Kramer v. New Orleans Saints

United States District Court for the Eastern District of Louisiana
February 11, 2004, Decided ; February 12, 2004, Filed, Entered
CIVIL ACTION NO. 01-2451 SECTION "L"(4)

Reporter: 2004 U.S. Dist. LEXIS 1934; 2004 WL 288779
MELANIE KRAMER, ET AL. VERSUS NEW ORLEANS SAINTS, ET AL.

Prior History: Kramer v. New Orleans Saints, 2002 U.S. Dist. LEXIS 10389 (E.D. La., May 28, 2002)

Disposition: [*1] Motion for Leave of Court to Reopen Case and to File Intervention DENIED.

Counsel: For MELANIE KRAMER, SYLVIA ALFORTISH, plaintiffs: Sean D. Alfortish, Law Office of Sean D. Alfortish, Gretna, LA.

For NEW ORLEANS LOUISIANA SAINTS, defendant: Leslie A. Lanusse, Janis van Meerveld, Adams & Reese, New Orleans, LA.

For CHEHARDY, SHERMAN, ELLIS, BRESLIN, MURRAY & RECILE, L.L.P., movant: Paula Anne Perrone, Chehardy, Sherman, Ellis, Breslin, Murray & Recile LLP, Metairie, LA.

Judges: Eldon E. Fallon, UNITED STATES DISTRICT JUDGE.

Opinion by: Eldon E. Fallon

Opinion

ORDER AND REASONS

The Court is in receipt of Chehardy, Sherman, Ellis, Breslin, Murray & Reciles, L.L.P.'s (hereinafter "Chehardy") Motion for Leave of Court to Reopen Case and to File Intervention. For the following reasons the Motion is DENIED.

I. Background

This matter arises from a claim filed by a class, including Melanie Kramer and Sylvia Alfortish, alleging various violations of the Civil Rights Act, the Equal Pay Act, the Family and Medical Leave Act, and the Fair Labor Standards Act. Kramer and Alfortish hired Chehardy [*2] in approximately April of 2000 to represent them in their claims arising out of their respective terminations from employment. Attorney Paula Perrone, a member of the Chehardy law firm, was trial counsel in the matter. Under the terms of their agreement, Chehardy was to be reimbursed for costs and expenses advanced and was to be paid one-third of all proceeds of any settlement/judgment which may have resulted from the litigation as compensation to Chehardy for services rendered. In February of 2003, the parties participated in an unsuccessful settlement conference. Thereafter, Perrone and Chehardy withdrew as counsel for personal reasons. On April 2, 2003, Sean Alfortish, Plaintiff Sylvia Alfortish's son, was substituted as counsel with the approval of Chehardy.

The parties participated in a second settlement agreement that was successful on November 10, 2003. This Court entered an order of dismissal without prejudice and retaining jurisdiction to re-open the action upon good cause shown. On January 6, 2004, this Court entered the final order dismissing the matter with prejudice. On January 7, 2004, the present motion was filed.

In its motion, Chehardy urges the Court to re-open [*3] the matter to allow it to intervene and assert a claim to part of any funds which may be due and/or held by the Plaintiffs in the form of attorney's fees. Chehardy represents that it entered into a fee split arrangement with substituted counsel upon transferring the case to him. Chehardy claims that its intervention is permitted by *Rule 24 of the Federal Rules of Civil Procedure.*

The Plaintiffs oppose the motion, stating that no such agreement was entered into and that Chehardy has been reimbursed costs. Additionally, Plaintiffs state that part of the consideration in the confidential settlement agreement was that attorney's fees would not be paid. Thus, the settlement proceeds have been disbursed to the Plaintiffs.

II. Law and Analysis

It is axiomatic that a final order of dismissal with prejudice divests the district court of jurisdiction to re-open a matter absent very limited circumstances. Chehardy provides no basis to accomplish re-opening the case in the face of a dismissal with prejudice. Furthermore, under *Federal Rule of Civil Procedure 24(a)*, a party is entitled to an intervention [*4] of right if, *inter alia,* the motion to intervene is filed timely. *Fed. R. Civ. P. 24(a)*; *see Ford v. City of Hunstville,* 242 F.3d 235, 239 (5th Cir. 2001).

When determining whether a motion to intervene is timely, a court must consider the following four factors: (1) how

long the potential intervener knew or reasonably should have known of her stake in the case into which she seeks to intervene; (2) the prejudice, if any, the existing parties may suffer because the potential intervener failed to intervene when she knew or reasonably should have known of her stake in that case; (3) the prejudice, if any, the potential intervener may suffer if the court does not let her intervene; and (4) any unusual circumstances that weigh in favor of or against a finding of timeliness. *Ford,* 242 F.3d at 239.

In the instant case, an order substituting counsel was entered in April of 2003. At that point, Chehardy knew or should have known of its interest in the outcome of the litigation. Rather than filing a motion to intervene at that time, Chehardy waited approximately nine months and until after a final order dismissing [*5] the matter with prejudice was entered. Even if the Court had a basis for jurisdiction to grant the motion to intervene, the motion was not timely filed.

The decision of the Court regarding the instant motion has no bearing on the rights of Chehardy to move against the Plaintiffs in an action sounding in contract for breach of any fee splitting agreement that may have existed between counsel.

III. Conclusion

For the foregoing reasons, the Motion to Reopen Case and to Intervene should be and hereby is DENIED.

New Orleans, Louisiana this 11 day of February, 2004

Eldon E. Fallon

UNITED STATES DISTRICT JUDGE