

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA, :
Plaintiff, :
 :
v. : NO. 3:86CV252 (EBB)
 :
STATE OF CONNECTICUT, et al., :
Defendants. :

**RULING ON MESSIER PLAINTIFFS' MOTION TO INTERVENE
IN THE REMEDIAL PROCEEDINGS IN THE DISTRICT COURT
AND IN THE STATE'S APPEAL**

The class representatives ("intervenors") in Messier v. Southbury Training School, No. 3:94CV1706(EBB), have moved this Court to intervene as of right, pursuant to FED.R.CIV.P. 24(a), because, they allege, they have an interest relating to the issues in this lawsuit and the disposition of this action without their participation "may as a practical matter impair or impede their ability to protect that interest." Motion to Intervene at 1. Additionally, the intervenors have moved for permissive intervention, pursuant to FED.R.CIV.P. 24(b)(2), asserting that intervention "will ensure a prompt and fair resolution of the outstanding issues in the remedial process and appeal, rather than unduly delay the resolution" of this action. Motion to Intervene at 1. For the reasons set out below, the motion [Doc. No. 1334] is DENIED.

BACKGROUND

The background of this action has been extensively set forth in prior rulings, and is noted briefly here only to give context to the motion to intervene.

On September 11, 1985, following an investigation by the United States Department of Justice under the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997 et seq., Plaintiff brought this action against the State of Connecticut, the Governor, the Commissioner of the Department of Mental Retardation ("DMR"), and the Director of STS, pursuant to CRIPA. In lieu of litigation, the United States and various Connecticut officials entered into a Consent Decree which this Court so ordered on December 22, 1986.

The Consent Decree required the Defendants to submit an Implementation Plan, which was adopted by the Court on July 21, 1988. Eight years later, Defendants were found in contempt of the Consent Decree and the Implementation Plan. United States v. State of Connecticut, 931 F. Supp. 974 (D. Conn. 1996), appeal dismissed, 1997 U.S. App. LEXIS 21006 (2d Cir., June 13, 1997). The Court appointed a Special Master, and a Remedial Plan [Doc. No. 188] was developed by the Special Master and adopted by the Court on April 21, 1998. Since that time, the parties, along with the Special Master, have proceeded to review the outstanding Remedial Plan requirements and recommend release where appropriate. In the interim, the parties negotiated and presented to the court a settlement agreement ("the Joint Agreement") which proposed an alternative means of resolving the few outstanding issues. This Court disapproved that settlement agreement on July 21, 2005. Defendants filed a notice of appeal of the disapproval with the

Second Circuit on September 16, 2005. The United States elected not to join that appeal. The Defendants have not moved to stay proceedings in this Court pending the appeal, and as of the date of this ruling, only a few Court Requirements remain to be released. This Court anticipates that full compliance with the Remedial Plan shall be achieved in the first quarter of 2006.

The Messier plaintiffs have sought participation in this action in one form or another four times previously; each time, this Court denied permission. On October 27, 1986, the Connecticut Association for Retarded Citizens, Inc., now known as ARC/Connecticut, along with six named plaintiffs (residents of Southbury Training School) sought to intervene in this case. That motion was denied by this Court on December 22, 1986.

Subsequently, on October 6, 1994, ARC/Connecticut along with eight representative plaintiffs filed a separate action, Messier v. Southbury Training School, No. 3:94CV1706(EBB), and on that same date filed a motion to consolidate Messier with United States v. Connecticut. This Court denied the motion to consolidate on March 5, 1996.

On November 22, 2002, the Messier plaintiffs filed a motion to intervene, which motion was denied by this Court on January 7, 2003.

And, on April 27, 2004, the Messier plaintiffs filed a motion for permission to file a brief as amici curiae in opposition to the United States' motion for determination regarding the Joint

Agreement. This Court denied that motion on June 24, 2004.

STANDARD

A. Intervention as of Right under FED.R.CIV.P. 24(a)

Rule 24(a) of the Federal Rules of Civil Procedure provides, in pertinent part:

Upon timely application anyone shall be permitted to intervene in an action: . . . (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

FED.R.CIV.P. 24(a). See also Brennan v. N.Y.C. Bd. of Educ., 260 F.3d 123, 128 (2d Cir. 2001); Butler, Fitzgerald & Potter v. Sequa Corp., 250 F.3d 171, 176 (2d Cir. 2001); New York News, Inc. v. Kheel, 972 F.2d 482, 485 (2d Cir. 1992). "For an interest to be cognizable under Rule 24(a)(2), it must be 'direct, substantial, and legally protectable.'" United States v. Peoples Benefit Life Ins. Co., 271 F.3d 411, 415 (2d Cir. 2001) (quoting Washington Elec. Coop., Inc. v. Massachusetts Mun. Wholesale Elec. Co., 922 F.2d 92, 97 (2d Cir. 1990)) (citations omitted). "Intervention is a procedural device that attempts to accommodate two competing policies: efficiently administering legal disputes by resolving all related issues in one lawsuit, on the one hand, and keeping a single lawsuit from becoming unnecessarily complex, unwieldy or prolonged, on the other hand." United States v. Pitney Bowes, Inc., 25 F.3rd 66, 69 (2d Cir. 1994). The court has discretion in

determining when intervention is appropriate. Washington Elec. Coop., 922 F.2d at 97.

Timeliness

Whether an application is timely is a decision within the discretion of the district court. The Second Circuit has held that among the circumstances courts should consider are: "(1) how long the applicant had notice of the interest before it made the motion to intervene; (2) prejudice to existing parties resulting from any delay; (3) prejudice to the applicant if the motion is denied; and (4) any unusual circumstances militating for or against a finding of timeliness." Id. at 70. Here, both the United States and the State of Connecticut argue that the Messier plaintiffs' motion to intervene is not timely in that the movants knew of the Court's consideration of the Joint Agreement for over a year and did not seek to intervene until now. The movants argue that granting the motion will not unduly delay or prejudice the rights of the parties to this action "in that only a vigorous opposition to the State's appeal will ensure the prompt completion of the remedial process." Motion to Intervene at 6. The remedial process has continued to operate during the pendency of the State's appeal; the State has not sought to stay proceedings in the district court. Intervention at this late date, when the parties and the Court anticipate full compliance with the Remedial Plan in the first quarter of 2006, will inevitably lead to a delay in these proceedings, thereby significantly prejudicing the existing parties. The Court finds no

prejudice to the Messier plaintiffs if the motion is denied on timeliness grounds. As oft stated by this Court in the rulings on the Messier plaintiffs' prior motions to participate in this action, the Messier plaintiffs can and are pursuing their Constitutional rights in a separate action.

Impairment of Messier plaintiffs' ability to protect their interests

The intervenors also claim that the disposition of this action will impair or impede their ability to protect their interest because the United States entered into a settlement agreement "that does not accord proper deference to the Remedial Orders, . . . the parties have been found to have needlessly delayed the remedial process by seventeen months, and . . . [because] the parties have decided to pursue an appeal rather than bring this matter to a prompt conclusion." Mem. in Support at 24. This Court never held that the parties needlessly delayed the remedial process by seventeen months, and, although the State has appealed this Court's disapproval of the Joint Agreement, the United States has not joined that effort and neither party has moved for a stay of the proceedings in this Court. Thus, review of compliance with the Remedial Orders is ongoing, and intervention at this time, shortly before this Court expects this litigation to be resolved, either along the path followed since the Remedial Orders were issued or through the appeal of the denial of the settlement agreement, will lead to a delay which would itself likely impair intervenors' ability to protect their interests.

Interest adequately represented by existing parties

The intervenors assert that "where a proposed intervenor's interests are otherwise unrepresented, the standard for intervention is no more burdensome than the standing requirement." Mem. in Support of Motion to Intervene at 20. Nearly nineteen years ago this Court found that the Connecticut Association for Retarded Citizens and six individual residents at STS failed to overcome the presumption that representation by the government in the context of this CRIPA action is adequate. See Ruling on Pending Motions [Doc. No. 34] at 6-7 (December 22, 1986). Nothing has changed in the intervening years to cause this Court to find intervention by the Messier plaintiffs should be permitted. As the Second Circuit has cautioned, "we have demanded a more rigorous showing of inadequacy in cases where the putative intervenor and a named party have the same ultimate objective." Butler, 250 F.3d at 179 (citation omitted). Here, the Messier plaintiffs assert that only they can adequately represent the interests of class members, in that, under CRIPA, the "Attorney General does not directly represent any institutionalized plaintiffs, and the authority granted him is in no way intended to preclude, delay or prejudice private litigants." Mem. in Support of Motion to Intervene at 24-25. This Court stated as much in its December 22, 1986 ruling, noting that "these parties remain free to pursue any individual claims they may have concerning the conditions at STS in a separate action" because 42 U.S.C. § 1997j specifically disclaims

any expansion or restriction on the rights of private parties to enforce legal rights granted them by existing law. See Ruling on Pending Motions at 7, 2. The government has proceeded under CRIPA since 1986 to ensure the constitutional rights of persons institutionalized at STS. Only the Attorney General, for or in the name of the United States, is authorized to initiate a civil action under CRIPA. The intervenors have pursued their own private action to remedy unconstitutional conditions at STS and to address issues of community placement. "Where there is an identity of interest between a putative intervenor and a party, adequate representation is assured." Washington Elec. Coop., 922 F.2d at 98. Though the approach and motivation may be different, both the United States and the Messier plaintiffs seek to correct constitutional deficiencies in the care of persons institutionalized at STS. "[A] putative intervenor's interest is not inadequately represented merely because its motive to litigate is different from that of a party to the action." Id. Intervenors fail to overcome the presumption that representation by the United States in this CRIPA action is adequate.

B. Permissive Intervention under Rule 24(b)

Rule 24(b) of the Federal Rules of Civil Procedure provides, in relevant part:

Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. . . . In exercising its discretion the court shall consider

whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

FED.R.CIV.P. 24(a). The Messier plaintiffs also seek intervention because they assert that issues of fact and questions of law in Messier are common to those in this action, especially under the Due Process Clause of the Fourteenth Amendment. Intervenors argue that their participation will serve the ends of judicial economy and that no compelling argument can be made that their intervention will unduly delay or prejudice the rights of the existing parties to this action. Mem. in Support of Motion to Intervene at 26-27. Intervenors allege that Defendants have not purged themselves of contempt since 1995. Defendants have made great progress toward compliance with all outstanding Court Requirements in the Remedial Plan and this Court anticipates that full compliance will be achieved in the first quarter of 2006. To now allow the Messier plaintiffs to interject new issues into this litigation would not serve the ends of judicial economy. Even if intervention would serve the ends of judicial economy, this Court must deny permissive intervention as inevitably it will lead to an unnecessarily complex and protracted process in this action, thereby prejudicing the rights of the existing parties. See Pitney Bowes, 25 F.3d at 69.

CONCLUSION

Having found that the intervenors' interest is adequately represented by existing parties, the Messier plaintiffs' Motion to Intervene in the Remedial Proceedings in the District court and in the State's Appeal [Doc. No. 1334] as of right under FED.R.CIV.P.

24(a) is DENIED.

Having also found that intervention will unduly delay or prejudice the adjudication of the rights of the existing parties, the Messier plaintiffs' motion for permissive intervention under FED.R.CIV.P. 24(b) is also DENIED.

SO ORDERED.

ELLEN BREE BURNS, SENIOR JUDGE
UNITED STATES DISTRICT COURT

Dated at New Haven, CT, this ____ day of December, 2005.