

No. 19-1959

In the United States Court of Appeals for the Sixth Circuit

MELISSA BUCK; CHAD BUCK; SHAMBER FLORE;
ST. VINCENT CATHOLIC CHARITIES,

Plaintiffs-Appellees,

v.

ROBERT GORDON, in his official capacity as Director of the Michigan Department of Health and Human Services; JOOYEUN CHANG, in her official capacity as the Executive Director of the Michigan Children's Services Agency; DANA NESSEL, in her official capacity as Attorney General of Michigan; ALEX AZAR, in his official capacity as the Secretary of the United States Department of Health and Human Services;
UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES,

Defendants,

and

KRISTY DUMONT; DANA DUMONT,

Amici Curiae-Appellants.

On Appeal from the U.S District Court for the
Western District of Michigan, Southern Division
No. 1:19-CV-00286

NOTIFICATION OF CORRECTION

Counsel for Plaintiffs-Appellees writes to correct a legal error he made during oral argument in the above captioned case.

At oral argument, this Court questioned counsel regarding whether the Dumonts' voluntary dismissal of *Dumont v. Lyons* had preclusive

effect on their ability to bring the previously asserted Establishment and Equal Protection Clause claims afresh. No. 17-cv-13080 (E.D. Mich. March 22, 2019), ECF No. 83. This issue had not been addressed by either party's briefing and arose for the first time at oral argument.

Counsel incorrectly stated that the Dumonts' claims likely would not face claim preclusion. Upon further review of the record and the caselaw, however, it is clear that the Dumonts' voluntary dismissal was with prejudice and that this would have preclusive effect on their ability to re-raise the same claims. *Pedreira v. Sunrise Children's Servs., Inc.*, 802 F.3d 865, 870 (6th Cir. 2015) ("A dismissal with prejudice 'operates as a final adjudication on the merits and has a *res judicata* effect.") (quoting *Warfield v. AlliedSignal TBS Holdings, Inc.*, 267 F.3d 538, 542 (6th Cir. 2001)). The Dumonts would therefore be unable to reassert their prior Establishment Clause and Equal Protection Clause claims by filing a new legal action.

However—and as noted in Plaintiffs-Appellees' March 5, 2020 notice to the Court—the Dumonts have recently sought to reopen *Dumont v. Lyon* in an effort to enforce their alleged contractual rights obtained from the settlement agreement against the State of Michigan. *See* Mot. to

Reopen, *Dumont v. Lyon*, No. 17-cv-13080 (E.D. Mich. Feb. 24, 2020), ECF No. 87.¹ Since the Dumonts voluntarily surrendered their constitutional claims by agreeing to dismissal with prejudice, the *Dumont* case, and not the *Buck* case, is the proper forum for the Dumonts to raise claims regarding enforcement of their private contract with the State.

March 20, 2020

Respectfully Submitted,

/s/ Nicholas R. Reaves

NICHOLAS R. REAVES

LORI H. WINDHAM

Counsel of Record

MARK L. RIENZI

WILLIAM J. HAUN

JACOB M. COATE

The Becket Fund for

Religious Liberty

1200 New Hampshire Ave. NW

Suite 700

Washington, DC 20036

(202) 955-0095

nreaves@becketlaw.org

Counsel for Plaintiffs-Appellees

¹ Plaintiffs have not taken a position on reopening *Dumont*, as this separate contractual agreement does not affect the constitutional protections granted by Judge Jonker's preliminary injunction in *Buck v. Gordon*.

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the appellate CM/ECF system on March 20, 2020.

I also certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Nicholas R. Reaves
Nicholas R. Reaves

Counsel for Plaintiffs-Appellees