IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

ELAINE BLANCHARD, KEEDRAN FRANKLIN, PAUL GARNER, and BRADLEY WATKINS, Plaintiffs, and ACLU OF TENNESSEE, INC., Intervening Plaintiff, v. CITY OF MEMPHIS, TENNESSEE, Defendant.	)	Case No. 2:17-cv-2120-JPM-egb

ORDER DENYING MOTION FOR RULE 54(b) CERTIFICATION

Before the Court is the Motion for Rule 54(b) Certification filed by Plaintiffs Elaine Blanchard, Keedran Franklin, Paul Garner, and Bradley Watkins (collectively, the "Blanchard Plaintiffs") on September 11, 2017. (ECF No. 49.)

I. BACKGROUND

This action arises from the Order, Judgment and Decree (the "Kendrick Decree") entered in September 1978 in the case of Kendrick, et al. v. Chandler, et al., No. 2:76-cv-00449 (W.D. Tenn.). (See ECF Nos. 1, 16.) On June 30, 2017, this Court dismissed the Blanchard Plaintiffs' Complaint after determining that the Blanchard Plaintiffs lacked

standing to enforce the Kendrick Decree because they were not parties to it. (See ECF No. 41.) In the same Order, the Court also determined that Intervening Plaintiff ACLU of Tennessee, Inc. ("ACLU-TN") had standing to enforce the Kendrick Decree because it is the successor in interest to the West Tennessee Civil Liberties Union, an original party to the Kendrick Decree. (Id.)

The Blanchard Plaintiffs now move the Court to enter final judgment as to them—as dismissed parties—pursuant to Federal Rule of Civil Procedure ("Rule") 54(b), so that they can appeal the issue of their standing to enforce the Kendrick Decree. (See ECF No. 49.) The Blanchard Plaintiffs argue that the Court's June 30, 2017 Order "adjudicates all claims brought by and ends the litigation as it pertains to Blanchard Plaintiffs." (Id. at 557.[1]) The Blanchard Plaintiffs further argue that there is no just reason to delay their appeal because ACLU-TN's unadjudicated claims for general enforcement of the Kendrick Decree by a successor in interest are not related to the Blanchard Plaintiffs' adjudicated claims for specific enforcement of the decree by third-party beneficiaries. Accordingly, the Blanchard Plaintiffs argue that future proceedings in this action cannot moot their need for appellate review and would not require the Sixth Circuit to reconsider the same issue the Blanchard Plaintiffs seek to appeal: the enforceability of a consent decree by intended third-party beneficiaries. (See id. at 558.)

Defendant City of Memphis, Tennessee (the "City") argues that there is just reason for delaying the Blanchard Plaintiffs' appeal because the City will argue in an anticipated motion for summary judgment—in response to which ACLU-TN will not be able to rely on its allegations, as it could in response to a motion to dismiss—that ACLU-TN lacks standing to

[1] All page number citations are to PageID number.

enforce the Kendrick Decree. (ECF No. 50 at 564-65.) The City argues that, should it prevail at the summary judgment stage, "ACLU-TN would be forced to argue on appeal that it, like the Blanchard Plaintiffs, has standing to enforce the *Kendrick* Consent Order as a nonparty to the original consent order." (Id. at 565.) The City further argues that, should it fail at the summary judgment stage, the Blanchard Plaintiffs' need for appellate review may be mooted by future developments in this action because a judgment in favor of ACLU-TN would grant ACLU-TN the same remedy the Blanchard Plaintiffs seek: the enforcement of the Kendrick Decree. (Id.) Finally, the City argues that allowing immediate appeal of the Blanchard Plaintiffs' dismissal would needlessly bifurcate this action over a legal issue that is well-established in the Sixth Circuit. (Id. at 567.) The City further asserts that bifurcation would be burdensome and costly for the City. (Id.)

II. LEGAL STANDARD

Rule 54(b) certification requires two actions by a district court. First, the district court must "direct the entry of final judgment as to one or more but fewer than all the claims or parties" in a case. Second, the district court must "expressly determine[] that there is no just reason for delay" of appellate review. Fed. R. Civ. P. 54(b); see also Gen. Acquisition, Inc. v. GenCorp, Inc., 23 F.3d 1022, 1026 (6th Cir. 1994).

"The second step in certification, determination of no just reason for delay, requires the district court to balance the needs of the parties against the interests of efficient case management." Gen. Acquisition, 23 F.3d at 1027. Specifically, a district court should consider the following factors when making a Rule 54(b) determination:

(1) the relationship between the adjudicated and unadjudicated claims;

(2) the possibility that the need for review might or might not be mooted by future developments in the district court;

(3) the possibility that the reviewing court might be obliged to consider the same issue a second time;

(4) the presence or absence of a claim or counterclaim which could result in set-off against the judgment sought to be made final;

(5) miscellaneous factors such as delay, economic and solvency considerations, shortening the time of trial, frivolity of competing claims, expense, and the like.

Corrosioneering, Inc. v. Thyssen Envtl. Sys., Inc., 807 F.2d 1279, 1283 (6th Cir. 1986) (citation omitted); see also Curtiss-Wright Corp. v. Gen. Elec. Co., 446 U.S. 1, 6 (1980). To properly consider these "Corrosioneering factors," a district court must "strike a balance between the undesirability of more than one appeal in a single action and the need for making review available in multiple-party or multiple-claim situations at a time that best serves the needs of the litigants." Gen. Acquisition, 23 F.3d at 1027 (quoting Wright, Miller & Kane, Fed. Prac. & Proc. Civ. § 2655 (3d ed.)).

III. ANALYSIS

The City may yet succeed in establishing, through evidence not considered in the Court's June 30, 2017 Order, that ACLU-TN is not a successor in interest to the West Tennessee Civil Liberties Union. In that event, ACLU-TN's claims will likely be dismissed for lack of standing exactly as the Blanchard Plaintiffs' claims were, and ACLU-TN may appeal the dismissal of its claims on the same issue the Blanchard Plaintiffs contend has been finally adjudicated. Accordingly, "the relationship between the adjudicated and unadjudicated claims" in this action will remain a close one at least through the summary judgment stage. See Corrosioneering, 807 F.2d at 1283.

Moreover, if the City fails to obtain dismissal of ACLU-TN's claims for lack of standing, ACLU-TN may prevail in this action on the merits. In that event, ACLU-TN would likely obtain the substantive remedy the Blanchard Plaintiffs seek in their Complaint: the enforcement of the Kendrick Decree. (See ECF No. 1.) Contrary to the Blanchard Plaintiffs' contentions, such success by ACLU-TN would not leave the Blanchard Plaintiffs "having a right without a remedy"; rather, it would leave them with the remedy they seek.[2] (See ECF No. 49 at 558.) Accordingly, there remains a substantial possibility that the Blanchard Plaintiffs' need for appellate review might be "mooted by future developments in the district court." See Corrosioneering, 807 F.2d at 1283.

The Blanchard Plaintiffs are correct that, on appeal, the Sixth Circuit or the Supreme Court could ultimately find in their favor on the issue of standing, thereby requiring the "re-opening of the litigation and rearguing of the case" in this Court. (ECF No. 49 at 559.) But that is true of virtually every appeal, which helps to explain why a district court's reconsideration of issues on remand is not enumerated in the Corrosioneering factors. See Corrosioneering, 807 F.2d at 1283 ("the possibility that the *reviewing court* might be obliged to consider the same issue a second time") (emphasis added).

IV. CONCLUSION

For the foregoing reasons, the Court finds that balancing the needs of the parties against the interests of efficient case management, the Blanchard Plaintiffs' arguments are

[2] The question the Blanchard Plaintiffs seek to ask on appeal is whether they have a *right* at stake in this action. In that respect, the Blanchard Plaintiffs are correct that a question as to which they seek an answer will not have been addressed by an ultimate determination in favor of ACLU-TN.

unpersuasive. Accordingly, the Blanchard Plaintiffs' Motion for Rule 54(b) Certification is DENIED.

IT IS SO ORDERED, this 1st day of November, 2017.

/s/ Jon P. McCalla
JON P. McCALLA
UNITED STATES DISTRICT COURT JUDGE