention.” *J. Hancock, supra*, 127 Ill. App. 3d 140, 144. Petitioners’ arguments in defense of the administrative rules are identical or closely akin to those raised in the main case.

13. The Petition to intervene is timely. The second amended complaint was filed on December 18, 2007, and related motion papers have not yet been filed. A petition to intervene by Plaintiffs Gidwitz and Baise was granted on December 14, 2007. No substantive rulings have been made in this case, and Petitioners’ intervention will not unduly prejudice the rights of the original parties.

14. All Defendants have represented through counsel that they do not object to this Petition.

WHEREFORE, for the foregoing reasons, Petitioners Gregory and Robin Jacaway respectfully request that Petitioners' Emergency Petition to Intervene be granted, and for such other relief as the Court deems proper.

December 20, 2007

Respectfully submitted,

One of Petitioners' Attorneys

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