Ramirez v. Webb

United States District Court for the Western District of Michigan
May 3, 1988, Decided
File No. K 81-344

Reporter: 1988 U.S. Dist. LEXIS 18018

Jesus Ramirez; Arturo Garcia; Guillermina Garcia; Jose Garcia; Arturo Garcia, Jr.; Juan Rodriguez; Jose Jimenez; Jesus Mendoza; Gregoria Guerrero; Zenaida Quinones; Janet Quinones; Awilda Quinones; Nelson Santiago; Cynthia McCleary; Martin Ramos; Domingo Coriano; Benedicto Padron; Timothy Ponce; Juan Guerrero, Jose Guerrero, Maria Guerrero, and Margarita Guerrero by their next friend, Gregoria Guerrero; Norma Garcia, Lupita Garcia, and Enedina Garcia by their next friend, Arturo Garcia; and Jose Angel Garza by his next friend Gregoria Guerrero; individually and on behalf of all others similarly situated, Alfredo Solis; Joe Manuel Solis by his next friend Alfredo Solis; Alvaro Aguilar and Nancy Aguilar, Plaintiffs, v. Jack E. Webb, Gregory Kowalski, Thomas J. Keenan, Michael Went, John D. Hegelson, Michael T. Hawes, Gregory Dahl, Robert Wallis, Daniel Moritz, Timothy Houghtaling, Manfred Zarfl, Gregory Bednarz, John Dam, Frank Falkowski, James Wellman and Oscar Gonzalez, both individually and in their official capacity as agents of the Immigration and Naturalization Service; James H. Montgomery, both individually and in his current official capacity as District Director of the Immigration and Naturalization Service, Paul E. McKinnon, both individually and in his official capacity as District Director of the Immigration and Naturalization Service, and in his former official capacity as Associate Regional Commissioner for Enforcement Northern Division; Paul E. McKinnon, both individually and in his official capacity as District Director of the Immigration and Naturalization Service; Edward Short, both individually and in his official capacity as former Assistant District Director for Investigations of the Immigration and Naturalization Service in Detroit; Robert Wagus, both individually and in his current official capacity as Assistant District Director for Investigations of the Immigration and Naturalization Service in Detroit; Jerald D. Jondall, both individually and in his official capacity as District Director of the United States Border Patrol; Emil Orsack, both individually and in his current official capacity as Chief Patrol Officer of the United States Border Patrol; Ricky Dixon, James D. Kunkle, Brian F. Munson, James S. Gilmore, Stanley R. DeSonia, Donald C. Teeple, Steven E. Nusbaum, Edward T. Farley, Ronald Dowdy, Edwin W. Earl, Charles L. Huffman, Robert J. McNamara, James J. Higgins, Kenneth S. Harris, and Larry G. Laudner, both individually and in their official capacity as agents of the United States Border Patrol; J. L. Buzaitis, both individually and in his official capacity as an agent of the Immigration and Naturalization Service or the United States Border Patrol; John Doe I through LXIX, both individually and in their official capacity as agents of the Immigration and Naturalization Service or the United States Border Patrol; The United States Immigration and Naturalization Service; Unknown Local Law Enforcement Agencies; Ronald Roe I and II, both individually and in their official capacity as agents of Unknown Local Law Enforcement Agencies, Defendants.

Judges: [*1] ENSLEN

Opinion by: RICHARD A. ENSLEN

Opinion

OPINION

This matter is before the Court on defendants Keenan, Fisher, Pierce, Markle, Dillender and Bakowski's Motion to Dismiss and/or for Summary Judgment. Defendants' sole argument in support of their motion is that the suit against them is barred by the applicable statute of limitations since, they argue, they were not served with a complaint naming them as defendants within the applicable limitations period. The Court has addressed the statute of limitations defense in this matter on at least two prior occasions, and, as it has in the past, will deny defendants' motion.

This is a *Bivens* action brought by a number of American citizens of Hispanic descent against officials of the United States Immigration and Naturalization Service ("INS") and the United States Border Patrol ("Border Patrol"). The suit involves a number of incidents upon which the plaintiffs were allegedly seized by agents of the INS or the Border Patrol in factory raids, car stops and dwelling searches for the purpose of determining whether the plaintiffs were illegal aliens. The earliest relevant incident, for purposes of this motion, occurred in August of 1980 (the Brown [*2] and Basore farm raids). Other relevant incidents occurred on August 14, 1983 (Oritz incident); October 21, 1983 (Velasquez incident); July 11, 1984 (Zepeda incident) and September 25, 1984 (Mireles incident). Plaintiffs filed their original complaint on August 8, 1981. They have since filed three supplemental complaints (August 1, 1984, February 20, 1985 and April 10, 1987). The moving defendants were named as "Doe"

defendants in the original complaint and in the first and second supplemental complaints. Plaintiffs identified them by name in their "Identification of Does" filed March 31, 1987. Their names first appeared in the plaintiffs' "Final Complaint," filed April 10, 1987.

Defendants argue that they were not served with a summons and complaint within the applicable three-year limitations period, M.C.L. 600.5805(8), and that plaintiffs' claims against them are therefore time-barred. Defendants argue that the "Final Complaint" cannot relate back to the date the original complaint or the applicable supplemental complaint was filed because they did not receive notice that they would be defendants in this suit until after the limitations period expired. As I have held in [*3] the past, I find this argument to be without merit.

The text of *Federal Rule of Civil Procedure 15(c)* is familiar to all concerned, and no useful purpose could be served by setting it out here. That rule provides for the relation back of allegations made in an amended complaint to the date the action was commenced where four criteria are satisfied:

> (1) the basic claims must have arisen out of the conduct set forth in the original pleading; (2) the party to be brought in must have received such notice that it will not be prejudiced in maintaining its defense; (3) that party must or should have known that, but for a mistake concerning identity, the action would have been brought against it; and (4) the second and third requirements must have been fulfilled within the prescribed limitations period.*Schiavone v. Fortune*, 91 L.Ed.2d 18, 27 (1986); *See also*, *Berndt v. Tennessee*, 796 F.2d 879, 884 (6th Cir. 1986); *Sanchez v. Morrison*, 667 F. Supp. 536, 539 (W.D. Mich. 1987); *Carver v. Casey*, 669 F. Supp. 412, 415 (S.D. Fla. 1987); *Fludd v. United States Secret Service*, 102 F.R.D. 803 (D.D.C. 1984). [*4] [1] Here, there is no dispute that the plaintiffs satisfy the first criteria, since the factual allegations against the moving defendants were included in the original complaint. What remains to be resolved is whether the moving defendants had notice and knowledge of this suit within the limitations period. I hold that they did.

[*5] While it is true that notice may not be imputed to a newly named defendant solely because the same attorney represents both the originally named defendant and the new defendant, sufficient notice may be found where common representation and other factors tie the old and new defendants together. *Sanchez*, 667 F. Supp. at 539. Here several factors lead the Court to conclude that the moving defendants had adequate notice of this suit. First, all defendants are employees of the same governmental agencies. *See*, *Berndt* at 994. [2] They were named as Doe defendants in the original and supplemental complaints, which set forth in detail the claims against them. The named defendants and their counsel, the United States Attorney, had the ability at that time to identify the officers involved in those incidents. The plaintiffs did not identify the Doe defendants by name, primarily because the government's attorney refused to engage in discovery between November, 1984 and May, 1986. *See*, *Fludd*, at 806. Copies of the complaint were timely served upon the United States Attorney within the three year limitation period. *F.R.Civ.P. 15(c)*. The United States [*6] Attorney has vigorously represented the interests of the moving defendants throughout the long course of this litigation, despite her protests to the contrary. The United States Attorney not only filed the instant motion on their behalf, but has also filed an answer to the "Final Complaint," and two other motions to dismiss on behalf of these defendants. *See*, Defendants' Motions to Dismiss of September 7, 1984, April 29, 1985 and February 19, 1988; Answer, July 15, 1987. Moreover, three of the moving defendants must be held to have had actual knowledge of

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[1] Defendants cite *Carver v. Casey*, 669 F. Supp. 412, 415 (S.D. Fla. 1987) in support of their argument that the allegations against them in the "Final Complaint" cannot relate back to the allegations in the original complaint, since they were not served with the Final Complaint prior to the expiration of the limitations period. The case did not so hold and is not controlling. In *Carver*, the court found that the plaintiff had failed to serve either the original or the newly named defendant within the applicable limitations period, and thus found that *Rule 15(c)* was inapplicable. Here, it is undisputed that the original complaint, naming Doe defendants was properly filed and served upon the United States Attorney prior to the expiration of the limitations period. *Carver* would require dismissal only if one accepts the defendants' argument that they did not have imputed notice of this action by virtue of that service. Since I decline to accept that argument, *Carver* is inapposite.

[2] All of the named defendants and the Doe defendants in the original complaint were sued for actions taken in their capacities as employees of either the INS or the Border Patrol. The moving defendants are or were similarly employees of those agencies. In my bench opinion of February 18, 1987, I intimated that *Berndt* was not strictly controlling in this case, because plaintiffs had not named an organizational defendant. That defect has since been cured by the plaintiffs' Second Supplemental Complaint, filed February 9, 1987. Thus, *Berndt*'s holding that employees of the original defendant have adequate notice where their employer was timely served and where they are sued for illegal actions taken in their official capacities is fully applicable here. *Berndt*, 796 F.2d at 884. *See also*, *Fludd*, 102 F.R.D. at 805, note 4.

this suit, because they have filed affidavits in this matter. *See*, Affidavit of Robert Bakowski, October 19, 1984; Affidavit of Nicholas Fisher, September 20, 1984; Affidavit of Kerry Pierce, October 26, 1984. The remaining defendants may be said to have had constructive notice of this action since plaintiff served the original and all subsequent complaints upon the United States Attorney who represents their interests, and the interests of their superiors, also named as defendants in this matter. *See*, Bench Opinion of February 18, 1987 Tr. at 11-14.

[*7] In summary, I can find no reason to change my earlier rulings with regard to the relation back and statute of limitations issues. The newly named defendants are all employees of the same governmental agencies as the originally named defendants. *See*, Berndt, at 884. Their interests have been, and are being vigorously represented by the same counsel. The original complaint was timely served upon that counsel, and it appears that the final complaint has also been filed and served upon the moving defendants. [3] They have not shown, nor could they, that they have been prejudiced by their tardy identification, especially since the timeliness is due in large part to the fault of the remaining defendants' refusal to engage in discovery. I find therefore, that the moving defendants had sufficient notice of the commencement of this action within the limitations period and that they knew or should have known that "but for a mistake concerning identity," they would have been named as defendants in the original pleadings. [4] Their motion to dismiss is, therefore, denied. [*8]

DATED in Kalamazoo, MI: May 3, 1988

RICHARD A. ENSLEN, U.S. District Judge

ORDER

In accordance with the written opinion dated May 3, 1988;

IT IS HEREBY ORDERED that defendants Keenan, Fisher, Pierce, Markle, Dillender and Bakowski's Motion to Dismiss and/or for Summary Judgment is DENIED.

DATED in Kalamazoo, MI: May 3, 1988

RICHARD A. ENSLEN, U.S. District Judge

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[3] Even if the newly named defendants were not served with the Final Complaint within the limitations period, I find that they had adequate notice of this action, since the original and supplemental complaints were served upon the United States Attorney and the organizational defendants within the appropriate time period.

[4] *Schiavone*, 91 L.Ed.2d at 28; *F.R.Civ. P. 15(c)(1)*.