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United States District Court, M.D. Alabama, Northern Division.

Clara SIMS, et al., Plaintiffs, W.T. Scott, et al., Plaintiff–Intervenors,
v.
MONTGOMERY COUNTY COMMISSION, et al., Defendants,
Albert B. Dodson, et al., Defendant–Intervenors.
Sallie WILLIAMS and Johnie Love, Plaintiffs,
v.
MONTGOMERY COUNTY SHERIFF'S DEPARTMENT, et al., Defendants,
Albert B. Dodson, et al., Defendant–Intervenors.

Civ. A. Nos. 3708–N, 82–717–N. | May 18, 1992.

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Opinion

ORDER

MYRON H. THOMPSON, Chief Judge.

***1** This litigation represents the consolidation of two class action suits filed against the Montgomery County Sheriff's Department and the Montgomery County Commission: in one, initiated in 1972, a class of African–American employees seeks relief from the department's racially discriminatory employment practices, *Sims v. Montgomery County Commission,* Civil Action No. 3708–N (M.D.Ala.); and in the other, filed ten years later, a class of female employees and applicants for employment charges the Sheriff's Department with sexual discrimination, *Williams v. Montgomery County Sheriff's Department,* Civil Action No. 82–717–N (M.D.Ala.). In November 1990, this court permitted a group of white male deputy sheriffs, collectively called "the Dodson intervenors," to intervene in this litigation. In their complaint-in-intervention, the Dodson intervenors charge that the defendants, the Montgomery County Commission and the Montgomery County Sheriff's Department, acting pursuant to consent decrees previously entered in this case, have discriminated against white males in the

hiring and promotion of deputy sheriffs in the Sheriff's Department, in violation of the fourteenth amendment to the United States Constitution, as enforced through 42 U.S.C.A. § 1983.[1] This cause is now before the court on the Dodson intervenors' second motion for certification as a class.[2] For the reasons that follow, the court concludes that the motion is due to be granted to the extent that a class of white male officers should be certified for the purpose of challenging promotion procedures within the Sheriff's Department.

I.

As a result of the *Sims* and *Williams* litigation, the Montgomery County Sheriff's Department currently operates under several court orders and court-approved consent decrees which obligate it to combat racial and sexual discrimination in the department. First, the *Sims* consent decree, entered and approved by the court in 1972, requires the Montgomery County Commission to conduct "all hiring and personnel practices, programs, and procedures on a non-discriminatory basis without regard to race, color, creed or national origin." *Sims v. Montgomery County Commission,* Civil Action Nos. 3708–N & 82–717–N (M.D.Ala. March 22, 1973). In 1988, four African–American officers, collectively called the "Scott intervenors," moved to intervene in the *Sims* litigation, charging that the department was continuing to discriminate against black employees in violation of the consent decree. The court certified a plaintiff-intervenor class of all "black persons who are past, current, and future employees of the Montgomery County Sheriff Department." *Sims v. Montgomery County Commission,* Civil Action No. 3708–N (M.D.Ala. November 2, 1988). As a result of that litigation, the court entered a permanent injunction ordering the Sheriff's Department to cease further racial discrimination and requiring the department to change its personnel procedures. *Sims v. Montgomery County Commission,* 766 F.Supp. 1052 (M.D.Ala1990).

***2** Second, in the *Williams* lawsuit, the court certified a plaintiff class of "all past, present, and future female employees of the Montgomery County Sheriff's Department." *Johnson v. Montgomery County Sheriff's Dept.,* 99 F.R.D. 562, 566 (M.D.Ala.1983).[3] As a result of the litigation, the department entered into a consent decree in 1985 that required it to adopt new, non-discriminatory policies with regard to promotions, transfers, and job and shift assignments. *Johnson v. Montgomery County Sheriff's Dept.,* 604 F.Supp. 1346 (M.D.Ala.1985). In particular, and of most relevance here, the department agreed to develop a promotion procedure which would have "little or no adverse impact" upon women seeking promotion to ranking positions. *Id.* at 1350. In a supplemental consent decree entered July 1986, the department agreed to hire an independent professional consultant, mutually selected by the parties, to develop the promotion procedure required by the 1985 decree and to develop temporary and, eventually, permanent promotion procedures for promotions in all ranks. In 1988, the Williams class also charged that the Sheriff's Department was continuing to discriminate. As a result of the litigation, the court found the department had discriminated and retaliated against female employees, and entered a permanent injunction prohibiting the department and its officers from engaging in further sexual harassment of female officers and requiring the department to take affirmative steps to address sexism within the department. *Sims v. Montgomery County Commission,* 766 F.Supp. 1052 (M.D.Ala.1990).

The claims of the Dodson intervenors focus primarily on the procedures employed in the sergeant promotions of 1988. The Dodson intervenors contend that in order to comply with existing court orders and consent decrees, the department is "following a policy of hiring and promoting Deputy Sheriffs on the basis of race or color" and in reliance upon "quotas or goals." They contend that, as a result, the department in 1988 selected for promotion women and African–Americans while denying promotions to whites with "superior qualifications."[4] As relief, they seek a declaration that the consent decrees are unconstitutional and an injunction prohibiting further discrimination against white male employees of the Sheriff's Department. They also request "monetary and punitive" damages and attorney's fees.

II.

The Dodson intervenors seek certification of a class similar to those the court certified for the Scott intervenors and the Williams plaintiffs. In considering the legitimacy of a plaintiff's motion for class certification, a court need not inquire into the merits of the plaintiff's lawsuit.[5] Rather, the court addresses the two procedural prerequisites to certification of a class: first, that the plaintiff has standing to raise the issues sought to be litigated; and second, that the proposed class comports with the procedural requirements of Rule 23 of the Federal Rules of Civil Procedure. *Griffin v. Dugger,* 823 F.2d 1476, 1482 (11th Cir.1987) (analysis of class certification in private Title VII suit "must begin with the issue of standing"), *cert. denied,* 486

U.S. 1005, 108 S.Ct. 1729 (1988); *see also Brown v. Sibley,* 650 F.2d 760, 771 (5th Cir. July 16, 1981) ("This constitutional threshold must be met before any consideration of the typicality of claims or commonality of issues required for procedural reasons by Fed.R.Civ.P. 23").

A. Standing

***3** To establish standing to sue, a plaintiff must allege and show (1) that he personally suffered an injury that is (2) fairly traceable to the defendant's conduct and is (3) likely to be redressed by the requested relief. *Cone Corp. v. Florida Dept. of Transp.,* 921 F.2d 1190, 1204 (11th Cir.1991), *cert. denied,* 500 U.S. 942, 111 S.Ct. 2238; *see also Saladin v. City of Milledgeville,* 812 F.2d 687, 690 (11th Cir.1987) (identifying "irreducible constitutional minimum" necessary for standing). In *Griffin,* the Eleventh Circuit Court of Appeals discussed the application of these "elementary principles" of standing in the context of a class action:

> "Th[e] individual injury requirement is not met by alleging that injury has been suffered by other, unidentified members of the class to which the plaintiff belongs and which he purports to represent. Thus a plaintiff cannot include class action allegations in a complaint and expect to be relieved of personally meeting the requirements of constitutional standing, even if the persons described in the class definition would have standing themselves to sue.... Moreover, it is not enough that a named plaintiff can establish a case or controversy ... by virtue of having standing as to just one of many claims he wishes to assert. Rather, *each claim must be analyzed separately, and a claim cannot be asserted on behalf of a class unless at least one named plaintiff has suffered the injury that gives rise to that claim.*"

823 F.2d at 1483 (internal citations and quotations omitted) (emphasis added). The question of standing must be determined on the allegations of the complaint, without consideration of the likelihood of the plaintiff's success on the underlying merits of his case. *Saladin,* 812 F.2d at 690 n. 4.

In their complaint, the Dodson intervenors claim that the Sheriff's Department discriminated against white male candidates in the hiring and promotion of deputy sheriffs.[6] In addition, as part of the relief requested in their complaint, they also ask the court to enjoin further discrimination in recruitment and job assignments.[7] Because no named intervenor has alleged that he personally suffered an injury as a result of discrimination in hiring, recruitment or job assignments, the Dodson intervenors do not have standing to raise these claims. *Griffin,* 823 F.2d at 1483. The court will therefore restrict itself to the Dodson intervenors' challenge to promotions.

B. Rule 23(a)

Once the court has determined the issues for which the proposed class representative has standing and has thus clearly identified the potential class claims, the court then considers whether the requirements of Rule 23(a) have been met: numerosity of the proposed class, typicality of the named plaintiff's claims, commonality of questions of law or fact, and adequacy of representation. To proceed under 23(b), as the Dodson intervenors seek to do, they must also show that the Sheriff's Department has acted on grounds "generally applicable to the class," so that the final relief requested would be appropriate to the class as a whole. Fed.R.Civ.P. 23(b). Although a district court has "broad discretion in determining whether to certify a class," *Coon v. Georgia Pacific Corp.,* 829 F.2d 1563, 1566 (11th Cir.1987), the court must nevertheless "evaluate carefully the legitimacy of the named plaintiff's plea that he is a proper class representative under Rule 23(a)." *General Telephone Co. v. Falcon,* 457 U.S. 147, 160, 102 S.Ct. 2364, 2372 (1982); *Johnson v. Montgomery County Sheriff's Dept.,* 99 F.R.D. 562, 564 (M.D.Ala.1983) (Thompson, J.). The burden of proof falls on the plaintiff; the court will not presume compliance with the requirements of the rule. *Falcon,* 457 U.S. at 160, 102 S.Ct. at 2372.

***4** The numerosity requirement of Rule 23(a) is satisfied if joinder of all plaintiff class members would be impracticable. Fed.R.Civ.P. 23(a)(1); *see also Garcia v. Gloor,* 618 F.2d 264, 267 (5th Cir.1980), *cert. denied,* 449 U.S. 1113, 101 S.Ct. 923 (1981). Here, the Dodson intervenors seek certification of a class that would include past, present and future white male employees of the Sheriff's Department. The department contends that inclusion of past and future employees would be

inappropriate because the promotion selection process that gave rise to the Dodson intervenors' challenge was a one-time event that will not be repeated. The department claims that the procedure employed for the 1988 sergeant promotions was not a permanent procedure but an interim arrangement, used while the department was in the process of developing new, non-discriminatory procedures in compliance with the court's order. It is now 1992 and the court has neither received from the department, nor given its approval to, a permanent promotion procedure. The court is therefore reluctant to accept the department's contention that the allegedly discriminatory procedures employed in 1988 will not be repeated.[8] In light of the inclusion of future employees in the class, joinder is clearly impracticable in this case. *Phillips v. Joint Legislative Committee,* 637 F.2d 1014, 1022 (5th Cir. Feb. 23, 1981), *cert. denied,* 456 U.S. 960, 102 S.Ct. 2035 (1982). Furthermore, as many as 20–30 current white male officers could fall within the class. The numerosity requirement has been met.

Rule 23(a)'s requirements of commonality and typicality "tend to merge." *Falcon,* 457 U.S. at 157 n. 13, 102 S.Ct. at 2370 n. 13. Both inquiries serve to determine whether, in the circumstances of a particular case, "maintenance of a class action is economical and whether the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence." *Id.* Here, the department acknowledges that promotion procedures and decisions have been directly affected by the existing consent decrees and court orders. Any challenge to promotion procedures at the Sheriff's Department by a white male officer would likely require the court to address these orders and decrees and to examine the department's compliance with them. The claims of the Dodson intervenors are therefore closely interrelated with the claims of any other white male employee who would challenge the promotion procedures, and all of these claims would raise common legal questions regarding the interpretation and application of existing court orders and decrees. Common factual questions also exist regarding the procedures employed to select sergeant candidates in 1988. The court finds that certification of a class will therefore promote judicial economy without compromising the interests of the class members, in keeping with the requirements of the rule.

***5** Before certifying the class, the court must also inquire into the adequacy of the proposed representatives and the adequacy of their counsel to ensure that "the representative parties will fairly and adequately protect the interests of the class." Fed.R.Civ.P. 23(a)(4); *Jordan v. Swindall,* 105 F.R.D. 45, 48 (M.D.Ala.1985) (Thompson, J.). The first of these two requirements often tends to merge with those of typicality and commonality. *See Nelson v. United States Steel Corp.,* 709 F.2d 675, 679 n. 8 (11th Cir.1983). Here, the court has found that the claims of the named intervenors are sufficiently intertwined with those of the class members that they can be expected to adequately protect the interests of the absent class members. The fact that only a small number of the intervenors would likely receive promotions even if they prevail in this lawsuit does not render the named intervenors' claims antagonistic to those of the class members. Finally, while the attorney for the Dodson intervenors has acknowledged that he is a novice with regard to class-action litigation, the court finds that the legal representation provided the Dodson intervenors up to this point has been adequate and believes that the attorney is competent to represent the class.

C. Rule 23(b)(2)

As stated earlier, because the Dodson intervenors proceed under Rule 23(b)(2), the court must also consider, in the words of the Rule, whether "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." This subsection is particularly applicable to employment discrimination class actions. *See Giles v. Ireland,* 742 F.2d 1366, 1372 (11th Cir.1984). Here, the Dodson intervenors seek a declaration condemning the department's alleged discrimination against white male employees and holding that the consent decrees, which allegedly authorize this discrimination, are unconstitutional and invalid. They also seek injunctive relief to prohibit further use of promotion procedures which discriminate against white male candidates. Clearly, if the intervenors prevail on their claims, the declaratory and injunctive relief sought would benefit the class as a whole. The court therefore finds that the intervenors have satisfied the requirements for class certification under Rule 23(b)(2).

The court will therefore certify a class of all those past, present, and future white male officers of the Montgomery County Sheriff's Department. The class will be limited in its claims at this time to a challenge to promotions in the department.

Accordingly, it is ORDERED that:

(1) The Dodson intervenors' second motion for class certification, filed on June 14, 1991, be and it is hereby granted;

(2) A class of defendant-intervenors be and it is hereby certified as consisting of all those past, present, and future white male officers of the Montgomery County Sheriff's Department; and

***6** (3) Said class be and it is hereby represented by intervenors Albert B. Dodson, Steven R. Parker, Jon M. Highland, Mark C. Thompson, William H. Mills, Travis A. Parker, Gregory D. Beidleman, Robert L. Ingram, and Robert A. Stone.

Footnotes

[1] The Dodson intervenors also rest their claims on 42 U.S.C.A. § 1981; Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C.A. §§ 2000d–1 through 2000d–7; Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C.A. §§ 2000e through 2000e–17; and the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C.A. §§ 3711–97. The department contends that the intervenors have failed to comply with the requirements for filing suit under Title VII and the Omnibus Crime Control Act, and that they do not state a claim under § 1981, *see Patterson v. McLean Credit Union,* 491 U.S. 164, 109 S.Ct. 2363 (1989). Because the court finds that the Dodson intervenors are entitled to certification as a class based on their § 1983 claims, the court does not reach the other claims. The department's concerns are more suitable for resolution on a motion to dismiss or for summary judgment.

[2] The court denied the Dodson intervenors' first motion for class certification with leave to renew later after the other parties had responded to the complaint-in-intervention. *Sims v. Montgomery County Commission,* Civil Action Nos. 3708–N and 82–717–N (M.D.Ala. Feb. 4, 1991).

[3] The *Williams* litigation was originally know as the *Johnson* litigation. Sallie Williams and Johnie Love replaced Lois Johnson as plaintiffs in Civil Action No. 82–717–N.

[4] Complaint-in-intervention at 4 (Nov. 27, 1990).

[5] The Scott intervenors and the Williams plaintiffs suggest that the court should deny certification to the Dodson intervenors because the potential class members, white male officers, were effectively represented by the Sheriff's Department during the negotiation of the settlement decrees and therefore are prohibited from challenging these decrees under the doctrine of res judicata. The court believes this issue should be addressed on a motion to dismiss or for summary judgment.

[6] Complaint-in-intervention at 2–4 (Nov. 27, 1990); Brief in Support at 8 (Sept. 23, 1991).

[7] In the brief filed in support of their motion for class certification, the Dodson intervenors attempt to add additional claims, asserting for the first time claims of discrimination in training and transfers. However, because the Dodson intervenors have not amended their complaint to include claims of discrimination in training or transfers, these claims are not properly before the court. Fed.R.Civ.P. 8(a); *see also Coon v. Georgia Pacific Corp.,* 829 F.2d 1563, 1568 (11th Cir.1987) ("the inclusion of claims in the pretrial stipulations, the mention of them in discovery and the filing of motions concerning those claims [are] not a substitute for the factual allegations of a complaint under Federal Rule of Civil Procedure 8(a).")

[8] Indeed, it appears that personnel decisions at the Sheriff's Department continue to be influenced by the department's efforts to avoid adverse impact on women and African–Americans. *See, e.g.,* Williams Class' Objection to Certification (April 21, 1992).