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Trial Firm Proud of Pro Bono Foster Care Fight

BY ANGELA MORRIS

Commercial litigator Paul Yetter has scored multiple victories worth hundreds of millions of dollars his impressive career. But one pro bono case that recently struck down the state's foster care system as unconstitutional really makes Yetter proud to be a lawyer.

"There are some things you do as a lawyer that you are simply honored to do, and you know make a real difference in the world, and this is one of them. I couldn't be more proud of this case and our firm," said Yetter, managing partner in Yetter Coleman in Houston.

He and colleagues at his 31-lawyer firm were pro bono counsel in a class action of 12,000 foster care children who sued the state for violating their 14th Amendment due process rights. U.S. District Judge Janis Graham Jack found that the state violated the plaintiffs' rights to be free from unreasonable risk of harm caused by the state.

"Texas' foster care system is broken, and it has been that way for decades," the court ruled in *M.D. v. Abbott*. Children "have been shuttled throughout a system where rape, abuse, psychotropic



Partner Paul Yetter founded Houston-based Yetter Coleman in 1997

John Everett

medication and instability are the norm."

Yetter said that his firm decided 11 years ago to take up a pro bono case that could bring important change and also appeal to the lawyers there. For the family-focused firm, the right cause involved children.

"My wife Patti and I have seven sons, so children are a very important part of my personal life, and this litigation was my way of making

children part of my professional life. Hearing the stories of these poor young people—it broke my heart. It also gave us resolve to do whatever it took to find a way to reform the system so that other children in the future wouldn't be subject to the same abuse," Yetter said.

Decade-Long Battle

The early years of the project were spent investigating the

situation and monitoring unsuccessful reform efforts by the state. Then in 2011, Yetter Coleman filed *M.D. v. Abbott* in partnership with the New York-based public interest group Children's Rights, which has succeeded in similar litigation in other states.

Yetter is on the trial and appellate team for the foster children. Other Yetter Coleman lawyers on the trial team are Dori Kornfeld Goldman, Lonny Hoffman, Chris Porter and Wynn McCloskey. Goldman and Hoffman also are on the appellate team, along with Reagan Simpson and Christian Ward.

"We've spent thousands of hours on the case since it started," Yetter said.

Lawyers with Haynes and Boone, Children's Rights and A Better Childhood Inc. also worked on the case.

Since it's a civil rights case and the plaintiffs scored a victory, the state will be liable to pay the plaintiffs' attorney fees.

Yetter said it was discouraging to hear stories of children who were terribly abused and to learn about the long-broken foster care system. But it's heartening to see a light at the end of the tunnel, he said.

"The court's opinion is a clear call to reform that we are so optimistic about. It will change the lives of thousands of children," Yetter said.

Watershed Ruling

The Dec. 17, 2015 opinion and verdict in *M.D. v. Abbott*, filed in the U.S. District Court for the

Southern District of Texas in Corpus Christi, said that the 12,000 class action plaintiffs are minors in permanent management conservatorship in the Texas Department of Family and Protective Services.

The court found that children enter foster care and get an overburdened caseworker. They suffer abuse and neglect that is not acknowledged or treated. Children are frequently moved to different living quarters that are often inappropriate for their needs, and they switch schools so often that academic achievement is impossible. Kids get overmedicated with psychotropic drugs, and then age out of foster care as damaged, institutionalized and unable to succeed, the court found.

"These children have for too long been forgotten. Their stories deserve to be told," the judge wrote in a 260-page opinion that exhaustively details the heartbreaking struggles of the 17 anonymous plaintiffs.

Although she ruled the system was unconstitutional, Yetter noted that the judge hasn't yet determined the proper remedy. Following the court's orders, both sides have nominated two people to become special masters to investigate independently and recommend solutions. At the next hearing, the judge will choose the special masters and give them six months to report back so that the judge can rule on the remedy, Yetter said.


"I think this is a watershed ruling that will lead to a safer world

for all these foster children in the future," he said.

But simultaneously, the state has appealed the ruling to the U.S. Court of Appeals for the Fifth Circuit.

Yetter said it was wrong for the state to appeal because there's too much at stake.

"These are children's lives. I feel strongly that it's time for the state to stop fighting and start fixing. In this system, the longer you delay, the more children get hurt. We can find quicker, more efficient reforms if the state cooperates in fixing the problems," Yetter said. "I don't think it's that complicated. When a child goes into the custody of the state, that child should have a safe place to live."

But Teresa Farfan, a spokeswoman for the Texas Office of the Attorney General, which appealed the ruling, wrote in an email, "We are appealing because the district court's finding of a class-wide constitutional violation is erroneous, as is the injunctive relief that the court has ordered. When unelected federal judges improperly invoke substantive due process to assume control of state institutions, Texas officials cannot make the policy choices that they have been entrusted to make, and Texas voters lose their right to shape the debate and participate in the process. A judicial takeover of the entire foster-care system will not help in the reform efforts." 

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