1994 WL 603820
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United States District Court, N.D. Illinois, Eastern Division.

Sheena HODGES, By her father and next friend, Willie HODGES, and Nikishia Hunter, by her mother and next friend Daucenia Hunter, each, solely on their own individual behalf; and Dede, Teteh and Kwame Atiogbe, by their father and next friend Gotlieb Atiogbe, Jaime and Edgardo Duran, by their mother and next friend Elena Duran, on behalf of themselves and all others similarly situated, Plaintiffs,
v.
PUBLIC BUILDING COMMISSION OF CHICAGO, Chicago Board of Education, and the City of Chicago, Defendants.
CHICAGO BOARD OF EDUCATION, Defendant/Cross Plaintiff,
v.
PUBLIC BUILDING COMMISSION OF CHICAGO, Defendant/Cross Defendant.

No. 93 C 4328.
|
Oct. 31, 1994.

MEMORANDUM OPINION AND ORDER

CASTILLO, District Judge.

***1** Immediately after it became apparent that this case might proceed to trial,[1] Alderwoman Virginia Rugai sought to intervene as an additional defendant in her official capacity as Alderperson for the Nineteen Ward of the City of Chicago. Essentially, Alderwoman Rugai asserts that she is the only defendant who can adequately represent the interests of her Mount Greenwood constituents and thereby defend her own reputation against plaintiffs' assertions of race-based conduct. Alderwoman Rugai claims that she is the only potential defendant with sufficient knowledge of the facts surrounding the community opposition to the original expansion of the Chicago High School for Agricultural Sciences and its support of the revised proposal. The Court's review of all the pleadings in this case demonstrate that Alderwoman Rugai's actions and motives are inescapably at issue in this case. Thus, the Court concludes that she meets the interest test under Fed.R.Civ.P. 24(b)(2).

Additionally, this Court cannot say that the interest of the Alderwoman and the City will not diverge during the course of this litigation. When, and if this happens, the City will not adequately represent Alderwoman Rugai. However, that mere possibility does not satisfy the standards for establishing inadequacy of representation. *United States v. Board of School Commissioners of the City of Indianapolis*, 466 F.2d 573, 575 (7th Cir.1972), *cert. denied*, 410 U.S. 909 (1973). Moreover, the current adequacy of the representation of Alderwoman Rugai's interests are firmly established in this matter, especially because she seeks intervention solely in her official capacity and her interests are currently represented by the very governmental body which is charged by law with representing her interests. *Keith v. Daley*, 764 F.2d 1265 (7th Cir.1985), *cert. denied sub nom., Illinois Pro–Life Coalition, Inc. v. Keith*, 474 U.S. 980. In fact, as the record attests, Alderwoman Rugai does not and cannot claim that the city defendant is not vigorously defending her legal interests. Instead, she asserts merely that her interests may at some point diverge from the City. Thus, Alderwoman Rugai has not overcome the ensuing presumption of adequate representation at this time. Since this fact may change at some point in the future when it would be inconvenient to delay these proceedings, this Court will exercise its discretion and allow Alderwoman Rugai to actively monitor these proceedings to evaluate when and if her interests may not be adequately represented. In essence, rather than deny her motion, the Court will exercise its discretion and allow Alderwoman Rugai leave at this point to intervene as a nominal defendant, subject to the conditions outlined below. If, at some point, the City defendants' and Alderwoman Rugai's interests diverge, she may seek status as an active named defendant with full trial rights subject to the conditions expressed herein.

Timeliness

***2** Alderwoman Rugai concedes that Fed.R.Civ.P. 24 requires her motion for intervention to be timely. The Court finds that the original complaint in this case put

Alderwoman Rugai on notice that her interests were at stake in this litigation. Thus, plaintiffs correctly complain that her motion to intervene is fourteen months late.[2] Additionally, this motion was filed six months after the City was named as a defendant. Instead, it certainly appears that Alderwoman Rugai consciously waited until this Court decided whether to allow this case to proceed beyond the hurdles raised by the defendants' motions to dismiss. This conscious delay placed the intervenor at serious risk that this Court could, in the exercise of its discretion, deny her motion for lack of diligence alone.

The Seventh Circuit's latest word on the issue of timely intervention indicates that passage of time itself, however, is not the only factor to be considered. Rather, the most important consideration in deciding whether a motion for intervention is untimely is whether the delay in moving for intervention will prejudice the existing parties to the case. *Nissei Sangyo America, Ltd. v. United States*, 31 F.3d 435 (7th Cir.1994), *quoting* 7C Charles Alan Wright, et al., *Federal Practice and Procedure: Civil 2d* § 1916 (1986). The plaintiffs have not shown any actual prejudice which will be caused by Alderwoman Rugai's intervention that can not be resolved by the below-described limitations imposed by the Court. Alderwoman Rugai's future failure to abide by these limitations may cause this Court to reevaluate its analysis of prejudice and reconsider this ruling.

Restrictions

Pursuant to Fed.R.Civ.P. 24, this Court has the inherent power to place whatever restrictions it believes are necessary with respect to Alderwoman Rugai's intervention in this matter. *Harris v. Pernsley*, 820 F.2d 592, 599 (3rd Cir.1987); *Bradley v. Milliken*, 620 F.2d 1141 (6th Cir.1980); *Benson v. Little Rock Hilton Inn*, 87 F.R.D. 447 (Ark.1990).

In the first instance, Alderwoman Rugai must accept the litigation schedule which has previously been established. The Court will not allow Alderwoman Rugai to slow down the pace of this litigation which has been established to insure that this lawsuit does not become practically moot by the proposed construction schedule established by the defendants. Secondly, in accordance with her representations to the Court, Alderwoman Rugai will not be allowed to duplicate whatever discovery has already been taken.[3]

At the present time, as a nominal defendant Alderwoman Rugai will only be allowed to monitor the pretrial proceedings and participate in limited discovery to the sole extent necessary to protect her respective interests. She will receive notice of all court proceedings and copies of all pleadings. Her ability to file pleadings with respect to the briefing of any pretrial issues will be evaluated on a case-by-case basis. Alderwoman Rugai will have no trial rights, such as to separately question witnesses, other than the right to monitor the trial to determine if her interests continue to be adequately represented. During the trial, the Court will instruct the jury that Alderwoman Rugai voluntarily joined this case as a nominal defendant to ensure that her interests were adequately represented. If at some point this Court determines that Alderwoman Rugai's and the City's interests have diverged, she will be allowed the full rights of any other defendant.

All Citations

Not Reported in F.Supp., 1994 WL 603820

Footnotes

1 The underlying facts regarding this case are adequately set forth in this Court's Memorandum Opinion dated September 1, 1994, which granted and denied, in part, the defendants' motion to dismiss and which gave rise to this intervention motion. Thus, these facts will not be repeated in this order.

2 Only the plaintiffs have opposed this intervention motion. The defendants have not taken any formal position on this motion.

[3] Any discovery sought to be taken by Alderwoman Rugai has to be pre-approved by this Court in accordance with this Court's established procedures. Furthermore, since Alderwoman Rugai only seeks intervention in her official capacity, it is likely that her attorney's fees will be paid by the general public. This is an additional reason why needless duplication and effort should be avoided.