

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

BLAYNE WILLIAMS, SR.,

Plaintiff,

v.

CITY OF AUSTIN, ART ACEVEDO,
MARGO FRASIER, and
FRED FLETCHER, et al.,

Defendants.

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1:16-CV-1338-RP

ORDER

Before the Court is the motion of Debra L. Stephens (“Stephens”) to Intervene as Plaintiff. (Dkt. 17). By way of her motion, Stephens asserts that she satisfies the requirements for intervention as of right and permissive intervention and thus requests leave to intervene as a plaintiff in this matter. The Court disagrees and, for the reasons that follow, denies her motion.

BACKGROUND

Plaintiff Blayne D. Williams, formerly a police officer employed by the Austin Police Department (“APD”), brought this action against the City of Austin, the Austin Police Department, Police Chief Art Acevedo, police monitor Margo Frasier, and police commander Fred Fletcher.¹

Plaintiff’s allegations largely concerned disciplinary actions taken against him up to the eventual termination of his employment in the summer of 2015. Plaintiff asserted that this discipline violated several of his federal constitutional rights and was contrary to state law and his collective bargaining agreement. Plaintiff also raised claims concerning Acevedo’s decision to terminate APD’s secondary employment contract and purported retaliation following his reports of criminal activities by City employees.

¹ According to the complaint, Fletcher is now the chief of police for the Chattanooga Police Department.

The Court dismissed Plaintiff's claims on July 10, 2017, finding that the allegations contained in Plaintiff's complaint failed to state a claim upon which relief may be granted. (*See* Order, Dkt. 16). The court dismissed several claims with prejudice but granted Plaintiff leave to amend his other claims within fourteen days of the issuance of the order. The deadline to file an amended complaint was thus July 24, 2017. Plaintiff did not file an amended complaint and, on July 25, 2017, the Court entered final judgment dismissing Plaintiff's claims with prejudice.

Stephens filed her motion to intervene on July 17, 2017, one week after the Court granted the motion to dismiss Plaintiff's action. She claims to have a direct interest in the litigation because she, like Plaintiff, is claiming discrimination and retaliation leading to her termination from the APD Laboratory. Stephens's allegations concern gender discrimination, rather than the racial discrimination that Plaintiff complained of. The individuals Stephens accuses of perpetuating discrimination are also different from those named as defendants in Plaintiff's actions. Additionally, it is unclear when the events described in Stephens's motion have taken place.

LEGAL STANDARD

Federal Rule of Civil Procedure 24 provides for two avenues to intervene in an action: intervention of right and permissive intervention. A person may intervene as of right if a federal statute gives her an unconditional right to do so. Absent a statutory right, however, a movant must satisfy four requirements in order to intervene as of right under Rule 24(a): (1) the motion to intervene must be timely; (2) the movant must demonstrate an interest that is related to the property or transaction forming the basis of the action in which she seeks to intervene; (3) the disposition of the main action must impair or impede the movant's ability to protect her interest; and (4) the existing parties must not adequately represent the movant's interest. *Saldano v. Roach*, 363 F.3d 545, 551 (5th Cir. 2004). "Failure to satisfy any one requirement precludes intervention of right." *Haspel & Davis Milling & Planting Co. Ltd. v. Bd. of Levee Comm'rs*, 493 F.3d 570, 578 (5th Cir. 2007).

Where a movant does not meet the requirements for intervention of right, a court may still allow permissive intervention if a federal statute provides the individual with a conditional right to intervene, or if she “has a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b). The Court must consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties in exercising its discretion. *Taylor Commc’ns Grp., Inc. v. Sw. Bell Tel. Co.*, 172 F.3d 385, 389 (5th Cir. 1999). A district court’s decision to deny permissive intervention will be overturned only in extraordinary circumstances where the court has abused its discretion. *Trans Chem. Ltd. v. China Nat’l Mach. Imp. & Exp. Corp.*, 332 F.3d 815, 825 (5th Cir. 2003).

DISCUSSION

1. Intervention as of Right

Stephens first argues that she has a statutory right to intervene in this action under 42 U.S.C. § 2000h-2. That statute provides that the United States Attorney General may intervene in the name of the United States in equal protection actions under the Fourteenth Amendment if the Attorney General certifies that the case is of general public importance. The statute is inapplicable because Stephens is not the Attorney General.

The Court likewise concludes that Stephens does not satisfy the requirements for intervention under Rule 24(a)(2). First, she has not established an interest in Plaintiff’s action. The Fifth Circuit has held that “the applicant’s interest relating to the subject of the action must be ‘direct and substantial’ and must be ‘something more than an economic interest.’” *Trans Chem. Ltd.*, 332 F.3d at 823. “Moreover, ‘the interest must be one which the substantive law recognizes as belonging to or being owned by the applicant.’” *Hartford Cas. Ins. Co. v. Border States Traffic Supply, Inc.*, No. EP-08-CV-118-PRM, 2009 WL 224107, at *2 (W.D. Tex. Jan. 12, 2009) (quoting *Shaunfield v. Citicorp Diners Club, Inc.*, 2005 Dist. LEXIS 11244, at *17 (N.D. Tex. June 8, 2005)). Stephens has

identified no such interest in Plaintiff's action, beyond claiming unrelated denial of equal protection on the basis of her gender—not her race—and retaliation for unrelated acts. It is difficult to imagine how she has any interest at all in Plaintiff's action, which concerns racial discrimination and retaliation peculiar to him. Stephens has not convinced the Court that she shares any interest in common with Plaintiff.

Second, the adjudication of Plaintiff's claims in Stephens's absence will not impair any claims she may have. Aside from perhaps falling under similar legal theories, the claims Stephens seeks to raise bear no relation to Plaintiff's. Because her claims are completely unrelated, there is no risk of claim or issue preclusion.² Additionally, Plaintiff's claims concern no property in which Stephens may have an interest. In short, the Court's denial of leave to intervene will not prejudice Stephens, who may be able to pursue her claims in an independent action.

Because several elements are unsatisfied, the Court finds that Stephens is not entitled to intervention as of right under Rule 24(a).

2. Permissive Intervention

Stephens asserts that she satisfies the requirements for permissive intervention because her claims share a common question of law with the Plaintiff's. Even assuming that is true, the Court finds that allowing her to intervene in this matter will unduly delay the proceedings. Though Plaintiff's action has not been pending for a particularly long time, it has been finally adjudicated. And, as noted above, Stephens's claims are entirely unrelated to those at issue in Plaintiff's action. The Court "cannot see how litigating facts that are wholly unrelated to the underlying litigation can be achieved without causing undue delay to the parties involved in the suit." *Taylor Commc'ns Grp.*,

² The Court notes, however, that Stephens sued the City in 2012 over the events she outlines in her motion, which resulted in summary judgment being rendered against her. *See Stephens v. City of Austin, et al.*, 1:12-cv-659-DAE (W.D. Tex. 2012). Her claims would therefore likely be precluded even if the Court granted leave to intervene. Additionally, to the extent the events occurred prior to 2012, they are likely time-barred as well.

172 F.3d at 389. And a court does not abuse its discretion “[i]n seeking to bring the litigation to an expeditious close.” *Id.* at 389–90. The Court therefore finds permissive intervention to be unwarranted here.

CONCLUSION

For the foregoing reasons, the Court **DENIES** Stephens’s Motion to Intervene as Plaintiff. (Dkt. 17).

SIGNED on July 25, 2017.

A handwritten signature in blue ink, appearing to read "Robert Pitman", written over a horizontal line.

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE