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United States District Court, S.D. Indiana, New Albany Division.

NOON, Valerie L, Middleton, Leah D, Clark, Christine F, Harmon, Celina A, Wilson, Kimberly, Chism, William % 6/29/99 Granted Mot to Intervene as Pltf, Darnall, Christi Lynn % 6/29/99 Granted Leave as Intervening Pltf, Kingery, Brian % 6/29/99 Granted as Intervening Pltf, Mins, Eva R % 6/29/99 Granted Leave as Intervening Pltf, McClaim, Sharon % 6/29/99 Granted as Intervening Pltf\ , Greenwell, William % 6/29/99 Granted as Intevening Pltf, Plaintiffs,
v.
SAILOR, Sheriff Clyde R, Individually & as Former Sheriff of Harrison County, Carver, William, Individually and as the Sheriff of Harrison County, Defendants.

No. NA99-0056-C-H/G. | April 17, 2000.

Opinion

ENTRY ON PLAINTIFFS' MOTION TO RECONSIDER DENIAL OF CLASS CERTIFICATION

HAMILTON, J.

***1** The named plaintiffs have asked the court to reconsider its entry of March 14, 2000, denying class certification. The motion to reconsider raises no new arguments. However, the motion cites two decisions that were not cited to this court before it made its decision.

Federal courts often must point out that motions to reconsider are not vehicles for presenting new arguments or evidence that could and should have been presented before the court made its initial decision. See *Moro v. Shell Oil Co.,* 91 F.3d 872, 876 (7th Cir.1996). As has often been said, a federal district court's decision is not a "first draft," subject to a prolonged cycle of further comment, debate, and revision. See *Quaker Alloy Casting v. Gulfco Industries, Inc.,* 123 F.R.D. 282, 288 (N.D.Ill.1988) (denying motion to reconsider and explaining that district court opinions "are not intended as mere first drafts, subject to revision and reconsideration at a litigant's pleasure"); *Pickett v. Prince,* 5 F.Supp.2d 595, 597 (N.D.Ill.1998) (same).

In this case, however, this court's respect for the decisions of another circuit and another district judge in this district in closely analogous cases warrants a specific response to plaintiffs' new (if belated) reliance on those opinions.

Plaintiffs rely first on the Sixth Circuit's unpublished decision in *Eddleman v. Jefferson County,* 96 F.3d 1448, 1996 WL 495013 (6th Cir.1996), another case challenging a jail's strip search policy. In *Eddleman* the Sixth Circuit affirmed a district court's certification of a plaintiff class with a definition very similar to the one plaintiffs propose in this case. Most relevant was the proviso: "unless there existed reasonable cause to believe that [the person was] carrying or concealing weapons or other contraband."

Plaintiffs acknowledge that *Eddleman* was an unpublished decision of essentially no precedential weight even in the Sixth Circuit. See Sixth Circuit Rule 24. Nevertheless, plaintiffs urge this court to consider the opinion for its reasoning and persuasive value. The court has done so. This court and the Sixth Circuit took very similar views toward all questions except the manageability of the proposed class. On that issue, this court respectfully disagrees with the Sixth Circuit. The Sixth Circuit's opinion fails to ask, let alone answer, the question this court considers decisive: How does the court determine whether any given person is or is not a member of the class? Because plaintiffs in both cases proposed class definitions with the proviso on reasonable cause to believe the person was carrying weapons or other contraband, the court cannot answer that question, and cannot determine whether a person will be bound by the judgment in the case, without having the court consider all the circumstances of the individual arrest, detention, and search.

The Sixth Circuit relied on the fact that the jail in *Eddleman* was alleged, like the defendants here, to have implemented a "blanket" policy of strip-searching all detainees. The problem with that approach is that even under plaintiffs' theory, such a policy is unconstitutional only *as applied* to some detainees. For other detainees, strip searches are reasonable and constitutional. By building into the class definition an essential criterion that requires the court to make an individualized determination of the constitutionality of the search as applied to each individual, plaintiffs have proposed a class which, in this court's view, is unmanageable for reasons set forth in the original entry.

***2** Plaintiffs have also called this court's attention to Judge Barker's decision certifying a class in *Doan v. Watson,* Cause No. NA 99-4-C (S.D.Ind. March 2, 2000), which presents essentially identical issues, but with respect to practices at the Floyd County Jail. Plaintiffs in

this case, who are represented by the same counsel involved in *Doan,* did not provide this court with a copy of that decision before this court issued its Entry on March 14, 2000. Plaintiffs contend it is "inconsistent" for people who live in adjoining counties and who have suffered "identical constitutional injury" to have different remedies.

Judge Barker chose in *Doan* to follow the reasoning of the Sixth Circuit in *Eddleman.* The reasons this court disagrees need not be repeated. With respect to the inconsistent decisions, three comments are in order. First, this court has not prevented any persons who have actually stepped forward and *asked* for relief from pursuing their claims. Second, the inconsistency is also significant from the different defendants' (and counties' taxpayers') perspectives. Third, a motion to certify a class calls upon a district judge to exercise his or her discretion, within the bounds of the law. *Council 31, American Federation of State, County and Municipal Employees, AFL-CIO v. Ward,* 978 F.2d 373, 380 (7th Cir.1992) (finding that appellate review of class certification decisions is deferential and that a district court's decision will not be reversed "absent an abuse of the district court's discretion"). It should not be surprising that different judges may, on occasion, exercise their discretion in different ways with respect to similar questions.

Accordingly, plaintiffs' motion to reconsider the denial of class certification is hereby DENIED. This case remains set for a status conference on Friday, April 21, 2000, at 1:30 p.m. in the United States Courthouse in New Albany, Indiana.

So ordered.