Heit v. Van Ochten

United States District Court for the Western District of Michigan, Southern Division
January 12, 2001, Decided ; January 12, 2001, Filed
Case No. 1:96-CV-800

Reporter: 2001 U.S. Dist. LEXIS 532
RICHARD T. HEIT and JOSEPH CORSETTI, on behalf of himself and all other persons similarly situated, Plaintiffs, v. MARJORIE VAN OCHTEN, et al., in their official capacities, Defendants.

Subsequent History: Objection denied by Heit v. Mich. Dep't of Corr., 2008 U.S. Dist. LEXIS 109979 (W.D. Mich., Sept. 26, 2008)

Prior History: Heit v. Van Ochten, 126 F. Supp. 2d 487, 2001 U.S. Dist. LEXIS 248 (W.D. Mich., 2001)

Disposition: [*1] Dean V. Langworthy's and Mark A. Coleman's Motion for Order of Non-Joinder or Alternative Motion for an Order of Party Subdivision (Dkt. No. 389) DENIED.

Counsel: For RICHARD TERRY HEIT, plaintiff: Patricia A. Streeter, Detroit, MI.

For JOSEPH CORSETTI, plaintiff: Elizabeth Alexander, National Prison Project of the ACLUF, Washington, DC.

For THOMAS P. D'HAEM, LEN DENHOUTER, ALICE FLORIDA, BILL MARTIN, DAN BOLDEN, defendants: Linda M. Olivieri, Jennifer M. Granholm, Attorney General, Lansing, MI.

Judges: RICHARD ALAN ENSLEN, Chief Judge.

Opinion by: RICHARD ALAN ENSLEN

Opinion

This matter is before the Court on a Motion for Order of Non-Joinder of Parties or in the Alternative Motion for an Order of Party Subdivision by Dean V. Langworthy and Mark A. Coleman (collectively "Petitioners"). Petitioners claim to be members of the class represented in the case *Heit v. Van Ochten*. [1] The Court denies the Motion.

[*2] In 1998, the Court certified a class action against Defendants pursuant to *Federal Rules of Civil Procedure 23(b)(2)*. The class was defined as consisting of all current and future prisoners confined within the Michigan Department of Corrections ("MDOC"). Petitioners now state that they were never provided notification that the *Heit* case was being maintained as a class action until the Seconded Amended Complaint and Proposed Settlement Agreement were posted. Petitioners claim that the class representative abandoned the "further and significant harm experienced upon the Petitioners" and other class members. Petitioners are referring to the guilty findings in prisoner disciplinary hearings and their effects on the amount of time a prisoner serves.

Opting-Out of a *Rule 23(b)(2)* Class

Class actions brought under *Rule 23(b)(2)* do not give class members the right to opt out. *See Laskey v. International Union, United Auto., Aerospace and Agr. Implement Workers of America (UAW)*, 638 F.2d 954, 956 (6th Cir. 1981). This policy stems from concern that "'defendants would not be inclined to settle where the result would likely be a settlement applicable only to [*3] class members with questionable claims, with those having stronger claims opting out to pursue their individual claims separately.'" *See Huguley v. General Motors Corp.*, 925 F.2d 1464, No. 83-72864, 1991 WL 22013, at *2 (6th Cir. Feb. 22, 1991) *quoting Kincade v. General Tire & Rubber Co.*, 635 F.2d 501, 507 (5th Cir.1981). Lawsuits, such as the *Heit* action, alleging class-wide discrimination are well suited for *Rule 23(b)(2)* treatment because the common claim is "susceptible to a single proof and subject to a single injunctive remedy." *Senter v. General Motors Corp.*, 532 F.2d 511, 525 (6th Cir. 1976). The Sixth Circuit has further stated that "in the interests of judicial economy and efficiency," courts should generally certify classes pursuant to 23(b)(2) when the class members are seeking injunctive relief and, correspondingly, not allow class members to opt out. *Laskey*, 638 F.2d at 956.

Petitioners also claim that *Perry v. McGinnis*, 209 F.3d 597 (6th Cir. 2000), demands more relief than that offered in the Proposed Settlement Agreement. When approving the Proposed Settlement Agreement the Court addressed [*4] *Perry*. The Court found that the Sixth Circuit did not grant judgment to Mr. Perry, but it merely reversed the defendants' motion to dismiss and remanded the case for trial. The Court also found that a remand does not mean

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[1] The Court recently entered an Opinion and Judgment in *Heit v. Van Ochten*, approving the Proposed Settlement Agreement, allowing the class's counsel to withdraw from representing Mr. Heit, and adding Joseph Corsetti as named Plaintiff.

that Mr. Perry will succeed, nor does it mean that the court will find that MDOC practices violate prisoners' rights. The Court further found that the Proposed Settlement Agreement was fair, adequate and reasonable regardless of the *Perry* decision. The Court stands behind its findings.

In this case, the class sought injunctive relief. Further, no monetary damages were awarded or sought. In addition, the class is so numerous that allowing members to opt-out could create inefficiency and numerous actions. Such inefficiency is neither desired nor needed as the common claim is susceptible to a single proof and subject to a single remedy. The class was properly certified under *Rule 23(b)(2)*, and Petitioners do not have an automatic right to opt-out of the class. Moreover, the Settlement Agreement gives each class member the right to challenge his individual disciplinary hearing results in state court, thus giving Petitioners the ability to address the harm the [*5] Settlement Agreement does not.

Subdividing the Class

Petitioners alternatively ask that the Court subdivide the class and appoint counsel for the subdivision. *Rule 23(c)(4)* states that when appropriate a class may be "divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly."

Subclasses under *Rule 23(c) (4)* are appropriate "whenever a distinct segment of the class presents special factual circumstances, *United States ex rel. Sero v. Preiser*, 372 F. Supp. 660, 662 (S.D.N.Y.1974) (prisoner [*42 U.S.C.] § 1983* class action challenging prison conditions should provide for subclasses where distinct variance among institutions exists); different causes of action, *Monroe v. Bombard*, 422 F. Supp. 211, 218 (S.D.N.Y.1976), or special legal or equitable prayers for relief, *Weathers v. Peters Realty Corp.*, 499 F.2d 1197, 1200-1201 (6th Cir. 1974)." *Glover v. Johnson*, 85 F.R.D. 1, 7 (E.D. Mich. 1977).

Petitioners do not claim special factual circumstances, different causes of action, or a special legal or equitable prayer for relief. [*6] Rather, Petitioners seek to subdivide the class to maintain relief for any guilty findings that were the result of unfair procedures. As discussed in the Court's Opinion approving the Proposed Settlement Agreement, the class could not seek expungements, reversals, or damages for hearings that resulted in loss of good time. *See Edwards v. Balisok*, 520 U.S. 641, 645, 137 L. Ed. 2d 906, 117 S. Ct. 1584 (1997); *Sandin v. Conner*, 515 U.S. 472, 486, 132 L. Ed. 2d 418, 115 S. Ct. 2293 (1995). The Settlement Agreement was not the proper vehicle for individual class members to challenge the results of disciplinary hearings. Such challenges are left for individual class members to raise in state court. Therefore, no need exists to subdivide the class or appoint counsel.

Thus, the Court denies Petitioners' Motion for Order of Non-Joinder or Parties or in the Alternative Motion for an Order of Party Subdivision.

DATED in Kalamazoo, MI

Jan 12, 2001

RICHARD ALAN ENSLEN

Chief Judge

ORDER

In accordance with the Court's Opinion of this date;

IT IS HEREBY ORDERED that Dean V. Langworthy's and Mark A. Coleman's Motion for Order of Non-Joinder [*7] or in the Alternative Motion for an Order of Party Subdivision (Dkt. No. 389) is **DENIED**.

DATED in Kalamazoo, MI

Jan 12, 2001

RICHARD ALAN ENSLEN

Chief Judge