

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

**Case No. 11-4003-JAR-KMH**

This lawsuit was filed *pro se* and *in forma pauperis* by Brenda Moore on behalf of a minor child, G.J. The Court issued a Memorandum and Order of Dismissal pursuant to of 28 U.S.C. § 1915(e)(2)(B)(ii) because a minor child may not bring suit through a *pro se* party acting as next friend. In addition, the Court observed that there is no indication in the Complaint that Moore is a representative that may sue on behalf of G.J., even if she was represented by counsel, because she is not his guardian, conservator, or other like fiduciary.<sup>1</sup>

Before the Court is Brenda Moore’s Motion for Reconsideration (Doc. 8), which argues that the Court erred in not allowing her an opportunity to amend and allow her daughter, G.J.’s mother, to be added as a party-plaintiff. “[A] *pro se* litigant bringing suit *in forma pauperis* is entitled to notice and an opportunity to amend the complaint to overcome any deficiency unless it is clear that no amendment can cure the defect.”<sup>2</sup> Leave need not be granted if amendment

<sup>2</sup>*Denton v. Hernandez*, 504 U.S. 25, 34 (1992).

would be futile.<sup>3</sup> Under these circumstances, the amendment would be futile because the basis for dismissal was that a minor may not bring suit through a *pro se* party; it would not matter if that *pro se* party was indeed a representative that could sue on behalf of G.J. *if* she was represented by counsel. Nothing in the Court's dismissal of this lawsuit bars G.J.'s mother from bringing a separate suit in her representative capacity if she is represented by counsel.

**IT IS THEREFORE ORDERED BY THE COURT** that Brenda Moore's Motion for Reconsideration (Doc. 8) is **denied**.

**IT IS SO ORDERED.**

Dated: February 10, 2011

S/ Julie A. Robinson  
JULIE A. ROBINSON  
UNITED STATES DISTRICT JUDGE

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<sup>3</sup>See *Gee v. Pacheco*, —F.3d—, 2010 WL 4196034, at \*14 (10th Cir. 2010); *Mountain View Pharmacy v. Abbott Labs.*, 630 F.2d 1383, 1389 (10th Cir.1980).