BREEN et al v. MINETA et al Doc. 334

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KATHLEEN BREEN, et al.,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 05-0654 (PLF)
ANTHONY FOXX, SECRETARY OF TRANSPORTATION, DEPARTMENT OF TRANSPORTATION, et al.,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

On November 4, 2016, the Court granted Joseph D. Gebhardt's Motion to Withdraw as Attorney for Plaintiffs. Order (Nov. 4, 2016) [Dkt. 321]. Upon consideration of the Defendants' Motion for Clarification and Partial Reconsideration of Order Granting Gebhardt's Motion to Withdraw From Representation ("Defendants' Motion for Clarification and Partial Reconsideration") [Dkt. 323] and Plaintiffs' Response to Defendants' Motion for Clarification and Partial Reconsideration of Order Granting Gebhardt's Motion to Withdraw From Representation ("Plaintiffs' Response") [Dkt. 328], the Court will clarify its November 4, 2016 Order and deny the defendants' motion for partial reconsideration.

Joseph D. Gebhardt was the lead counsel for the plaintiffs in this case. He closed his law firm, Gebhardt & Associates, in 2014. Plaintiffs' Response Exhibit A. On August 18, 2016, Daniel K. Gebhardt, also a former partner at Gebhardt & Associates, filed an unopposed Motion to Withdraw as Attorney for Plaintiffs, stating that he is now a solo practitioner and "no longer has the resources to devote to the case." Unopposed Motion to Withdraw as Attorney for

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Plaintiffs at 1 [Dkt. 300]. In his unopposed motion, Daniel Gebhardt stated that "[i]n light of the fact that the Plaintiffs now have new competent counsel, it is appropriate for undersigned counsel to be allowed to withdraw." Id. at 1. He further represented that counsel for the defendants had no opposition to his withdrawal. Id. The Court granted Daniel Gebhardt's motion to withdraw by minute order on September 27, 2016. Joseph Gebhardt filed a motion to withdraw for the same reason; he no longer has the resources to provide plaintiffs with representation in this case. See Plaintiffs' Response Exhibit B; Letter from Joseph D. Gebhardt (Dec. 2, 2016) at 1 [Dkt. 333].

After the closure of Gebhardt & Associates, there has been confusion regarding which plaintiffs have chosen to pursue their claims pro se and which have obtained representation through plaintiffs' new counsel, Joseph M. Sellers and Gary M. Gilbert. See Defendants' Motion for Clarification and Partial Reconsideration at 1 n.1. Plaintiffs' counsel have reached out to all of the plaintiffs previously represented by Joseph Gebhardt. Plaintiffs' Notice of Filing Regarding the Individuals Who Have Retained Plaintiffs' Counsel at 1-2 [Dkt. 307]. Plaintiffs' counsel have also reached out to the 663 plaintiffs who were previously dismissed from this case. Plaintiffs' Notice of Filing Regarding the Individuals Who Have Retained Plaintiffs' Counsel at 1 n.3 [Dkt. 313]. Due to the many years that have passed in this case and a lack of accurate contact information for all plaintiffs, many of the plaintiffs have not responded to letters from plaintiffs' new counsel, and some letters have been returned as undeliverable. See id.; Plaintiffs' Response at 2.

The Court granted Joseph Gebhardt's motion to withdraw based on the following information: (1) Joseph Gebhardt's law firm is now closed and he no longer has the means to represent the plaintiffs in this case; (2) Daniel Gebhardt's unopposed motion to withdraw

because he also no longer has the means to represent the plaintiffs in this case; (3) the representation in Daniel Gebhardt's motion that the plaintiffs in this case now have competent counsel; and (4) the efforts of plaintiffs' new counsel to reach all of the named and dismissed plaintiffs previously represented by Joseph Gebhardt.

The present motion to withdraw did not comply with Local Civil Rule 83.6(c) because it did not state that notice of Joseph Gebhardt's motion to withdraw had been given to each party not currently represented by plaintiffs' counsel. The Court is satisfied, however, that the efforts by plaintiffs' new counsel to reach the named and dismissed plaintiffs in this case constitutes a sufficient effort to notify them that they may need to obtain new counsel, retain Mr. Sellers or Mr. Gilbert, or proceed pro se. Given the difficulties that plaintiffs' new counsel have had in attempting to reach these individuals, it is unlikely that Joseph Gebhardt would be more successful in that endeavor.

Accordingly, it is hereby

ORDERED that defendants' Motion for Partial Reconsideration of Order Granting Gebhardt's Motion to Withdraw From Representation [Dkt. 323] is DENIED; and it is

FURTHER ORDERED that plaintiffs' new counsel shall submit a status report on or before January 4, 2017, on their continuing efforts to contact the plaintiffs previously represented by Joseph Gebhardt and include an updated list of plaintiffs who have retained plaintiffs' counsel, plaintiffs who have chosen to proceed pro se, and the individuals who have

not responded to letters from plaintiffs' counsel or for whom letters have been returned as undeliverable.

SO ORDERED.

/s/_____
PAUL L. FRIEDMAN
United States District Judge

DATE: December 14, 2016