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United States District Court,
N.D. Illinois, Eastern Division.

Dorothy GAUTREAUX, et al., Plaintiffs,
v.
THE CHICAGO HOUSING AUTHORITY, et al., Defendants.
CONCERNED RESIDENTS OF ALBA ("CRA"), et al., Intervenor-Plaintiffs,
v.
THE CHICAGO HOUSING AUTHORITY, et al., Intervenor-Defendants.

No. 66 C 1459. | June 23, 2004.

Attorneys and Law Firms

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Opinion

MEMORANDUM OPINION AND ORDER

ASPEN, J.

***1** Over thirty years ago, a group of Chicago Housing Authority ("CHA") residents filed a federal class action suit in which they alleged that the CHA had unconstitutionally discriminated against them by selecting sites for public housing based on the racial makeup of the surrounding communities. In 1969, United States District Court Judge Austin entered a judgment on the pleadings in favor of the CHA residents, finding that the CHA had engaged in a pattern of racial discrimination in selecting public housing sites. *Gautreaux v. Chicago Hous. Auth.,* 296 F.Supp. 907 (N.D.Ill.1969). He ordered the parties to "formulate a comprehensive plan to prohibit the future use and to remedy the past effects of CHA's unconstitutional site selection and tenant assignment procedures." *Id.* at 914. Pursuant to that mandate, as well as this Court's subsequent orders, the class-action plaintiffs (the "*Gautreaux* plaintiffs"), the CHA, the United States Department of Housing and Urban Development ("HUD"), and a court-appointed receiver have worked together to develop a plan for the revitalization of one of the Chicago's major public housing developments, the ALBA Homes. (We will refer collectively to this group of parties as the "*Gautreaux* parties" or the "original parties" to this litigation). The Concerned Residents of ALBA ("CRA") object to the proposed joint plan on the grounds that it does not do enough to remedy the past effects of CHA's discriminatory practices. CRA has therefore filed a motion to intervene in the *Gautreaux* litigation so that it may have a forum in which to voice its objections. For the reasons set forth below, we deny its motion to intervene as untimely.

BACKGROUND

On June 19, 1998, we approved a joint motion of the *Gautreaux* parties, entering an order designating an ALBA Revitalization Area and authorizing the development of non-elderly public housing units. Pursuant to our order, CHA submitted an application for funding under the federal government's HOPE VI program, along with a tentative plan for development of the ALBA Revitalization Area. Not long thereafter, on July 29, 1999, the CRA, a group comprised of current, former, and potential ALBA residents, filed suit against the CHA and HUD, challenging the proposed ALBA redevelopment plan, which we dismissed without prejudice as to CRA's right to intervene in the *Gautreaux* action. *Gautreaux v. Chicago Hous. Auth.,* No. 66 C 1459 (N.D.Ill. Nov. 4, 1999). The ALBA plaintiffs then filed a motion to intervene, which we denied without prejudice. *Gautreaux v. Chicago Hous. Auth.,* No. 66 C 1459 (N.D.Ill. Sept. 25, 2000). At that time, we found that the CHA had only developed a *tentative* plan for the ALBA Revitalization Area. Because the parties had not yet come up with a final redevelopment plan, we held, the CRA's complaint, which alleged that the plan was illegal, was not ripe for adjudication. *Id.* We explained that "once a

development plan is finalized, we expect to hold a hearing on the merits of the plan, which would involve receiving either oral or written submissions from all interested parties. At that time, if the CRA believes the final plan is in violation of the law, it may renew its motion to intervene." *Id.* CRA appealed this order to the Seventh Circuit, but voluntarily dismissed its appeal on May 31, 2002 because "the parties reached agreement that the ALBA redevelopment plan had become ripe, meeting the requirements set forth in this Court's Order of September 25, 2000." (CRA's Mem. In Support of Mtn. to Intervene at 3.) CRA did not renew its motion to intervene in the case until two years later, when it filed the present Amended Motion to Intervene on May 14, 2004.

ANALYSIS

***2** In its motion, CRA argues first that, pursuant to Federal Rule of Civil Procedure 24(a)(2), it has a right to intervene in the *Gautreaux* action. CRA's second argument is that, even if this Court finds that CRA is not entitled to intervene as a matter of right, this Court should allow permissive intervention pursuant to Federal Rule of Civil Procedure 24(b). We discuss each argument in turn.

I. Intervention as of Right

A party may intervene in an action as of right when, *inter alia,* "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." Fed. R. Civ. Pro. 24(a)(2). Mirroring the language of the Rule, the Seventh Circuit has set forth a four-part test for determining whether a party may intervene as of right: 1) the application must be timely; 2) the applicant must claim an interest relating to the property or transaction which is the subject of the action; 3) the applicant must be so situated that the disposition of the action may impair or impede the applicant's ability to protect that interest; and 4) existing parties must not adequately represent the applicant's interests. *Heartwood, Inc. v. United States Forest Serv., Inc.,* 316 F.3d 694, 700 (7th Cir.2003) (citing *Sokaogon Chippewa Community v. Babbitt,* 214 F.3d 941, 945-46 (7th Cir.2000)). The failure of any one of these factors requires denial of the petition to intervene. *Reich v. ABC/York-Estes Corp.,* 64 F.3d 316, 321 (7th Cir.1995) (citations omitted).

Turning to the first requirement, timeliness, the Seventh Circuit has held that courts should evaluate whether an application to intervene is timely according to a reasonableness standard. *People Who Care v. Rockford Bd. of Educ.,* 68 F.3d 172, 175 (7th Cir.1995) ("[R]equiring potential intervenors to be reasonably diligent in learning of a suit that might affect their rights, and upon learning of such a suit, to act to intervene reasonably promptly."). A party may not intervene if it "dragged its heels" after learning of its interest in a lawsuit. *Nissei Sangyo Am., Ltd. v. United States,* 31 F.3d 435, 438 (7th Cir.1994). There are four factors that a court must consider in assessing timeliness: 1) when the intervenor knew or should have known of his interest in the case; 2) whether the delay caused any prejudice to the original parties; 3) whether the intervenor would suffer any prejudice if his motion is denied; and 4) any unusual circumstances. *Id.* (citations omitted). Taking each of these factors in turn, we conclude that the CRA's application is not timely.

We first consider when CRA knew or should have known of its interest in the case. There is little question that CRA knew it had an interest in the case from the early stages of the ALBA redevelopment process since it filed its first suit against the CHA and HUD in 1999, shortly after this Court entered the order designating the ALBA Revitalization Area. Once we ordered that intervention was the appropriate vehicle for addressing its concerns (rather than the filing of a separate suit), CRA was also diligent about filing its first motion to intervene. As discussed above, however, we denied that motion on the grounds that CRA's interest in the case was not yet ripe. *Gautreaux v. Chicago Hous. Auth.,* No. 66 C 1459 (N.D.Ill. Sept. 25, 2000). At that time, we indicated that CRA could renew its motion to intervene once its claim did become ripe. Thus, the pertinent issue for purposes of the present motion to intervene is not when CRA knew of its overall interest in the case, but when CRA knew or should have known that its claim became ripe for adjudication.

***3** CRA concedes in its brief that, as soon as May 2002, "the parties reached agreement that the ALBA redevelopment plan had become ripe, meeting the requirements set forth in this Court's Order of September 25, 2000." (CRA's Mem. In Support of Mtn. to Intervene at 3.) There is therefore little question that CRA knew that the time was ripe for intervention as early as May of 2002. Yet it waited a full two years before renewing its motion to intervene. Although there is no set time limit by which a party must file a motion to intervene once it is aware of its interests, courts have held that much shorter time periods were insufficient. *See, e.g., City of Bloomington, Indiana v. Westinghouse Elec. Corp.,* 824

F.2d 531, 535 (7th Cir.1987) (finding that an eleven-month delay before seeking intervention was too long). CRA retorts that it had a good reason for holding off on renewing its motion since the parties were engaged in settlement negotiations and intervention might not be necessary. This argument is unpersuasive. CRA knew the case was ripe, and yet it waited two full years to intervene.

CRA maintains that it also waited two years to renew its motion because it relied on a supposed promise (contained in our Order of September 25, 2000) that we would hold a hearing on the merits of the ALBA redevelopment plan and that the hearing would act as a signal to CRA that its claim had become ripe. However, most significantly, CRA admits that it knew the case became ripe in May of 2002. In light of this admission, CRA's allegation that it has been biding its time, waiting for us to hold a hearing, appears disingenuous. Moreover, CRA has misread our Order of September 25, 2000. In that Order, we said that "once a development plan is finalized, we expect to hold a hearing on the merits of the plan, which would involve receiving either oral or written submissions from all interested parties. At that time, if the CRA believes the final plan is in violation of the law, it may renew its motion to intervene."[1] *Gautreaux v. Chicago Hous. Auth.,* No. 66 C 1459 (N.D.Ill. Sept. 25, 2000). In any case, the unmistakable message of the Order was that CRA could renew its motion to intervene once a plan had been finalized, not once a hearing had been held.[2] For example, in the concluding sentence of the Order, we explicitly told CRA when a renewed motion would be considered appropriate. We stated that we would "dismiss the complaint without prejudice to the CRA's right to bring another motion to intervene in this court *after the completion of the development plan." Id.* In short, we spelled out for CRA when the proper time for filing suit would be: once a plan was finalized. CRA acknowledged that the controversy was ripe more than two years ago, but waited until one month ago to renew its motion to intervene. We thus find that CRA has failed to satisfy the first prong of the timeliness analysis.

Next, we consider whether the *Gautreaux* parties were prejudiced by CRA's delay. *See People Who Care v. Rockford Bd. of Educ.,* 68 F.3d 172, 176 (7th Cir.1995) (noting that "the ultimate test in considering timeliness is the prejudice suffered by the parties because of [the intervenor's] delay in petitioning to intervene."). The CHA contends that the CRA's delay is "catastrophic." (CHA's Mem. in Opp. to Mtn. to Intervene at 17.) Although this may be an overstatement, CHA does point out that, after a several-year long process of developing plans, meeting with concerned neighborhood groups, obtaining building permits, and securing funding, construction is finally set to begin on the ALBA development project on July 1, 2004. *See City of Bloomington, Indiana v. Westinghouse Elec. Corp.,* 824 F.2d 531, 535 (7th Cir.1987) (finding that intervention after the original parties had come to a settlement agreement was prejudicial because it would "render worthless all of the parties' painstaking negotiations" and impede the cleanup of environmental waste). CHA also alleges that the deadline for completion of the project is in late 2005, that they are dealing with an already ambitious construction schedule, and that failure to meet their deadline could cause the CHA to forfeit eligibility for certain tax credits that are essential to the project's funding.

***4** HUD also describes significant problems that the parties could face if the ALBA plan is delayed. According to HUD, it is required to recapture any funding that it provides to local housing authorities that are not used in a timely fashion. Thus, HUD argues that if CRA's intervention causes substantial delays in the ALBA project, it might have no choice but to withdraw its funding. HUD also points out that funding for the HOPE VI program (under which the parties obtained funding for the ALBA project) has been "dramatically cut" in recent years and worries that the program "may not have a long future." (HUD's Mem. in Support of Opp. to Mtn. to Intervene at 2-3.) It explains that a substantial delay in the ALBA project could therefore render future HOPE VI funding unavailable.

CRA responds that many of the arguments put forth by the CHA and by HUD are speculative at best. This is true. None of the potential problems to which the *Gautreaux* parties cite are necessarily destructive to the entire ALBA project. However, the parties' briefs do highlight some of the very concrete difficulties that the parties will have to face if the project is delayed. There is little question that CRA's intervention will act as a *de facto* injunction, requiring the parties to rethink the timing and funding of the entire construction process. Although the consequences of allowing CRA to intervene may not be quite as disastrous as the parties make them out to be, we find that the existing parties will suffer some prejudice if CRA is allowed to intervene at this stage.[3]

We next consider whether denial of the motion to intervene will cause undue prejudice to CRA. CRA argues that, because "this Court already dismissed both their independent lawsuit and their first attempt to intervene on procedural grounds, denying intervention would effectively leave the ALBA Plaintiffs with no forum in which to raise their substantial and well-supported concerns." (Mem. In Support of Mtn. to Intervene, at 6.) It may be true that denial of their motion

will leave CRA without the opportunity to litigate its claims on its own. However, CRA is not entirely without representation in this matter. Almost all of the members of CRA are also plaintiffs in the *Gautreaux* class-action. Thus, at least some of their interests are represented by the *Gautreaux* plaintiffs. Although CRA and the *Gautreaux* plaintiffs obviously differ as to the best method for curing past grievances at ALBA, CRA and the *Gautreaux* plaintiffs do share the same ultimate goal of remedying past grievances and ensuring that ALBA residents obtain the maximum amount of low-income housing in the new development. Furthermore, this Court has appointed a Receiver in the action who also has interests in common with CRA. We appreciate that CRA wishes to intervene because its members disagree with the approach taken by those very parties who are supposed to be representing their interests in the *Gautreaux* action. However, the fact that most of them are also members of the *Gautreaux* class means that they are not left entirely without a voice.[4] We therefore find that CRA will not suffer undue prejudice by being denied the right to intervene at this late stage in the development process.

***5** Finally, we address the "unusual circumstances" prong of the Seventh Circuit's timeliness test. CRA argues that the unusual procedural posture of this case requires intervention as of right. CRA's argument is somewhat puzzling. CRA claims that, based on similar cases proceeding outside of the *Gautreaux* litigation (regarding CHA developments at the Henry Horner Homes and at Cabrini-Green), it originally believed that it was appropriate to bring a separate action rather than intervening in the *Gautreaux* litigation. It concludes that, "[w]hen this Court made clear by its November 4, 1999, decision that intervention in *Gautreaux* was the ALBA Plaintiffs' only remedy, they promptly filed a motion to intervene. Given the unusual facts of this case, the motion to intervene should be considered timely and intervention should be granted." (CRA's Mem. in Support of Mtn. to Intervene at 7.) CRA's argument appears to be that we should take into account the fact that it was reasonable for it to originally file its case as a separate action, rather than intervening in the *Gautreaux* litigation. Although the procedural posture of this case is unusual, CRA's belief, held in 1999, that it should file a separate action has no bearing on our consideration of whether the present motion to intervene is timely.

Superficially, it may appear that this Court has erected unfair procedural borders for CRA. First, we told CRA that it filed suit in the wrong place. Next, we told CRA that it filed its motion to intervene too early. Now we tell CRA that it has renewed its motion too late. But an examination of the procedural history shows that in reality, CRA was treated fairly. After acknowledging that the time was ripe for intervention in the case, CRA stalled in filing a motion to intervene for two years. There is nothing in this Court's earlier opinions which would suggest that CRA would have been turned away had it renewed its motion to intervene at a much earlier date. We thus find that CRA's two-year delay in filing its renewed motion to intervene is improper and conclude that they may not intervene as of right in this matter.

II. Permissive Intervention

CRA's next argument is that, even if it has no right to intervene, permissive intervention is appropriate in this case. The doctrine of permissive intervention is set forth in Federal Rule of Civil Procedure 24(b), which provides that, "[u]pon 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." District courts have broad discretion as to whether to grant permissive intervention. *Sokaogon Chippewa Community v. Babbitt,* 214 F.3d 941, 949 (7th Cir.2000) ("Permissive intervention under Rule 24(b) is wholly discretionary and will be reversed only for abuse of discretion.").

***6** As a rule, permissive intervention is only allowed in cases where an application to intervene is timely. *Heartwood, Inc. v. United States Forest Serv.,* 316 F.3d 694, 701 (7th Cir.2003). The timeliness analysis applied to permissive intervention cases is the same as that employed where a party seeks to intervene as of right. *Id.* Therefore, our conclusion that CRA failed to renew its application for intervention in a timely manner dictates the denial of their request for permissive intervention.

CONCLUSION

For the foregoing reasons, CRA's motion to intervene is denied. It is so ordered.

Footnotes

1 CRA argues that our Order *required* the *Gautreaux* parties to request a hearing before final implementation of the plan. We find

nothing in the language of our Order that would countenance such a conclusion.

2 It is true that the hearing to which we alluded did not take place (indeed, one was not necessary given the fact that all of the parties, including the *Gautreaux* plaintiffs, were in complete agreement regarding the proposed ALBA development plan).

3 CRA also argues that the *Gautreaux* parties are estopped from claiming that they would be prejudiced by intervention given the fact that the *Gautreaux* parties argued *in favor* of intervention in 1999 when CRA first attempted to raise its concerns in a separate action. This argument misinterprets the Seventh Circuit's rulings regarding prejudice to existing parties. The relevant test is not whether existing parties would be prejudiced by another party's *intervention;* it is whether the existing parties will be prejudiced by a would-be party's *delay* in moving to intervene. *People Who Care v. Rockford Bd. of Educ.,* 68 F.3d 172, 176 (7th Cir.1995). Thus, the fact that the *Gautreaux* parties argued in favor of intervention in 1999 is irrelevant to the issue of whether they will be prejudiced by CRA's attempt to intervene now, two years after the controversy became ripe.

4 Because we find that the motion to intervene is not timely, we do not reach the three remaining requirements for intervention, including the inquiry into whether or not CRA is adequately represented by the existing parties. We note, however, that the Seventh Circuit presumes adequacy of representation in cases where the proposed intervenor and an existing party share the same ultimate objective. *Wade v. Goldschmidt,* 673 F.2d 182, 186 n. 7 (7th Cir.1982). Although CRA and the *Gautreaux* plaintiffs disagree as to the best way to remedy past segregation in the ALBA development, they do share the same ultimate goal of ensuring that CHA residents will be given the opportunity to live in racially and economically integrated communities. This shared goal invokes the presumption that CRA is adequately represented by the *Gautreaux* plaintiffs and suggests that CRA would also fail to demonstrate this element of the Seventh Circuit's intervention test.