

Roosevelt: Welcome, everyone, to another edition of Possibilities, the official podcast of the Michigan Developmental Disabilities Institute or MI-DDI. In this episode, we have the pleasure of sitting down with Kyle Williams and Nick Gable, the litigators representing the plaintiffs in the notable case of Waskul and others versus Washtenaw County Community Mental Health and others. We'll dive into the details of this lawsuit, explore the settlement's implications, and discuss the broader impact on people with disabilities and their caregivers. Thank you for tuning in, and we hope you enjoy the conversation.

Roosevelt: All right, so before we get into the questions, I have Kyle Williams and Nick Gable. So please, just introduce yourselves and your titles.

Kyle: I'll go ahead and start. Hi everybody. My name is Kyle Williams. I'm a director of litigation over at Disability Rights Michigan and one of the plaintiff's counsel in the Waskul litigation that we're talking about today.

Nick Gable: Hi everyone. I'm Nick Gable I'm the senior attorney at Disability Rights Michigan. And I'm also one of the plaintiff's counsel in this case.

Roosevelt: Perfect. So, speaking of the Waskul case back in 2015 Cindy Waskul of Washtenaw County filed a lawsuit against Washtenaw County Community Mental Health. The issue was CLS or Community Living support service funding for her son Derek, who lives with cognitive disabilities. For those who are unfamiliar, how did Cindy Waskul's situation eventually lead to a lawsuit?

Nick: I can start with this one. So, actually just one small clarification point, this lawsuit was filed in March 2016. But the change that led to it happened in 2015. And what happened was the predecessor organization to the Washtenaw County Community Mental Health had changed the way that had calculated budgets for CLS. Before May 2015 the way it would work is people would have their CLS budgets built up. In other words, there would be a cost in there for staff time, a separate cost for activities based on the person's plan a service, for transportation there would be taxes, and it would all be added together to build up a budget that was tailored to each person's needs. In 2015 the predecessor entity imposed a all-inclusive rate on everybody who received CLS-self-determination under the HAB (Habilitation Supports Waiver) waiver. And instead of building up budgets, people now had a 13 dollar and eighty-eight cent rate per hour to fit everything into and if they couldn't make it work too bad. And in the case of Cindy, and a lot of the other people we encountered around that time, people either couldn't hire staff or they couldn't pay for the activities or transportation in their plan, or both. And because we determined pretty quickly that this letter affecting the change and gone out to everybody. It was clear that it was a systemic issue and we quickly had other people come to us. We pursued administrative hearings in 2015, which didn't get us the relief we needed and so, we filed this case

Roosevelt: And I believe, this either the first case of its kind or one of the few. So, what initially made your team see this as a viable case to take on?

Nick: Well, one of the interesting things early on was that we looked at the Habilitation Supports Waiver (HSW) itself, and there's language in the HSW which says that budgets for CLS have to be costed out. And, they have to be sufficient to implement the IPOS (Individual Plan of Service). And in our view what this change did was it did not cost out budgets and it led to budgets that were not sufficient in supporting the IPOS. So, it seemed pretty clear to us, just based on that that there was a problem. From there we looked to the Medicaid act, we eventually added ADA (Americans with Disabilities Act), Section 504 claims, but really it started from the waiver itself and certain requirements there.

Kyle: Yeah, and Roosevelt, I do want to just add really quickly that, Nick covered the beginning of the case and the administrative hearings and all of that was Nick while he was over at Legal Services the South Central Michigan at their Ann Arbor office. So, Nick was really the one of the only attorneys or one of the few attorneys that were working on the case at the point that it was going through the administrative system trying to fix those problems there. And what was then Michigan Protection and Advocacy, we have since been renamed as Disability Rights Michigan since the filing of the lawsuit, but I was a staff attorney there and so I became aware of the litigation after a complaint had been drafted for the federal lawsuit that came after the issue remained unresolved at the administrative level. And all I remember is that it was huge. It was one of the biggest complaints that I'd ever seen. And, whenever we were looking at it, what definitely caught my eye was what Nick was talking about, those waiver specific claims that related to people's rights to cost out and have a budget that's sufficient to implement their IPOS. That was something that I've never seen at that point in my career. And it might be worth noting that none of us had much of a career at that point. We were a couple of years out of law school. So, we certainly were in the beginning phases of being attorneys when the case came around both of us. But my legal director at the time just slapped this giant case down on my desk and said "hey, you need to take a look at this. There's this kid", and he said the word kid, "out at Ann Arbor who's got this case, take a look at this thing. It's interesting." And that was the first thing that really popped out to me. I'd never heard of that, and they appeared to be directly implicated by the action that was taken by moving to that in all-inclusive rate.

Nick: And one historical fact, which I have no recollection of, but I'm told this, it was that when multiple people told me to reduce the complaint because it was too long. I said "no."

Kyle: I told him that and then he said "no" and we've been working together for many, many years afterwards, you know, and he was in he was right on that. The complaint was lengthy for a reason because it was complicated, and it involved a complicated system. And he was right on that and now you got it on the record here in the podcast, Roosevelt.

Nick: And we just had too much fun working together and now we're both at DRM.

Roosevelt: Talking about you guys just being so young and how this case was moving forward. So, the case was initially dismissed in 2019 by a district court, but decision was reversed in 2020 by a panel of three judges on the six court of appeals. What influenced the panel's decision to overturn the ruling.

Nick: The short answer is that the sixth circuit reversed the dismissal on every ground that it was based on and it can get legally complicated very quickly. For example, the district court said in a couple of instances that we didn't plead in our complaint sufficient facts and the sixth circuit said "no, we did". There were things like immunity. There were things like very technical legal things that that we prevailed on. To sue under certain provisions of the Medicaid act for example, but the two most important things in the reversal were the holdings by the sixth circuit that risk of institutionalization and isolation at home violate the integration mandate under the Americans with Disabilities Act and Section 504. That was a precedential holding that extended the application of the ADA in significant ways. I always want to highlight that in the sixth circuit decision.

Roosevelt: and I know that there were a series of Judges who took recusal in this case over the years. Some of my colleagues have wondered, when they read about this case, why this was but could you tell us or just give us an explanation for why an answer for this is unlikely?

Nick: I'd love to tell you why, but we don't know. The judges don't have to say what the reason is and every case there's been a form filed that says, "cause has been found for recusal" and here's your new judge. Our guess is that when we got to a certain point in the case where we were talking about giving notice of the settlement to different organizations, there may have been some connection to some of them, but we really don't know

Kyle: And this would be a perfect opportunity for us to speculate wildly about what it could be but I think that we probably just stopped to say "we don't know and we probably will never know" but it happened and so that's what happened in the case.

Roosevelt: And I'm assuming having you guys speculate wildly will probably not help your cases very much going forward.

Nick: Generally, not a good thing to do. I Probably speculated already more than I should have.

Roosevelt: And this case has been litigated since 2015 or 2016?

Nick: 2016

Roosevelt: Is this a typical time frame or did other factors kind of extend it?

Nick: Well, we ended up going to the sixth circuit appeals court twice. We had a preliminary injunction denied back in late 2016, and we had a very limited appeal from that denial. That slowed things down considerably. We had a lengthy discovery process too. There have been I think at least 15 depositions in the case. I want to say over a million pages of documents exchange. You know, it takes time.

Kyle: A couple million pages of documents.

Nick: And then we were in mediation for quite a while too. I think in general litigation like this can move slowly and, in our case, we had circumstances that caused it to move even slower maybe.

Roosevelt: And, just talking about that time frame, what key factors can you list that helped you and your clients remain resilient in seeing this through?

Nick: Our clients are amazing. They've been so resilient and strong throughout this process. They're incredible advocates for their children who are our real clients, I'm talking about the Guardians. And I think on our side, I mean it was really when our co-counsel Ed Krugman got involved that we had a path forward. He got involved prior to that first sixth circuit appeal and he's been our lead counsel in the case since then. Just an amazing attorney. He's been an incredible leader for the lawyer's side.

Kyle: And I think for the clients and this is true in a lot of the litigation that we do that, you know, they kind of see that the case can be, you know more than just about them that there's potential to help other people, that they know that they're not the only ones with the types of issues that they were facing and that you can always kind of look at it as the light at the end of a tunnel might be I can try to fix my problem, but I might be able to work on this and go through the pain involved with it to try and help other people and I know that's really a common thing for a lot of our clients. And making the decision to be in that role, in terms of being a plaintiff in a lawsuit, and being in a more public

facing adversarial type process that's involved with it, it's not comfortable. And really a lot of the credit really is on those clients for being willing to share their story even at the end of the day.

Nick: Absolutely.

Roosevelt: And speaking what they went through and the light at the end of the tunnel. A settlement was eventually reached between the plaintiffs and MDHHS in 2023. So, what contributed to a settlement eventually being placed on the

Nick: Well, I should start by saying that the mediation process is confidential, and you can't talk about anything that happened in mediation. I can say that we were in it for a long time. And to the state's credit, they really came to the table, and they worked with us to reach what we think is a great settlement.

Roosevelt: How did the settlement address the initial issues raised in the lawsuit?

Nick: Really it resolved all of the issues in the lawsuit as against the state and if we're able to succeed in getting a court ruling that is binding against and is enforceable against the local CMH and the PHP, then we'll have everything we wanted in the lawsuit. There's two main forms of relief and the first is the one that most people know about which is the implementation of the thirty one dollar per hour minimum fee schedule for CLS, which would be statewide, have debilitation supports wavier / CLS self-determination, and there would also be a related fee schedule for overnight health and safety support, which would be 70 percent of the PLS schedule. There are certain contingencies for that to happen. But if there is a contingency failure, then we will have a statewide policy for the same population that is essentially a return to that pre 2015 methodology that I talked about at the beginning. Where you have dull budgets built up and that are sufficient to implement the IPOS. In addition to that there's a lot of provisions that address person-centered planning issues, things like what should be discussed, who should make what decisions in person-centered planning. When you're entitled to a notice. And there's even a fix in there for a "fair hearing system problem" where people would prove an entitlement to a certain level of benefits and then just get sent back for a quote-unquote "reassessment" which resulted in them getting put on something that we called the "Medicaid hamster wheel." And the settlement makes clear that administrative law judges, if appropriate, can and should be ordering specific numbers of hours or budget amounts even. So, really the settlement comprehensively addresses a lot of different stages of the process from that person centered planning meeting to an appeal.

Kyle: And I think that the settlement really goes above and beyond even what we would have, initially envisioned what the relief could look like in the case because of the statewide application

of both the minimum fee schedule and the policies that Nick is talking about. Ultimately this was a case that was brought against the three tiers of Managed Care Medicaid, MDHHS the local prepaid in-patient Health Plan and the local community mental health. But all of our plaintiffs were located in Washtenaw County and the associational plaintiff was a regional organization that served Washtenaw County and the surrounding areas, and they were subject to this budget methodology change that was happening in one local area. So, the fact that the lawsuit generated such substantial statewide impact is certainly a windfall out of that to the plaintiffs and for people that are similarly situated to them and it's another reason why we're really happy about the settlement terms because of that ability to help people beyond just the individual plaintiffs and the people who are locally subjected to that budget methodology change.

Nick: Yeah, that's a great point and just to add to that one thing we've heard about the settlement is people say this is great, but we wish it could be for non-HAD waiver, non-CLS, non-self-determination. And we agree, that would be great. But like Kyle just said, getting what we got was way Beyond anything we could have even gotten from the court even if we had completely won in this case and the settlement fixes the problem that this lawsuit was designed to fix and then some. And our hope is that the settlement can serve as a springboard for additional efforts going forward to do something similar elsewhere.

Roosevelt: And as of January 2024, the settlement is still awaiting approval from the court. So, if you can go on record, what can you tell us about this case moving forward?

Nick: So, the most recent thing that we did was we filed 12 declarations of support of the settlement from various advocacy organizations throughout Michigan. Shortly after we did that we got a notice from the new judge assigned to the case and a status conference, which will be held May first I think. It is not a public event. It's not even for clients, but it's the first step and at that point we hope that we'll get some clarity on the schedule going forward and what the nature of the approval process will look like.

Roosevelt: And I know you guys touched on the wider implications of this the settlement but touching back when you guys just being young attorneys taking on this very large case, which is hopefully going to have larger implications across state and hopefully the country, what do you both think you'll remember most from this case?

Nick: Right now, I mostly remember the amount of hair I had before I started.

Kyle: I remember it to Nick. Let me take a stab at it. What's interesting about doing it and doing the case over such a long period of time is that our lives have changed along with this case moving forward. So, Nick and I, we are both married now, we both have kids and so we've kind of moved

into new positions in our life, which have really allowed you to reflect on the work from a different Viewpoint, especially whenever you become a parent, I think. Because the case is always about the clients. They were always about the people who are receiving the services and making sure that they were going to be in safe situations where they would have good quality of life where they would have a meaningful choice between living in their community and being in a group home. But then, I think about the case, especially after becoming a parent and talking a lot with the parents of you know, these plaintiffs and the parents of people with disabilities across the state and our role as PNA attorneys and just that role that parents have in your life whether you have a disability or not and how common what my desires are for my children in terms of having them have an education having them happy, having quality of life. Having them become more independent and self-sufficient, and I don't want to sound like I don't want my kids to leave my house or anything like that, but you want that because all of us are kind of with the understanding that I'm not going to be around forever and I'm not going to be able to take care of you forever. So, it's important that you have the supports and things that are in place so that you can go out into the world and can become more independent and can rely on me less. And the case, really to me has become more and more about that. In addition to, just those core rights that the individual plaintiffs are about, just being able to feel and understand that need from those parents that really generated them or you know, kind of caused them to start calling attorneys and starting to deal with the stuff because I think that that's really grounded in feelings that a lot of parents have and that I might not have really even understood until I became a parent over the course of this litigation and started to get those feelings for you how you feel about your kids because you know that's certainly a component of this case, parents trying to take care of their kids and especially what if your kids get older and need some help. And I want you to know too that I had more hair too when everything started.

Roosevelt: Thank you so much for coming on and for the work that you've done in the past and going forward. Michigan Developmental Disabilities Institute wishes you all the best and thank you.

Nick: Thank you.

Kyle: Thank you for having us. We appreciate the time.

Roosevelt: Thank you everyone for tuning into another edition of Possibilities. If you'd like to keep up with this case going forward, visit Disability Rights Michigan at [drmich.org](http://drmich.org) and select their litigation tracker. There, you can find all current details of this case as it continues to progress. And, if you'd like to keep up with future episodes of Possibilities, please visit:

[ddi.wayne.edu/possibilitiespodcast](http://ddi.wayne.edu/possibilitiespodcast)

Thank you all again for tuning in and see you in the next episode.