IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

JOHNNY REYNOLDS, ET AL.,

Plaintiffs,

v.

CIVIL ACTION NUMBER:
CV-85-T-665-MHT
Special Master González

ALABAMA DEPARTMENT OF
TRANSPORTATION, ET AL.,

Defendants.

ORDER

I

Before the Special Master is the Plaintiffs' Motion for Reconsideration, (Docket № 8313), of the June 19, 2008 R&R, (Docket № 8310). The R&R contains a recommendation that summary judgment be granted to the Defendants on the individual contempt claimants' allegations that they are entitled to make-whole contempt relief for racial harassment flowing from the contempt of the Consent Decree. Docket № 8310 at 24. The Plaintiffs' motion is due to be granted because the recommendation regarding the racial harassment claims is clearly erroneous.

II

In January 2001, the Defendants and the Plaintiffs entered into a Settlement Agreement, ("Agreement"), resolving a number of alleged pending claims of race discrimination by ALDOT in hiring and promotion. Docket № 4700. The Agreement also resolved claims for compensatory remedies for contempt of the Consent Decree. Id. at 2. In the Agreement's "Scope of Settlement" section, the parties specifically excluded from the settled claims "(u) relief . . . related to racial harassment or the practices and procedures and training associated therewith[.]" Id. at 41 - 49. This exclusion was applicable to the Promotion Class, id. at 43 - 44, and the Hiring Class, id. at 46. The same language also exists in the section of the Agreement that recites the scope of the settlement for claims released by individual claimants seeking monetary relief for contempt of the Consent Decree. Id. at 48. The language of the settlement is clear and unequivocal—claims for relief related to racial harassment are not settled by the Agreement.

The issue of whether contempt claimants can pursue allegation of racial harassment has been before the Court for many years. Each time the issue was considered the conclusion was the same: The Plaintiffs had

released their race discrimination claims and consequently, also released any claims of racial harassment flowing from contempt of the Consent Decree. This conclusion rested on the determination that there was no substantive difference between the settled discrimination claims and the claims for racial harassment being made in the contempt proceedings.

> The Plaintiffs contend that the 2001 Settlement Agreement, (Docket № 4700), did not resolve claims of "racial harassment," but only claims of "racial discrimination." Docket № 8175 at 3 and Docket № 8227 at 1-2. The practical distinction between racial harassment and racial discrimination in the context of the claims at issue is never made by the Plaintiffs and not readily apparent to the Special Master. It has been established for some time that the 2001 Settlement Agreement resolved claims of racial discrimination. Docket № 7318 at 24-25 and Docket № 7041 at 17. "The contempt claims for which the Plaintiffs may be entitled to make-whole non-compensatory relief must be based on alleged violation of the Consent Decree, not free standing discrimination claims unrelated to the alleged contempt of the Defendants." Docket № 7318 at 25. Nothing has occurred to change this ruling.

Special Master's Statement for Record, Docket № 8251 at 14-15.

More recently, on June 19, 2008, the Special Master again addressed the issue:

> Defendants are entitled to summary judgment on all claims alleging racial discrimination or harassment. This matter has previously been addressed by the Special Master in his Statement for the Record, (Docket № 8251 at 14-15) and in an October 2003 Order (Docket № 7041 at 16-17) and there is no

> reason to again address it here. The reasoning contained in Docket № 7041 and 8251 is incorporated. The Defendants should be granted summary judgment on the Claimants' racial discrimination claims, whether the claims are denominated as racial harassment claims or racial discrimination claims, there being no practical difference between them in this context and all such claims having been previously settled.

Docket № 8310 at 24.

Of course, the problem with the conclusion is that the parties through their negotiations agreed to settlement language that in fact created a distinction between claims for racial discrimination—that were clearly settled—and claims for racial harassment that were not settled.

The fact of the matter is that over the last many years neither the Plaintiffs, the Defendants, nor the Special Master were aware of the language in the Settlement Agreement to which the Plaintiffs now point. The Agreement's language—that the settlement did not release claims for "relief . . . related to racial harassment or the practices and procedures and training associated therewith"—is unequivocal and must be given effect.

The Defendants assert that the "law of the case" doctrine should result in the denial of the Plaintiffs' motion. Docket № 8314 at 6 - 7. According to the Defendants, because the Plaintiffs failed to object the first time the Special Master concluded that harassment claims could not be

pursued[1] they are now barred by the "law of the case" doctrine from seeking relief. The failure to object does not prevent the Special Master from correcting his error.

> Although courts are often eager to avoid reconsideration of questions once decided . . . it is clear that all federal courts retain the power to reconsider if they wish. Law of the case principles in this aspect are a matter of practice that rests on good sense and the desire to protect both court and parties against the burdens of repeated reargument . . . . Most recent decisions suggest that the major grounds that justify reconsideration involve an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice."

Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction §4478. See also Arizona v. California, 460 U.S. 605, 618 n.8 (1983)("Under law of the case doctrine, as now most commonly understood, it is not improper for a court to depart from a prior holding if convinced that it is clearly erroneous and would work a manifest injustice").

The Plaintiffs assert that they "are entitled to full make-whole relief arising from the defendants' contempt[,] including the failure to train its employees on racial harassment and the racial harassment that arose from that failure." Docket № 8317 at 3 - 4. If successful in litigation, the Contempt Plaintiffs will, in fact, be entitled to make-whole relief, including

[1] See Docket № 7318 at 24 - 25 (July 21, 2004).

appropriate relief related to harassment claims flowing from the contempt of the Consent Decree.

The earlier and oft-stated prohibition against the Plaintiffs using these individual contempt proceedings to pursue "free standing discrimination claims unrelated to the alleged contempt of the Defendants" remains undisturbed. Docket № 7318 at 25. Generalized claims of harassment unmoored from the specifics of the Consent Decree will not be allowed.

ACCORDINGLY, the Plaintiffs' Motion for Reconsideration, Docket № 8313, is GRANTED, and the Report and Recommendation, Docket № 8310 at 24, is modified to reflect that the Defendants' Motion for Summary Judgment, Docket № 8273, should be DENIED with respect to Plaintiffs' allegations of racial harassment related to the Defendants' contempt of the Consent Decree. In all other respects the June 19, 2008 R&R, Docket № 8310, remains unmodified.

Objections to the June 19 R&R, Docket № 8310, as modified by this Order, are due October 1, 2008. Failure to file objections in a timely manner constitutes a waiver of the right to review by the District Court.

IT IS SO ORDERED this 10th day of September 2008.

C. A. González
SPECIAL MASTER