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United States District Court,
E.D. Pennsylvania.

Neida SANTIAGO, et al.
v.
CITY OF PHILADELPHIA, et al.

CIV. A. No. 74-2589. | April 4, 1990.

Attorneys and Law Firms

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Opinion

OPINION

JOSEPH S. LORD, III, Senior District Judge.

***1** In this civil rights action challenging the conditions of confinement of allegedly delinquent juveniles in Philadelphia's Youth Study Center (YSC), Ronald Castille, the District Attorney for Philadelphia, has moved to intervene "in any proceedings which may involve the release or non-admission of juvenile delinquents or detainees." I will deny the motion.

Plaintiffs, former residents of YSC, commenced this action in 1974, alleging that the conditions under which they were detained were unconstitutional and in violation of the statutory and common law of Pennsylvania. Included among the named defendants were the City of Philadelphia, Mayor Frank Rizzo, Hillel Levinson (Managing Director of Philadelphia), judges of the Family Court Division of the Philadelphia Court of Common Pleas and administrators and personnel of YSC. One of plaintiffs' primary contentions was that YSC was chronically overcrowded. In 1978, the parties agreed to a stipulation of settlement that, among other things, established intake standards intended to reduce overcrowding. However, overcrowding persisted, and, in response, the parties amended the stipulation of settlement in 1985 and January 1988. Insofar as relevant here, the 1988 amended stipulation provided that, as of February 15, 1988, the maximum allowable population at YSC was 105, and authorized the release of detained juveniles and/or a limited admissions moratorium in the event the population cap was exceeded. On November 28, 1988, plaintiffs moved to close admissions at YSC until such time as the population cap of 105 would not be exceeded, alleging that the population at YSC had been "consistently over capacity." Shortly thereafter, the District Attorney filed this motion to intervene.[1]

The District Attorney primarily argues that he is entitled to intervene as of right pursuant to Fed. R. Civ. P. 24(a)(2). "Under Rule 24 (a)(2), a person is entitled to intervene if (1) the application for intervention is timely; (2) the applicant has a sufficient interest in the litigation; (3) the interest may be affected or impaired as a practical matter by the disposition of the action and (4) the interest is not adequately represented by an existing party in the litigation." Harris v. Pernsley, 820 F.2d 592, (3d Cir.), cert. denied 484 U.S. 947 (1987) (footnote omitted). I turn first to the issue of timeliness.

***2** The District Attorney's motion to intervene was filed more than 14 years after this action was commenced and 11 years after the parties entered into a stipulation of settlement. Although the mere lapse of time does not necessarily make an intervention application untimely, only "extraordinary circumstances" will overcome the presumption that a motion to intervene after entry of a decree or stipulation of settlement should be denied. Delaware Valley Citizens' Council for Clean Air v. Pennsylvania, 674 F.2d 970, 974 (3d Cir. 1982). The District Attorney argues, in essence, that his delay in moving to intervene is justified by extraordinary circumstances. He contends that, under the Third Circuit's ruling in Harris v. Pernsley, 820 F.2d 592, he did not have

a sufficient interest in this action to intervene as of right until 18 Pa. Cons. Stat. § 1108[2] was enacted in March 1988 and that his motion to intervene is timely when measured from that date.

In many respects like the present action, Harris was a civil rights action that involved a constitutional challenge to overcrowding in Philadelphia's prisons for adults. The District Attorney unsuccessfully sought to intervene as of right in Harris to oppose a proposed consent decree that established a maximum allowable population and authorized a limited admissions moratorium if that population was exceeded. Affirming the district court's denial of the District Attorney's motion to intervene, the Third Circuit noted that while the District Attorney "is the official who represents the Commonwealth's interest in criminal law enforcement," he has no responsibility for operating the City's prisons. 820 F.2d at 598-600. Furthermore, the court observed that under the consent decree approved by the district court, "[t]he District Attorney is not prevented from performing his statutory duties. He is not obligated to take any action, or refrain from any action, by the decree; moreover, he could not be held in contempt under this decree." Id. at 600. The Harris court rejected the District Attorney's contention that he had an interest in the litigation sufficient to justify intervention because, as a practical matter, his role as a prosecutor would be "rendered meaningless" by the release of or refusal to admit some persons who otherwise would have been imprisoned through his efforts. The court reasoned that "the District Attorney has no legally protected interest in causing the constitutionally imposed maximum [population] to be exceeded." Id. at 601. Additionally, the court rejected the District Attorney's argument that he had the right to intervene to protect the public's safety, observing that "officials in charge of prisons are attuned to such concerns and will return to the court to seek a modification of the decree if the ceiling threatens the safety of the public." Id. at 602. In conclusion, the court stated, "we decline to equate the District Attorney's function as the spokesperson for Pennsylvania's interest in criminal prosecutions with the responsibility for policing the entire criminal justice system." Id.

***3** In response to Harris, the Pennsylvania General Assembly enacted 18 Pa. Cons. Stat. § 1108, which provides that a district attorney "shall have automatic standing and a legal interest in, any proceeding which may involve the release or nonadmission of county prisoners, delinquents or detainees due to the fact, duration or other conditions of custody." The statute also affords a district attorney the right to "seek any equitable relief necessary to protect the district attorney's interest in the continued institutional custody and admission of county prisoners, delinquents or detainees." It is the district attorney's position that section 1108 unequivocally confers a legal interest sufficient to warrant intervention as of right in this action. Although superficially appealing, this argument lacks merit.

In determining whether the District Attorney's interest in this litigation is sufficient to give him the right to intervene, the relevant inquiry is whether his "rights and duties, as defined by Pennsylvania law, may be affected directly by the disposition of this litigation." Harris, 820 F.2d at 597. Although Pennsylvania law defines the scope of the District Attorney's duties, whether these duties are sufficient to support intervention as of right is a question of federal law. Id. at 597 n.7; see Clover Farms Dairy v. Brumbaugh, 102 F.R.D. 118, 120-21 (M.D. Pa. 1984) (although parties would have standing under Pennsylvania law to appear before Milk Marketing Board and participate in any appeal to the Commonwealth Court, they lacked an interest sufficient to give them the right to intervene in a related proceeding in federal court).

Section 1108 cannot be said to create any legitimate rights or duties; it simply states in conclusory terms that a district attorney has an interest in litigation that may involve the release or nonadmission of prisoners and then affords him the "right" to enforce this interest by seeking appropriate equitable relief. This interpretation of the statute is supported by the fact that Pennsylvania law confers no duties or responsibilities on district attorneys with respect to the conditions or circumstances in which juveniles are confined. Operation and management of YSC is done by the Philadelphia Department of Human Services in conjunction with the State Department of Public Welfare. See 55 Pa. Code §§ 3760, et seq. The determination whether to place a child in pretrial detention is vested in Family Court by the Juvenile Act. See 42 Pa. Cons. Stat. § 6327. Accordingly, the only basis I can perceive for the "interest" identified in section 1108 is the statutory duty of a district attorney to enforce the criminal laws of the Commonwealth.[3] See 16 Pa. Cons. Stat. § 1402(a). Under Harris, however, this interest is insufficient to give the District Attorney the right to intervene in this action concerning conditions of confinement.[4]

***4** In short, although release of juveniles from YSC or a limited admissions moratorium would undoubtedly have some effect on the District Attorney's enforcement duties, the District Attorney has failed to demonstrate a "tangible threat to a legally cognizable interest," as he must to have the right to intervene. Harris, 820 F.2d at 601 (emphasis added). Accordingly, the District Attorney cannot prevail on his claim that the enactment of section 1108 created "extraordinary circumstances" excusing his otherwise untimely motion to intervene as of right.

Alternatively, the District Attorney argues that he should be granted permission to intervene pursuant to Fed. R. Civ. P. 24(b)(2). Under Rule 24(b)(2), a court may permit a party to intervene if the application is timely and the

applicant's claim or defense and the main action have a question of law or fact in common. In determining whether to permit intervention, a court must also consider whether intervention will cause undue delay and prejudice to the original parties. See In re Fine Paper Antitrust Litigation, 695 F.2d 494, 500 (3d Cir. 1982); McKay v. Heyison, 614 F.2d 899, 906 (3d Cir. 1980).

For the reasons stated above, I believe the application to intervene is untimely. However, even assuming the application is timely, the District Attorney's intervention is not otherwise justified. In a broad sense, the District Attorney's objections to the plaintiff's motion for enforcement raise questions of law and fact that are raised by the main action insofar as it is concerned with the relief to which plaintiffs are entitled. However, assuming arguendo that the District Attorney has satisfied the common question of law or fact component of Rule 24(b)(2), I still am not persuaded that he should be allowed to intervene. Even if I were to grant the District Attorney intervenor status solely for the purposes of challenging implementation of the stipulation of settlement, he would have standing to seek appellate review of any rulings that affect him. See 3B Moore's Federal Practice ¶ 24.15, at 24-169 & n.22 (citing Norman's on the Waterfront, Inc. v. Wheatley, 444 F.2d 1011 (3d Cir. 1971)). The objections filed by the District Attorney in opposition to plaintiff's motion for enforcement make clear that he is completely opposed to those provisions of the stipulation of settlement that provide for release of detained juveniles or a limited admissions moratorium in the event the maximum allowable population is exceeded. He requests that if I invoke these remedies that I substantially expand the class of juveniles exempted from the release and limited admissions provisions. Thus, there is a substantial likelihood that further litigation and delay will ensue if the District Attorney is allowed to intervene.

Such delay will certainly prejudice plaintiffs, as representatives of YSC detainees, because the detainees will be forced to endure allegedly unconstitutional conditions for a much longer period. Because the District Attorney has no legal responsibility for the conditions of confinement at YSC and lacks a legally cognizable interest that will be directly affected by this litigation, I do not believe that whatever contributions he could make to this case as an intervenor outweigh the prejudice suffered by plaintiffs as a result of delay in resolving the problem of overcrowding. See id. ¶ 24.10[2] (general interest in subject matter of litigation is insufficient reason to grant motion for permissive intervention). I will therefore deny the District Attorney's motion for permissive intervention.

***5** In concluding that the District Attorney is not entitled to intervene in this action as of right or permissively, I do not mean to belittle the value of the perspective the District Attorney has on overcrowding at YSC. According to plaintiff, the proposed amendments to the stipulation of settlement in 1985 and 1988 were shared with the District Attorney and many of his suggestions were incorporated into the amended stipulations before they were submitted to me. As the Third Circuit recognized in Harris, permitting people to appear as friends of the court or on some other limited basis may be advisable where they can contribute to the court's understanding of the consequences of a settlement agreement. 820 F.2d at 603. Accordingly, I invite the District Attorney to continue submitting appropriate objections in response to any proceedings that may involve the release or nonadmission of juvenile delinquents or detainees.

O R D E R

AND NOW, this ?? day of April, 1990, for the reasons stated in an opinion filed this date, it is ORDERED that the motion of Ronald D. Castille to intervene in any proceedings which may involve the release or nonadmission of juvenile delinquents or detainees is DENIED.

Footnotes

1 I delayed ruling on the motion for some time because it appeared that through the sincere and vigorous efforts of all parties and the court-appointed master, Robert Wolf, the population cap would be met, which would make the motion to intervene moot. In fact, on July 27, 1989, plaintiffs withdrew their motion to close admissions. However, throughout the fall of 1989, the number of juveniles detained at YSC was continuously well over the maximum allowable population. On November 27, 1989, plaintiffs moved for enforcement of the stipulation of settlement, which means that the District Attorney's motion must now be decided.

2 18 Pa. Cons. Stat. § 1108 provides that a district attorney "shall have automatic standing and a legal interest in, any proceeding which may involve the release or nonadmission of county prisoners, delinquents or detainees due to the fact, duration or other conditions of custody." It also entitles a district attorney to "seek any equitable relief necessary to protect the district attorney's interest in the continued institutional custody and admission of county prisoners, delinquents or detainees."

3 The legislative history of section 1108 supports this conclusion. In proposing the statute in the House of Representatives, Representative Wogan stated: "[T]his is a commonsense amendment. It is reasonable to assume that D.A.'s who, it is already

recognized, have the power to advocate criminal sentences, the power to defend convictions in both State court actions and Federal habeas corpus actions, and the power to represent the Commonwealth generally in challenges of the constitutionality of the State's penal statutes, should also have the authority to intervene in lawsuits involving the release of county prisoners." 1987 Legislative Journal--House, Volume III, at 1951.

4 Pennsylvania certainly could grant its district attorneys an interest in prisoner litigation sufficient to warrant intervention as of right in a case challenging conditions of confinement. As Harris establishes, however, a public official who seeks to intervene in an action as of right must have more than "a general interest in the litigation;" the subject of the suit must come within the scope of his official duties. 820 F.2d at 602. To satisfy this requirement, Pennsylvania could make the District Attorney rather than the City of Philadelphia responsible for managing YSC. Cf. 18 U.S.C. § 4001(b)(1) (authorizing United States Attorney General to run federal prisons as well as prosecute those who violate federal laws).