

Plaintiffs have not responded. Defendant Jackson-Madison County School System Board of Education ("JMCSB") responded on April 24, 2007, opposing intervention. For the following reasons, the motion is DENIED.

I. Background

In November 1990, a consent judgment was entered addressing the consolidation of the Jackson City Schools and the Madison County Schools. On or about November 28, 2000, the parties entered into another agreement (the "Agreement"), which set forth a long-term voluntary desegregation plan.

The Agreement set out a two-phase program toward a final goal of declared unitary status. During the first phase (the "Implementation Period"), JMCSB agreed to secure funding for and accomplish school construction, renovation, and other projects included in a Long-Range Plan attached to the Agreement.

(Agreement, ¶ 6.) The Implementation Period was not to exceed four years. (Id.)

After completion of the Implementation Period, a second phase (the "Monitoring Period") began, which was to last two years. (Id., ¶ 23.) During the Monitoring Period, a set of three benchmarks was created toward partial and/or full unitary status. First, at the end of the first year of the Monitoring Period, if no issue about the facilities obligations of the Agreement had been pursued through the Dispute Resolution Process provided in

the Agreement, the parties would jointly ask the Court to enter an order stating that partial unitary status had been achieved as to facilities. (Id., ¶ 24.) Second, at the end of the second year of the Monitoring Period, if no issue about student assignments, faculty and staff, pupil transportation, and/or extracurricular activities had been pursued through the Dispute Resolution Process, the parties would jointly ask the Court to enter an order stating that partial unitary status had been achieved as to student assignments, faculty and staff, pupil transportation, and/or extracurricular activities. (Id., ¶ 25.) Third, at the end of the Monitoring Period, if the parties had resolved all matters, they would jointly ask the Court for an order declaring that full unitary status had been achieved. (Id., ¶ 28.) If the parties had not resolved all matters, the 2000 Agreement mandated a return to this Court as follows: "Otherwise, they shall jointly request that the Court establish a schedule for presentation and adjudication of remaining questions one or more of the parties contend are relevant to the Motion [for Declaration of Unitary Status] and will jointly request the Court to establish a new discovery schedule." (Id.)

The Agreement was signed by all parties on or about November 28, 2000. By Order dated December 8, 2000, the Court approved the Agreement, mandating that "defendants, the Monroe plaintiffs and the United States are hereby directed fully to implement the

provisions of this Agreement." (Dec. 8 Order, p. 2.) That order was not appealed and no party has sought relief from the order under Federal Rule of Civil Procedure 60.

The Agreement was made expressly contingent on JMCSB obtaining financing sufficient for construction and renovation of new schools, stating that "[i]n the event the Board is unable to obtain a commitment for the full funding anticipated in the Plan for all capital (construction and renovation) projects, this Agreement shall be void and unenforceable." (Agreement, ¶ 5(c).) To comply with this condition, JMCSB requested approximately fifty million dollars from Madison County, the entity that funds JMCSB, to fund the capital projects. Madison County approved and expended the funds.

The Monitoring Period began on July 1, 2004 and ended on June 30, 2006. (Aff. of Debra Owen, ¶¶ 5-6.) The parties have completed the Implementation and Monitoring Periods and no disputes were pursued through the Dispute Resolution Process provided in the Agreement. The parties did not petition the Court for partial unitary status as to facilities at the end of the first year of the Monitoring Period, nor did they petition the Court for partial unitary status as to student assignments, faculty and staff, pupil transportation, and/or extracurricular activities at the end of the second year of the Monitoring Period. At the end of the Monitoring Period, the parties did not

petition the Court for full unitary status or jointly request that the Court establish a schedule for presentation and adjudication of any remaining questions. At a meeting held in February 2007, JMCSB voted not to seek a declaration of unitary status at that time.

Madison County asserts that "the Department of Justice has agreed to at least jointly file a motion for partial unitary status with the School Board and that counsel for the School Board has recommended same to the Board." (Mem. of Law in Supp. of Mot. to Intervene, p. 8.) It appears that "the School Board" is the same as JMCSB.

Madison County now seeks to intervene in this matter to argue for the parties' compliance with the Agreement and a declaration of partial or full unitary status for the Jackson-Madison County School System.

II. Standards for Intervention

There are two methods by which a non-party can intervene in a pending case: intervention of right, and permissive intervention. Fed. R. Civ. P. 24.

Regarding intervention of Right, Federal Rule of Civil Procedure 24(a) provides in relevant part:

Upon timely application anyone shall be permitted to intervene in an action . . . 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.

To qualify for intervention of right, a third party must satisfy each of four elements: "(1) timeliness of application; (2) a substantial legal interest in the case; (3) impairment of the applicant's ability to protect that interest in the absence of intervention; and (4) inadequate representation of that interest by parties already before the court." Ne. Ohio Coal. for Homesless and Serv. Employees Int'l Union, v. Blackwell, 467 F.3d 999, 1007 (6th Cir. 2006).

Regarding permissive intervention, Federal Rule of Civil Procedure 24(b) provides in relevant part:

Upon timely application anyone may be permitted to intervene in an action . . . 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.

In deciding a motion to intervene, "the court will accept as true all well-pleaded, nonconclusory allegations in the motion to intervene, in the proposed complaint or answer in intervention, and in declarations supporting the motion." Martin v. Corr. Corp. of Am., 231 F.R.D. 532, 536 (W.D. Tenn. 2005)(quoting 6 James Wm. Moore, Moore's Federal Practice, § 24.03[1][a] (3d ed. 2005)).

III. Analysis

To intervene of right or by permission, the motion to

intervene must be timely. Creusere v. Bd. of Educ. of City School Dist. of City of Cincinnati, 88 F. App'x 813, 824 (6th Cir. 2003). "The determination of whether a motion to intervene is timely should be evaluated in the context of all relevant circumstances." U.S. v. Tennessee, 260 F.3d 587, 592 (6th Cir. 2001)(quoting Jansen v. City of Cincinnati, 904 F.2d 336, 340 (6th Cir. 1990)). Among the factors to be considered are:

- (1) the stage of the proceedings;
- (2) the proffered purpose of intervention;
- (3) the length of time preceding the application during which the proposed intervenors knew or should have known of their interest in the case;
- (4) potential prejudice to the parties attributable to the proposed intervenor's delay; and
- (5) the existence of unusual circumstances.

In re Troutman Enterprises, Inc., 286 F.3d 359, 365 (6th Cir. 2002)(citation omitted).

A. Stage of the Proceedings

Although this case has been before the Court since 1963, "the absolute measure of time between the filing of the complaint and the motion to intervene is one of the least important" circumstances to be considered in deciding whether a motion is timely. Stupak-Thrall v. Glickman, 226 F.3d 467, 475 (6th Cir. 2000). "A more critical factor is what steps occurred along the litigation continuum *during* this period of time." Id.

Prior extensive litigation activity can render a proposed intervenor's motion to intervene untimely. Stupak-Thrall, 226 F.3d at 475. There has been significant litigation activity in

this case over the past four decades. The case has proceeded to the Sixth Circuit multiple times, see, e.g., Monroe v. Bd. of Comm'rs of City of Jackson, Tenn., 581 F.2d 581 (6th Cir. 1978), Monroe v. County Bd. of Educ. of Madison County, Tenn., 505 F.2d 109 (6th Cir. 1974), and to the United States Supreme Court once, Monroe v. Bd. of Comm'rs of the City of Jackson, Tenn., 391 U.S. 450 (1968).

Although the case was taken off the Court's active docket at the parties' request in June 2002¹ and there has not been significant activity before the Court since that time, the parties have continued negotiating to resolve this case. Another negotiation session was scheduled for May 2, 2007.² The parties' negotiations resulted in the Agreement that Madison County now seeks to have enforced. That the parties have progressed far enough in this case to engage in negotiations with some success weighs against allowing intervention. See Midwest Realty Mgmt. Co. v. City of Beavercreek, 93 F. App'x 782, 786 (6th Cir. 2004); In re S. Ohio Corr. Facility, 24 F. App'x 520, 532 (6th Cir. 2001)(that a motion to intervene was not filed until after the parties had agreed to a settlement and created a "complicated administrative scheme" for carrying it out weighed against

¹ The December 8 Order adopting and entering the Agreement provided that the parties would move to have this case removed from the Court's active docket when JMCSB received commitments for full funding of the capital projects provided in the Agreement. (Dec. 8 Order, p. 2.)

² There is nothing before the Court to indicate whether the May 2, 2007 negotiation session occurred.

finding the motion timely).

B. Purpose of intervention

Madison County asserts that its purpose in intervening is to "represent its interests in the continued validity of the . . . Agreement." (Mem. of Law in Supp. of Mot. to Intervene, p. 7.)

Madison County has not cited any authority demonstrating that its stated purpose is a legitimate purpose supporting intervention. It is not a party to the Agreement whose continued validity it asserts. None of its legal rights appear to be implicated in this case. *Cf. Jansen v. City of Cincinnati*, 904 F.2d 336, 340-41 (6th Cir. 1990)(proposed intervenors seeking to protect rights granted them under a consent decree had a legitimate purpose in intervening in an action challenging that consent decree). That Madison County has provided funding for JMCSB related to the Agreement and this case does not indicate that Madison County has a legal interest at stake in this litigation.

Although Madison County might have a legitimate interest in eliminating segregation in the school system, *see Bradley v. Milliken*, 828 F.2d 1186, 1192 (6th Cir. 1987), it has not asserted that eliminating segregation is its purpose in intervening. It is also not clear that ensuring the parties' compliance with the provisions of the Agreement regarding when a declaration of partial or full unitary status should be sought

will combat segregation in Jackson-Madison County Schools. Therefore, it does not appear that seeking to compel compliance with the Agreement is a legitimate purpose supporting intervention. This factor weighs against allowing intervention.

C. Length of Time that Movant Knew of Its Interest in the Case

Madison County asserts that its interest in this case arises from its fifty-million-dollar investment in projects required under the Agreement. Therefore, it knew of its interest when it agreed to provide funding for the construction and renovation projects. It is not clear from the parties' submissions precisely when Madison County agreed to provide funding for the projects.

Madison County asserts that, when it provided funds for the capital projects, it believed that the parties intended to comply with the Agreement and, therefore, its interests were adequately represented. It learned that its interests were not being represented in February 2007, when JMCSB voted not to seek partial or full unitary status under the Agreement at that time. The motion to intervene was filed on March 13, 2007, approximately one month after JMCSB's vote.

JMCSB asserts that Madison County has known that the parties were not in full compliance with the Agreement since the end of the first year of the Monitoring Period, on June 30, 2005, when the parties did not petition the Court for a declaration of partial unitary status as to facilities. It became clearer that

the parties were not complying with the Agreement when, at the end of the second year of the Monitoring Period on June 30, 2006, the parties did not petition the Court for a declaration of partial unitary status as to student assignments, faculty and staff, pupil transportation, and/or extracurricular activities. Therefore, JMCSB asserts, if Madison County's purpose in intervening is to ensure compliance with the Agreement, it should have moved to intervene after the first benchmark was missed in mid-2005 or after the second benchmark was missed in mid-2006.

Madison County has known of its interest in this case for several years and has known that the parties were not complying with the Agreement since mid-2005. That Madison County waited approximately twenty-one months to move to intervene in this case after learning that the terms of the Agreement were not being fulfilled weighs against allowing intervention.

D. Prejudice

Madison County asserts that it did not delay in filing its motion to intervene and, therefore, the parties cannot be prejudiced by any delay. JMCSB asserts that allowing Madison County to intervene at this stage would prejudice the parties in their efforts to resolve the litigation.

The parties are currently engaging in negotiations to resolve this matter. Had Madison County expressed its position and moved to intervene earlier, the parties might have taken its

concerns into consideration during their negotiations or decided to comply with the benchmarks described in the Agreement rather than continuing negotiations. Were Madison County permitted to intervene at this stage, the time and effort that the parties have expended on negotiations likely would be wasted. Therefore, this factor weighs against allowing intervention.

E. Unusual Circumstances

Madison County asserts that unusual circumstances in this case support its intervention because the parties are no longer adversary to each other and are in collusion in opposition to any application for partial or full unitary status. Madison County admits, however, that the Department of Justice has agreed to seek partial unitary status. It appears, therefore, that at least one party does intend to seek a declaration of partial or full unitary status.

Madison County also asserts that unusual circumstances supporting intervention exist because the parties are violating the Court's Order to implement the Agreement. Although that is an unusual circumstance, it does not appear to favor allowing Madison County to intervene. The parties and the Court are in the best positions to address the parties' compliance with Court orders.

F. Balancing the Factors

In the circumstances of this case, Madison County's motion

to intervene is not timely. Therefore, the motion is DENIED.

IV. Conclusion

For the foregoing reasons, Madison County's motion to intervene is DENIED.

So ordered this 18th day of May 2007.

s/ Samuel H. Mays, Jr.

SAMUEL H. MAYS, JR.

UNITED STATES DISTRICT JUDGE