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United States District Court, N.D. Illinois.

Charles O. ROBINSON, and Belinda Taylor, individually and on behalf of a class, Plaintiffs,
v.
SHERIFF OF COOK COUNTY, Defendant.

No. 95 C 2205. | July 22, 1996.

Opinion

MEMORANDUM OPINION AND ORDER

ZAGEL, District Judge.

***1** Charles Robinson, the original named plaintiff, filed a timely charge of employment discrimination with the EEOC, alleging that the Sheriff of Cook County (Sheriff) discriminated against himself and "other black persons" on the basis of race and color in connection with his hiring of correctional officers.[1] Mr. Robinson brought this present action within 90 days of receipt of his right to sue letter.

On 10 January 1996, I declined to certify the case as a class action; Mr. Robinson had claims atypical of the class, and would therefore be an inadequate class representative. However, I granted Robinson the opportunity to add an additional plaintiff to take up the gauntlet of class representative. On 11 April 1996, Mr. Robinson filed his Amended Complaint naming Belinda Taylor as an additional plaintiff.

The Sheriff now moves to dismiss Robinson's First Amended Complaint, which he alleges suffers from two defects. First, Ms. Taylor cannot intervene as class representative in this Title VII action because she failed to exhaust her administrative remedies by not filing a charge of discrimination with the EEOC. Second, the timing issue set forth in paragraph 11(b) of the Complaint is not fairly encompassed with the EEOC charge filed by Mr. Robinson.

Title VII requires an aggrieved person to file a written charge with the EEOC as a condition precedent to seeking judicial relief. *Wakeen v. Hoffman House, Inc.,* 724 F.2d 1238, 1245 (7th Cir.1983); 42 U.S.C. § 2000e–5(e), (f)(1). The Sheriff asserts that Ms. Taylor's failure to file charges with the EEOC means that she has not satisfied the procedural requirements of Title VII and, therefore, cannot "piggy-back" on Mr. Robinson's timely filed charge. Ms. Taylor counters that the "single-filing rule" allows her to rely on Mr. Robinson's EEOC charge, and so intervene as sole class-representative.

The single-filing rule has been applied in both class actions and non-class action contexts, *Romasanta v. United Airlines, Inc.,* 537 F.2d 915, 918–19 & n. 7 (7th Cir.1976), *aff'd sub nom., United Airlines, Inc. v. McDonald,* 432 U.S. 385 (1977). Under the single-filing rule, a noncomplying plaintiff may join a suit initiated by a complying plaintiff under certain circumstances. *Zuckerstein v. Argonne Nat. Lab.,* 663 F.Supp. 569, 572 (N.D.Ill.1987). It is not necessary for each person with the same grievance to file an EEOC charge either as a prerequisite to class membership or from serving as a class representative. *Griffin v. Dugger,* 823 F.2d 1476, 1492 (11th Cir.1987), *cert. denied,* 486 U.S. 1005 (1988).

But, while the single-filing rule allows intervention as a member or a class representative, intervening as the *sole* named class representative can be a very different kettle of fish. As long as "at least *one named plaintiff* timely filed an EEOC charge, the precondition to a Title VII action is met for all other named plaintiffs and class members." *Id.* (emphasis added). But, if someone seeks to intervene as sole named class representative, and they have not timely filed an EEOC charge, the single-filing rule does not apply. *Compare, e.g., Zuckerstein,* 663 F.Supp. at 573–75 *and Romasanta,* 537 F.2d 915 *with Wakeen,* 724 F.2d at 1245–46 *and Griffin,* 823 F.2d at 1492.

***2** The reason for this difference is that class action lawsuits brought under Title VII must be prosecuted by named plaintiffs who have satisfied the filing requirements prescribed by Title VII, who have standing to raise the claims asserted, and who

have representative capacity as defined by Fed.R.Civ.P. 23(a). *Connor v. Harris County,* Civ.A. No. H–88–0078, 1992 WL 337420 at *3 (S.D.Tex. 17 Sept. 1992), citing *Oatis v. Crown Zellerbach Corp.,* 398 F.2d 496, 498–99 (5th Cir.1968). But as the Seventh Circuit expressly held in *Wakeen,*

> a class member who does not meet the procedural prerequisites for waging a Title VII suit may not use the guise of a motion to intervene to take over as the sole representative for someone who initiates but is not legitimately able to continue a class action.

724 F.2d at 1246.

Connor is directly on point, and though not binding, it is persuasive. In *Connor,* the originally named plaintiffs were found to be inadequate class representatives because of atypical claims. *Id.* at *8–9. Other persons sought to intervene in their place as named class representatives. Although none of these persons had satisfied the EEOC charge requirement, they argued that the "single-filing" rule allowed them to rely on the timely charges of discrimination filed by the originally named plaintiffs. *Id.* The court rejected the position of the plaintiffs in intervention, finding that the "single-filing" rule cannot be used to circumvent either the requirements of Rule 23(a) (i.e., that class representatives have representative capacity) or the statutory requirement (i.e., that class representative must have satisfied the Title VII administrative prerequisites to suit). *Id.* at *9.

In the present case, Mr. Robinson was found to be an inadequate class representative due to the atypicality of his claims. Ms. Taylor argues she is entitled to intervene as sole class representative, although she did not file her own EEOC charge, because the "single-filing" rule allows her to "piggy-back" on Mr. Robinson's timely EEOC charge. But *Connor* definitively forecloses this argument, for the Court held that class members

> who have not met the administrative prerequisites for maintaining a Title VII suit may not rely on the single-filing rule to permit them to replace as sole class representatives plaintiffs who satisfy the administrative prerequisites to suit and initiated the action but who ... were dismissed because they lacked standing to continue as class representatives.

Id., citing *Griffin,* 823 F.2d at 1493; *Wakeen,* 724 F.2d at 1245–46. Ms. Taylor cannot be the sole class representative in this case: she herself has not filed an EEOC charge, and she cannot rely on Mr. Robinson's timely filing under the "single-filing" rule.

The Sheriff's Motion to Dismiss the First Amended Complaint is granted without prejudice to Plaintiff's counsel, who have one month from the entry date of this Order to file a new amended complaint, proposing as the named class representative someone who has unquestionably complied with the statutory filing requirements of Title VII.

***3** As for the timing allegation asserted in Paragraph 11(b) of the Amended Complaint, I believe I denied as moot the Sheriff's Motion to Dismiss it in my oral ruling on 16 May 1996. If I did not then, I do so now.

Motion granted in part and denied in part.

Footnotes

[1] Specifically, that the Sheriff

> has hired a disproportionate number of white and Hispanic applicants and has failed and refused [Robinson] and other black persons [employment] as correctional officers in proportion to their representation in the pool of persons certified for employment.