

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

John Miller, et al.,

Plaintiffs,

v.

Case No. 2:98-cv-275

Reginald Wilkinson, et al.,

JUDGE SARGUS

Defendants.

ORDER

This class action case is before the Court by way of a number of motions, all of which have been filed either by class members who are not named plaintiffs, by a group of inmates which includes one named plaintiff, Darryl Blankenship, or by Mr. Blankenship in his capacity as a *pro se* plaintiff in this case. The Court will deal with each of these categories of motions in turn.

I. Motions by Persons Not Named Plaintiffs

Numerous motions have been submitted by persons who purport to be class members but who are not named plaintiffs. The Court does not ordinarily entertain motions filed by persons not officially parties to the case. Here, it is immaterial, because all of the motions ask for the same relief, and they are all without merit.

Each of the motions which fall into this category ask the Court either to set a trial date, to reject the "proposed settlement" of this case, or both. The Court has not yet set a trial date because productive settlement negotiations are ongoing, under the supervision of the Magistrate Judge, and they have not yet reached either the point of impasse or complete settlement of the class claims. Another meeting with the Magistrate Judge is scheduled for October 8, 2009. The Court is exercising its discretion not to set a trial date at this time. Additionally, since there is no proposed settlement as of this date, but only settlement proposals being exchanged between the parties, there is no settlement that the Court can reject. If and when a settlement of class claims

is reached, the class members will be notified and given an opportunity to object if they so choose. Any objections at this point are premature. Therefore, all of these motions (#s 426, 427, 429, 430, 433, 436, 437, 442, and 450) will be denied.

## II. Motions by the Proposed Intervenors

Mr. Blankenship and four other individuals (Jeffrey Weinsheit, Jason Ratcliff, Jason Hysell, and Chris Roy) have moved to intervene in this case for the purpose of asserting certain claims that they had asserted in another case filed in this Court, *Ratcliff v. Moore*, Case No. 1:05-cv-582 (S.D. Ohio). They contend that the defendants in that case argued that these claims were duplicative of claims made here and that they should not be allowed to pursue those claims in the *Ratcliff* case. Based on a Report and Recommendation issued in *Ratcliff* on October 1, 2008, which recommended the dismissal of some of their claims based on that argument, they contend that they must be permitted to assert the dismissed claims in this case or else they are without a forum in which to make those claims.

The Court has reviewed both the Report and Recommendation and the subsequent order, issued on April 24, 2009 adopting that Report and Recommendation, and comes to the following conclusion about the motion to intervene. The only claims which the *Ratcliff* court held were duplicative of claims asserted in this case, and therefore subject to dismissal on that ground (as opposed to other grounds not relevant to the motion for leave to intervene) were the plaintiffs' claims for religious accommodation. Opinion and Order of April 24, 2009, at 8. Those claims were not dismissed in their entirety, however. Rather, the Court dismissed only the injunctive and declaratory relief aspects of those claims, and stayed any determination of damages pending further litigation in this case. Opinion and Order of April 24, 2009, at 19. Thus, the question is whether this Court should allow the five *Ratcliff* plaintiffs to intervene here solely for purposes of allowing them to assert religious-based claims for injunctive and declaratory relief.

The Court sees no reason to do so. By definition, the class claims in this case subsume any separate claims for injunctive and declaratory relief that the *Ratcliff* plaintiffs would assert. That is precisely why those aspects of their claims in *Ratcliff* were dismissed. There is no showing that the interests of those plaintiffs, all of whom are also class members here, are not adequately represented by the existing class. If, by chance, some aspect of their claims for

declaratory or injunctive relief are not resolved when this case is either tried or settled, they would be free to move the *Ratcliff* court to reopen those issues and try them along with the reserved damages claims. In the meantime, however, there would be no purpose served by allowing them to intervene and to assert claims that are duplicated by the claims already being litigated on behalf of the class. Therefore, the motion to intervene (#421) will be denied. However, their motion to receive copies of any orders issued in this case relating to their motion to intervene (#434) will be granted. The Court construes their prior motion to receive portions of the docket sheet in this case (#428) to be moot.

### III. Mr. Blankenship's Separate Motions

Mr. Blankenship has filed two *pro se* motions in this case relating to claims on which class counsel does not represent him. First, he filed a motion to compel discovery. Second, he filed a motion asking the Court to refer a certain incident which occurred in November, 2008 to the United States Attorney for criminal prosecution.

Taking these motions in reverse order, the Court declines the invitation to refer the incident in question for criminal prosecution. As Mr. Blankenship describes it, he was hindered in his ability to attend a conference call with his attorney by one of the guards at his institution, and later issued a ticket when he did attend the call after receiving permission from other prison officials. He asserts that the behavior of the guard in question was designed to interfere with his exercise of his constitutional rights and is therefore a criminal matter.

The Court certainly does not approve of prison officials' efforts to interfere with legitimate arrangements made by inmates and their attorneys to confer about pending litigation. In this case, the Court's experience has been that ODRC officials have been extremely cooperative in terms of arranging for the named plaintiffs to confer with counsel and to attend, by video conference, many meetings with the Court. The incident in question, if true, appears to be no more than an isolated incident and is not reflective of the ODRC's overall approach to this case. The Court does not deem it necessary to take the somewhat extraordinary step of referring the matter for criminal prosecution, but Mr. Blankenship, like any other citizen, is free to contact federal law enforcement authorities to present a complaint, should he desire to do so.

The other motion Mr. Blankenship filed is a motion to compel discovery. It recites that

he served discovery, wrote three letters asking for the information after it was overdue, and never received an answer. The docket sheet does not reflect that a response was ever filed to the motion.

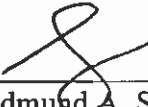
The Court is aware that Mr. Blankenship has been released from prison. The discovery in question appears to be directed to a claim for injunctive relief concerning work prescription days. The issue may well be moot. The Court will therefore deny the motion, noting, however, that a response to the motion would have been appreciated, and that if Mr. Blankenship believes the matter has not been mooted by his release from prison, he may renew his motion to compel.

#### IV. Disposition

For the foregoing reasons, all pending motions for a trial date or to have the Court reject the proposed settlement (#s 426, 427, 429, 430, 433, 436, 437, 442, and 450) are **DENIED**. The motion to intervene (#421) is **DENIED**, but the motion to direct the Clerk to mail a copy of the Court's ruling on that motion to the proposed intervenors (#434) is **GRANTED**. The motions for a copy of the docket sheet and to compel discovery (#s 428 and 432) are **DENIED AS MOOT**. The motion to refer a matter for criminal prosecution (#441) is **DENIED**.

**IT IS SO ORDERED.**

Date: 9-23-2009

  
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Edmund A. Sargus, Jr.  
United States District Judge