

Fussell v. Wilkinson

United States District Court for the Southern District of Ohio, Western Division

June 30, 2005, Decided ; June 30, 2005, Filed

Case No. 1:03-CV-704

Reporter: 2005 U.S. Dist. LEXIS 13010

Rodney Fussell, et al., Plaintiffs, v. Reginald Wilkinson, et al., Defendants.

Opinion by: Sandra S. Beckwith

Subsequent History: Settled by, Motion granted by Fussell v. Wilkinson, 2005 U.S. Dist. LEXIS 30984 (S.D. Ohio, Nov. 22, 2005)

Disposition: [*1]

Counsel: For Rodney Fussell, Gary Roberts, James Love, Plaintiffs: Alphonse Adam Gerhardstein, Gerhardstein Branch & Laufman Co. LPA, Cincinnati, OH; David A Singleton, Keith Eric Syler, Prison Reform Advocacy Center, Cincinnati, OH.

Christopher R Bruggeman, Intervenor Plaintiff, Pro se, London, OH.

Scott G Mattimore, Intervenor Plaintiff, Pro se, London, OH.

For Director Reginald Wilkinson, individually and in his official capacity (Ohio Department of Rehabilitation and Correction), Kay Northrup, individually and in her official capacity (Ohio Department of Rehabilitation and Correction), Dr Bruce Martin, individually and in his official capacity (Ohio Department of Rehabilitation and Correction), Pedro Obregon, individually and in his official capacity (Southern Ohio Correctional Facility, Institution Chief Medical Officer), Mona Parks, individually and in her official capacity (Southern Ohio Correctional Facility, Health Care Administrator), Vicki Ware, individually and in her official capacity (London Correctional Institution, Health Care Administrator), Dr. James McWeeney, individually and [*2] in his official capacity (London/Lebanon Correctional Institution, Institution Chief Medical Officer), Cindy Lawson, individually and in her official capacity (Lebanon Correctional Institution, Health Care Administrator), Defendants: Marianne Pressman, Joseph M. Mancini, Ohio Attorney General - 2, Cincinnati, OH; Mark David Landes, J Eric Holloway, Isaac Brant Ledman & Teetor - 2, Columbus, OH.

Michael A Kelley, Intervenor, Pro se, Blacklick, OH.

Judges: Sandra S. Beckwith, Chief Judge, United States District Judge.

Opinion

Order

On April 18, 2005, this Court issued an order denying Christopher R. Bruggeman's motion for intervention as of right in this matter. Mr. Bruggeman now asks the Court to certify the issue of his right to intervene pursuant to Rule 24(a) of the Federal Rules of Civil Procedure for interlocutory appeal. Mr. Bruggeman brings the present motion pursuant to Rule 54(b) of the Federal Rules of Civil Procedure and 28 U.S.C. § 1292(b). Rule 54(b) applies only to judgments, however, and is, therefore, inapplicable to the Court's April 18 [*3] order. For that reason, the Court considers Mr. Bruggeman's motion in accordance with the standards applicable to motions under 28 U.S.C. § 1292(b) only.

Section 1292(b) provides as follows:

When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, she shall so state in writing in such order. The Court of Appeals may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days of the entry of the order. In order to establish that an interlocutory appeal is appropriate, a party seeking to appeal an order must establish (1) that the order involves a controlling legal question, (2) that substantial ground for difference of opinion exists, and (3) that a determination of the question by the Court of Appeals would materially advance the litigation in the district court. See In re Baker & Getty Financial Services, Inc., 954 F.2d 1169, 1172 (6th Cir. 1992). [*4] A strong federal policy exists against the piecemeal litigation permitted by interlocutory appeals. See Pacific Union Conference of

Seventh-Day Adventists v. Marshall, 434 U.S. 1305, 1309, 54 L. Ed. 2d 17, 98 S. Ct. 2 (1977).

The Court is persuaded that the first prerequisite for certification is satisfied. The issue upon which the Court ruled in its April 18 Order is a controlling issue of law. The Court is not persuaded that the second requirement is satisfied. The Court's analysis is based upon settled law. The Court remains unpersuaded that Mr. Bruggeman has a right that is subject to impairment or impediment as a result of this action. He is not entitled to intervene as of right in this action. Moreover, the resolution of the issue

by the Court of Appeals would not materially advance this litigation. Accordingly, Mr. Bruggeman's motion to certify the issue for interlocutory appeal (Doc. 61) is hereby **DENIED.**

IT IS SO ORDERED.

June 30, 2005

Sandra S. Beckwith, Chief Judge

United States District Court