

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

JERRY LEE ALSTON,	:	
	:	
Plaintiff,	:	C.A. No. 01C-07-039
	:	
v.	:	
	:	
DELAWARE GOVERNOR RUTH ANN	:	
MINNER; DELAWARE ATTORNEY	:	
GENERAL M. JANE BRADY;	:	
DELAWARE STATE POLICE AS AN	:	
ENTITY; CITY OF DOVER POLICE	:	
DEPT. AS AN ENTITY; PROBATION	:	
AND PAROLE AS AN ENTITY; QUASI	:	
POLICE AGENCIES; STATE OF DELA-	:	
WARE HUMAN RELATIONS COMMIS-	:	
SION; and BAYHEALTH MEDICAL,	:	
	:	
Defendants.	:	

ORDER

This 19th day of October, 2001, upon consideration of the pleadings and arguments of the parties, it appears that:

- 1. Plaintiff has identified this matter as a class action in his complaint. Plaintiff has not, however, moved this Court for class certification, nor has he averred facts showing that the prerequisites for certification are met (as required under Superior Court Civil Rule 23(a)); therefore, as of this date, Plaintiff's action has not been certified as a class action.**
- 2. The Court can at any time, make the determination regarding class certification, preemptively, and the Court is required to do so in a prompt manner. The Court is not subject to any party making the motion. It can make the class certification decision in its discretion.**
- 3. In order for a class action to be conditionally certified under Delaware**

Superior Court Civil Rule 23(a),¹ certain criteria must be satisfied before the action may be pursued on behalf of a class. One or more members of a class may sue, or be sued, as representatives on behalf of all of the designated class if: (1) the class is so numerous that joinder of all members is impractical; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties fairly and adequately represent the class; and (4), the focus of the analysis here, the plaintiff must show that his representation will fairly and adequately protect the interests of the class.²

4. The Court finds that to certify the proposed class all certification requirements must be met (that is the representative must also comply with those requirements). The four prerequisites are required to certify the class, and the representative of the class must, of course, be a member of the class.

5. In this case, the Court is going to zero in on the representative parties—will the representative parties fairly and adequately represent the class? The focus is going to be on the adequacy of protection. Under Super. Ct. Civ. R. 23(a)(4),

¹ The circumstances for maintaining a class certification are covered in Delaware Super. Ct. Civ. R. 23(b). The Court must determine whether a class action can be maintained as soon as practicable.

² Delaware Super. Ct. Civ. R. 23(a).

the plaintiff must show that his representation will fairly and adequately protect the interests of the class. The Court does not need to examine the other remaining prerequisites, under Super. Ct. Civ. R. 23(a), if one of the prerequisites cannot be maintained.

6. When determining the adequacy of representation, the Court will consider the quality of the plaintiff's case as well as the caliber of legal representation and the issues of nonfeasance by the plaintiff.³ Class actions are very complicated matters. In view of the fact that the plaintiff has filed this action *informa pauperis*, and has difficulty in meeting procedural requirements, the Court cannot find that Plaintiff has the resources and legal expertise to fairly and adequately protect the interest of the class. The Court has allowed Plaintiff to pay his current court costs by making payments on a monthly basis. Plaintiff will incur substantial additional expense in order to have this matter certified, and to keep this matter certified.

7. Class action litigation, by definition, is legally demanding on the part of an attorney as well as the class representative. In this case, we have the class representative acting as his own attorney. If the plaintiff were going to maintain this as a class action, plaintiff would have to properly identify all members of the class that plaintiff describes as "American citizens of color"⁴ (a large class, and

³ *L. C. Parker Realtors, Inc. v. Dutch Village, Inc.*, Del. Super., 174 A.2d 320 (1961).

⁴ At the hearing on the motion to dismiss plaintiff's complaint, the plaintiff testified that he was trying to create a class of American citizens of color. This broad-based class definition certainly raises issues with respect to the "commonality" and "typicality" requirements of Super. Ct. Civ. R. 23(a), and regarding the "predominance" requirement for

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plaintiff testified, as well, that he is not really sure of the dimensions of the class).

maintenance of the class action under Super. Ct. Civ. R. 23(b); however, the Court does not reach these issues as the certification decision here can be decided on the issue of adequacy of representation under Super. Ct. Civ. R. 23(a).

8. Plaintiff would not only have to identify the class members, but would have to communicate with them. He would have to establish procedures under which he would be able to obtain acceptance as well as exclusion from the proceeding, as may be deemed appropriate, and determine what would be acceptable in resolving the controversy. This will be expensive in both time and monetary cost.⁵ A person proceeding *informa pauperis*, by definition alone, is not going to have the funds to support a class action.

9. The plaintiff has not set forth sufficient facts to allow this Court to appoint him or certify him as the class representative.

⁵ The class representative must perform vigorous, tenacious prosecution throughout. *Gonzales v. Cassidy*, 5th Cir., 474 F.2d 67 (1973). The representative must be fully qualified to handle the case. Legal ability and training are important. *Id.* Considerations include the ability of the representative to bear costs, as the plaintiff must bear the substantial costs of notice to the class. For example, due process requires that notice be made in the best method possible under the circumstances, which can include costly personal notice to all members instead of notice by publication. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156 (1974); *Oppenheimer Fund v. Sanders*, 437 U.S. 340 (1978).

10. For the foregoing reasons, under Super. Ct. Civ. R. 23(a)(4), this Court will not conditionally certify this as a class action; therefore, this case will not proceed as a class action.

IT IS SO ORDERED.

J.

WLW/dmh

oc: Prothonotary

xc: Mr. Jerry Lee Alston

Mason E. Turner, Jr., Esquire

Richard W. Hubbard, Esquire

William W. Pepper, Sr., Esquire