

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

FILED

FEB 26 2004

CLERK
U. S. DISTRICT COURT
MIDDLE DIST. OF ALA. *WJ*

IN RE: EMPLOYMENT)
DISCRIMINATION LITIGATION)
AGAINST THE STATE OF ALABAMA,)
et al.)

EUGENE CRUM, JR., et al.,)
Plaintiffs,)

v.)

STATE OF ALABAMA, et al.,)
Defendants.)

UNITED STATES OF AMERICA,)
Plaintiff,)

TIMOTHY D. POPE,)
Intervenor-Plaintiff,)

JOHNNY REYNOLDS, et al.,)
Intervenor-Plaintiffs,)

EUGENE CRUM, JR., et al.,)
Intervenor-Plaintiffs,)

v.)

TOMMY G. FLOWERS, et al.,)
Defendants.)

CIV. ACTION NO. 94-T-356-N

CIV. ACTION NO. 68-T-2709-N ✓

ALABAMA STATE CONFERENCE)
OF NAACP BRANCHES,)
)
Amicus Curiae.)

ORDER

These cases are currently before the court on the Crum plaintiffs' motion for Rule 54(b) judgment, or, in the alternative, motion for certification pursuant to 28 U.S.C.A. § 1292(b) (Flowers doc. no. 643, Crum doc. no. 641), of two of the court's orders. In the first order the Crum plaintiffs seek to appeal, the court dismissed the plaintiffs' Flowers claims without prejudice to the rights of an appropriate person or party to file motions for contempt (Crum doc. no. 416) ("the dismissal order"). In the second order, the court denied the Crum plaintiffs' motion for civil contempt based on alleged violations of the Flowers injunction. In re Employment Discrimination Litigation Against State of Alabama, 213 F.R.D. 592, 600 (M.D. Ala. 2003) (Flowers doc. no. 616, Crum doc. no. 610) ("the contempt order"). The court will deny the plaintiffs' Rule 54(b) motion for judgment for both orders, but for the reasons given below, will grant the motion

for certification of both orders pursuant to 28 U.S.C.A. § 1292(b).

The Crum plaintiffs filed this lawsuit in 1994 alleging, among other things, several claims based on the injunction issued in the Flowers case. In an order entered on September 17, 1997 (Flowers doc. no. 514, Crum doc. no. 307), this court consolidated the Crum litigation with the Flowers litigation to the extent that there were issues common to both. Subsequently, in the dismissal order, the court dismissed the Flowers claims that the Crum plaintiffs asserted, on the grounds that the proper way to enforce an injunction is through contempt proceedings. See, e.g., Florida Ass'n for Retarded Citizens v. Bush, 246 F.3d 1296, 1298 (11th Cir. 2001); Reynolds v. Roberts, 207 F.3d 1288, 1298 (11th Cir. 2000). Following the dismissal of the Flowers claims, the Crum plaintiffs moved for civil contempt for alleged violations of the Flowers injunction. The court denied that motion in a short order entered on June 19, 2001 (Flowers doc. no. 593, Crum doc. no. 465), which was followed by the contempt order at issue here (Flowers doc. no. 616, Crum doc. no. 610), which denied the plaintiffs' motion to alter, amend,

or reconsider, and provided a full explanation for the court's earlier order that the Crum plaintiffs could not proceed against the Crum defendants for civil contempt.

As a result of the court's legal rulings dismissing the Flowers claims in Crum, and denying the Crum plaintiffs' motion for contempt, the Crum lawsuit has been considerably narrowed, and is closer to resolution. However, the court recognizes that the contempt order was entered without the benefit of any Eleventh Circuit or other "judicial decision that [had] construed the rule" underlying the motion. In re Employment Discrimination Litigation Against State of Alabama, 213 F.R.D. 592, 600 (M.D. Ala. 2003). Further, the rule the court was required to interpret was "ambiguous" and there was no clear authority supporting or rejecting the plaintiffs' arguments. Id. at 601. Therefore, the court finds that substantial grounds exist for differences of opinion on this ruling. Additionally, because the contempt order was closely related to the dismissal order dismissing the Flowers complaints from the Crum lawsuit, the court finds that the dismissal order is also deserving of certification. That is, unless the court's ruling that the Flowers claims were due to

be dismissed from the Crum lawsuit is correct, there is no point in deciding whether its ruling denying the contempt motion was proper.

If the Eleventh Circuit finds that this court erred in entering either the dismissal order or the contempt order, it is best that this be known as soon as possible so that the court and the parties can avoid further waste of time and resources; or, to put it another way, if the court is mistaken in its legal rulings, and the mistake is not corrected until much later than it could have been, this litigation will have been prolonged even longer than necessary.


Accordingly, it is ORDERED as follows:

(1) The plaintiffs' motion for Rule 54(b) judgment, or in the alternative, motion for certification pursuant to 28 U.S.C.A. § 1292(b), filed June 5, 2003 (Flowers doc. no. 643, Crum doc. no. 641), is granted to the extent that the court's order filed April 5, 2001, dismissing the Frazer claims from the Crum litigation (Crum doc. no. 416), and the court's order filed March 28, 2003, denying the Crum plaintiffs' motion for contempt (Flowers doc. no. 616, Crum doc. no. 610) are certified for appeal.

(2) Said orders (Crum doc. no. 416; Flowers doc. no. 616, Crum doc. no. 610) are amended to reflect the following additional findings: this order involves a controlling question of law as to which there is substantial grounds for difference of opinion, and an immediate appeal from the order may materially advance the ultimate termination of the litigation.

The motion is denied in all other respects.

DONE, this the 26th day of February, 2004.



MYRON H. THOMPSON
UNITED STATES DISTRICT JUDGE