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United States District Court, N.D. Illinois, Eastern
Division.

Peso CHAVEZ, et al., Plaintiffs,
v.

ILLINOIS STATE POLICE, et al., Defendants.

No. 94 C 5307. | June 7, 1999.

Opinion

MEMORANDUM ORDER

BOBRICK, Magistrate J.

*1 Before the court is the motion of plaintiffs to add a new plaintiff, namely Christopher Jimenez.

The plaintiffs originally filed this action in August of 1994 and, as it has been the subject of numerous motions and rulings, it is unnecessary to review the facts. Plaintiffs' claim is, essentially, that the Illinois State Police maintain a practice of stopping, detaining, and searching African-American and Hispanic motorists solely on the basis of race and without legally sufficient cause or justification. Jimenez, who is Hispanic, complains of a stop that occurred in February of 1996, while he was a passenger in a vehicle driven by his girlfriend, who is white. In July of 1996, at the time they filed their fourth Amended Class Action Complaint, plaintiffs identified Jimenez as a member of the putative class. Defendants conducted a telephone deposition of Jimenez and his girlfriend in June of 1997. Now, nearly two years later, plaintiffs seek to add Jimenez as a named plaintiff in the Fourth Amendment and Title VI portions of their action; the Title VI claims are a putative class action.

Under Fed.R.Civ.P. 20(a), "[a]ll persons may join in one action as plaintiffs if they assert any right to relief ... arising out of the same transaction, occurrence, or series of transactions or occurrences and if any questions of law or fact common to all ... persons will arise in the action." While defendants do not dispute that the plaintiffs' motion qualifies under those requirements, they do argue that this motion should be denied for three reasons: (1) the statute of limitations has run on Jimenez's claims; (2) Jimenez has no standing to pursue a Fourth Amendment claim; and (3) the addition of Jimenez as a plaintiff would prejudice defendants from a discovery standpoint. The

joinder of a party under Fed.R.Civ.P. 20(a) is discretionary. the court may deny a motion where it would cause delay, prejudice, or expense. *National Union Fire Insurance Co. v. Continental Illinois Corp.*, 113 F.R.D. 527, 531 (N.D.Ill.1986). After a review of the parties' submissions, we are constrained to find that, given the posture of this case and the manner in which plaintiffs' have presented the instant motion, adding a plaintiff will indeed create undue delay, prejudice, and expense.

Defendants' statute of limitations argument is subject to Judge Manning's previous rulings on the issue. In her ruling of November 5, 1998, Judge Manning held that "the filing of a class action tolls the statute of limitations as to all asserted class members who would have been parties if the case were to proceed as a class action" unless the purported class member has slept on his rights. *Chavez v. Illinois State Police*, 27 F.Supp.2d 1053, 1077 (N.D.Ill.1998). Here, Jimenez was stopped by Illinois State Police on February 6, 1996. On February 12, 1996, he filed a complaint with the Illinois State Police regarding being stopped because he and his girlfriend were a "mixed couple." (*Pl.Reply*, Ex. 3). He was named as a member of the putative class about five months after the stop. Thus, it cannot be fairly said that he has slept on his rights.

*2 Defendants' other arguments, however, give us pause. They also argue that Jimenez is without standing to challenge the search at issue because Jimenez was neither the owner or driver of the vehicle. (*Defendants' Response to Plaintiffs' Motion*, at 3). The concept of "standing" to challenge a search was abandoned twenty years ago. *Minnesota v. Carter*,—U.S.—, 119 S.Ct. 469, 472 (1998); *Terry v. Martin*, 120 F.3d 661, 664 (7th Cir.1997). Thus, defendants are not attacking standing, but the merits of Jimenez's claim. This is inappropriate in the context of a motion to add a plaintiff, and as plaintiffs' point out, it would be more appropriately the subject of a summary judgment motion. (*Plaintiffs' Reply*, at 2 n. 1). The problem with that is discovery has been closed since August of 1997—and plaintiffs' were fully aware of Jimenez's claim before that. Now, they expect defendants to conduct discovery of Jimenez adequate to put together a motion for summary judgment, and they expect briefing and resolution of that motion prior to the trial date of September 7, 1999, and a date of July 15, 1999 for the filing of a final pretrial order (not to mention all motions in limine). This is unfair not only to defendants, but is rather disrespectful of the court and the demands on its resources, not to mention other parties before the court who have proceeded apace with their cases.

Defendants last argument is tied to discovery as well: that they will be prejudiced by the addition of Jimenez

Chavez v. Illinois State Police, Not Reported in F.Supp.2d (1999)

because discovery is closed. While it is true that defendants have already conducted a fairly thorough deposition of Jimenez, they did not address him as though he were a named plaintiff seeking damages. (*Defendants' Response*, at 5; Ex. 1, pp. 1–35). And as discussed above, they did not expect to have to bring a summary judgment motion against him. Further discovery will be necessary. This is prejudicial in terms of expense and time.

We are not unmindful that motions to add a plaintiff are ordinarily granted. Plaintiffs' motion, however, is simply beyond the ordinary. Discovery has been closed since August 30, 1997. Plaintiffs have known about Jimenez's claim for nearly three years. They knew about his claim for over a year before the discovery cutoff. They knew about his claim when the defendants conducted Jimenez's telephone deposition. It is true that plaintiffs "do not object to the defendants taking Jimenez's deposition again" (*Pl.Reply*, at 9 n. 5), but that does little to explain their delay or relieve defendants' prejudice.¹ This gesture

is less than magnanimous, given that it is plaintiffs who have sought—and been granted—extensions of discovery on no fewer than four occasions. Also disturbing is the fact that plaintiffs offer no explanation whatsoever as to why they were unable to add Jimenez prior to this. Joinder may be "permissively" granted, but it is not granted as a matter of right. Plaintiffs cannot expect to succeed on this motion without offering some excuse for their conduct, however, feeble.

CONCLUSION

***3** For the foregoing reasons, the plaintiffs' motion to add a new plaintiff is hereby DENIED.

Footnotes

¹ Ordinarily, the court—as opposed to the parties—has the authority to set, enforce, and grant extensions of discovery deadlines.