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

ELAINE BLANCHARD, et al.

Plaintiffs,

ACLU OF TENNESSEE, INC.,

Intervening-Plaintiff,

v. No. 2: 17-cv-02120-JPM-dkv

CITY OF MEMPHIS,

Defendant.

ORDER DENYING DEFENDANT'S MOTION TO BIFURCATE AND STAY OR LIMIT DISCOVERY

Before the Court is Defendant City of Memphis's Motion to Bifurcate and Stay or limit Discovery, filed on March 7, 2017. (ECF No. 19.) Plaintiffs Elaine Blanchard, Keedran Franklin, Paul Garner and Bradley Watkins responded in opposition on March 21, 2017. (ECF No. 25.) Intervening-Plaintiff ACLU of Tennessee, Inc. also responded in opposition on March 21, 2017. (ECF No. 24.) For the reasons stated below, Defendant's motion is DENIED.

I. Background

This case arises from a Consent Order entered in 1978 in the case of *Kendrick, et al. v. Chandler*, No. C76-449 (W.D. Tenn. 1978). (ECF No. 1; ECF No. 16.) Plaintiffs and Intervening-Plaintiff allege that Defendant violated the Consent Order through recording participants at protests and establishing a list of such protesters, in violation of their First Amendment rights. (ECF No. 1; ECF No. 16.) Defendant asserts that Plaintiffs and Intervening-

Plaintiff lack standing to enforce the Consent Order, and that the Court lacks subject-matter jurisdiction over the suit. (ECF No. 14; ECF No. 19-1.)

On March 7, 2017, Defendant filed a Motion to Bifurcate and Stay or Limit Discovery, requesting the Court to bifurcate the standing and subject-matter jurisdiction issues from the merits of the case, and grant a stay of discovery or limiting initial discovery to the standing issue. (ECF No. 19.) Plaintiffs filed a response in opposition on March 21, 2017, asserting that Defendant has not demonstrated that it will be unfairly prejudiced if the case is not bifurcated, and that bifurcation would delay the fair and expeditious resolution of Plaintiffs' claims. (ECF No. 25 at PageID 317.) Intervening-Plaintiff filed a response in opposition on March 21, 2017, arguing that bifurcation would not promote judicial economy or avoid prejudice, and that staying discovery would unnecessarily delay the progress of the case. (ECF No. 24 at PageIDs 311-12.)

II. Standard of Review

Federal Rule of Civil Procedure 42(b) provides that the Court may "order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims or issues." 9A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure, § 2387 (3d ed. 2017) (citing Fed. R. Civ. P. 42(b)). Rule 42(b)'s purpose is to "further[] convenience[,] or to avoid prejudice, or [to promote] expedition and economy." Saxion v. Titan-C Mfg., Inc., 86 F.3d 553, 556 (6th Cir. 1996); see also Wright & Miller, Federal Practice and Procedure, § 2388 ("If a single issue could be dispositive of the case . . . [then] separate trial of that issue may be desirable to save the time of the court and reduce the expenses of the parties.").

Bifurcation may be warranted even where only one of the above criteria (i.e., convenience, avoidance of prejudice, or judicial economy) would be satisfied by bifurcation.

Saxion, 86 F.3d at 556. The decision to bifurcate lies within the trial court's discretion. Id. Whether bifurcation is appropriate depends on the facts and circumstances of an individual case. Id. If a separate trial "will involve extensive proof and substantially the same facts or witnesses as the other issues in the cases, or if any saving in time and expense is wholly speculative, it is likely that a separate trial on that issue will be denied." Wright & Miller, Federal Practice and Procedure, § 2388.

The moving party "has the burden of showing that concerns such as judicial economy and prejudice weigh in favor of [bifurcation]." Woods v. State Farm Fire & Cas. Co., No. 2:09-cv-482, 2010 WL 1032018, at *1 (S.D. Ohio Mar. 16, 2010) (citing Wright & Miller, Federal Practice and Procedure, § 2388).

The Court may also stay discovery on certain claims where appropriate. Id. (citing Smith v. Allstate Ins. Co., 403 F.3d 404, 407 (6th Cir. 2005)).

III. Analysis

Defendant argues that the issues of standing and subject matter jurisdiction are "two threshold issues," and that "bifurcation and staying/limiting discovery will avoid prejudice to the City, further the convenience of the parties, and economize and expedite these proceedings." (ECF No. 19-1 at PageID 267.) Defendant points to a Sixth Circuit case involving a Section 1983 claim in which the court ordered separate trials on the issues of individual liability and municipal liability. *Wilson v. Morgan*, 477 F.3d 326 (6th Cir. 2007). Defendant also cites a case from the Western District of Michigan in which the court bifurcated the proceedings into one claim for declaratory relief regarding tribal boundaries and another claim for equitable relief in the form of an injunction. *Little Traverse Bay Bands of Odawa Indians v. Snyder*, 194 F. Supp. 3d 648 (W.D. Mich. 2016). Defendant contends that bifurcation in this case would (1) further

the convenience of the parties (2) avoid prejudice to the City by allowing them to avoid "extensive, intrusive discovery on issues having not[h]ing to do with the threshold issue of jurisdiction". (ECF No. 19-1 at PageID 273.)

Defendant further contends that bifurcation would streamline litigation and crystallize the issues by promptly determining the standing of the plaintiff and analyzing subject matter jurisdiction. (*Id.*) Defendant cites the motions to dismiss it has filed to date, which also assert that the Plaintiff and Intervening-Plaintiff lack standing to pursue the claim and that the Court lacks subject-matter jurisdiction over the case. (ECF Nos. 8, 22.)

Both Plaintiffs and Intervening-Plaintiff oppose Defendant's motion to bifurcate and stay or limit discovery. Their main objections are that the threshold issues of standing and subject matter jurisdiction are not complicated or exceptional enough to warrant bifurcation, and that Defendant has not demonstrated it will be unfairly prejudiced by proceeding with discovery, nor how bifurcating discovery would promote judicial economy. (ECF Nos. 24, 25.) The Court now examines the three relevant factors--convenience, avoidance of prejudice, and judicial economy—-in light of the parties' contentions.

a. Convenience and Judicial Economy

District courts often bifurcate proceedings when factual issues are so complex that it would be more expeditious and less confusing to the jury, such as in tort cases involving liability and damages, intellectual property cases, and cases arising out of contracts, trust, and insurance agreements. Wright & Miller, Federal Practice and Procedure, § 2389. See, e.g., Farmers Bank, 2011 WL 2023301, at *3 (bifurcating claims); Bruckner v. Sentinel Ins. Co., Ltd., No. 09-195-JBC, 2011 WL 589911, at *2 (E.D. Ky. Feb. 10, 2011) (same).

The Court finds that the threshold issues raised by Defendant in the instant case do not appear appropriate for bifurcation at this time. Preliminary issues of standing and subject matter jurisdiction are present in every case, and do not make this case an exceptional one. Additionally, these preliminary issues are raised by Defendant in its Motions to Dismiss, which will be resolved by the Court at an early stage of the proceedings. These threshold issues of standing and subject-matter jurisdiction are purely legal issues that would not create a risk of confusion or prejudice to a jury, unlike the cases cited by Defendant.

If the Court bifurcated the claims and Defendant failed to win the motion to dismiss on issues of standing and subject matter jurisdiction, the parties would likely need to depose the same witnesses again. The circumstances surrounding the formation, interpretation, and scope of the 1978 Consent Order are issues that are closely related to the merits of the case, and would likely involve some of the same discovery material and witnesses. Such a result would frustrate, rather than further, the convenience of the parties. Bifurcation would only promote judicial economy if Defendant succeeds on the threshold issues; otherwise, the Court would be faced with two discovery phases and potentially two trials. The Court therefore concludes that bifurcation would not promote judicial economy. Instead, bifurcation would unduly prolong the case, to the detriment of the Court and the parties. See SunCoke Energy Inc. v. MAN Ferrostaal Aktiengesellschaft, 563 F.3d 211, 217 n.7 (6th Cir. 2009) (explaining that trial courts have an interest in "judicial efficiency"). Accordingly, the factors of convenience and judicial economy weigh against bifurcation.

b. Avoidance of Prejudice

The moving party must make a "specific showing" when arguing that the potential for undue prejudice justifies bifurcation. Woods, 2010 WL 1032018, at *3 (citing, inter alia,

Gaffney, 2008 WL 3980069, at *5-6). Defendant argues that it would be prejudiced if bifurcation does not occur because it may be compelled to undergo extensive, intrusive discovery on other issues before the threshold issues are resolved. (ECF No. 19-1 at PageID 273.)

Defendant has not made a specific showing of the prejudice it would suffer if bifurcation is not granted. Defendant has not claimed, for example, that it would be forced to reveal privileged information or information beyond that which is necessary in the initial stage of discovery pending the Court's ruling on the Motions to Dismiss. Additionally, as Defendant has raised the threshold issues in the motion to dismiss, the threshold issues will be resolved at an early stage of discovery. The Court concludes that Defendant has failed to make a specific showing that it will be unduly prejudiced if the claims are not bifurcated. Moreover, even if Defendant were able to make such a showing, the other factors (convenience and judicial economy) weigh against bifurcation. Upon balancing the relevant factors, the Court declines to bifurcate the claims and stay discovery in this case. Accordingly, Defendant's motion is DENIED.

IV. Conclusion

For the foregoing reasons, Defendant's Motion to Bifurcate and Stay or Limit Discovery is DENIED without prejudice. If future developments revealed the efficacy of separate trials, the Court may revisit the issue.

IT IS SO ORDERED this 31st day of March, 2017.

/s/ Jon P. McCalla
JON P. McCALLA
U.S. DISTRICT JUDGE