

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

---

IN THE MATTER OF AMERICANS UNITED FOR SEPARATION OF STATE, et al.,	*	
	*	
Plaintiffs,	*	4:03-cv-90074 (lead case)
	*	
v.	*	
	*	
PRISON FELLOWSHIP MINISTRIES, et al.	*	MEMORANDUM OPINION
	*	AND ORDER
Defendants.	*	
	*	

---

Before the Court is Plaintiffs’ resisted Motion to Bifurcate Nominal Damages/Qualified Immunity Issue, and to Hold State Defendant’s Summary Judgment Motion on this Issue in Abeyance (Clerk’s No. 183). By their motion, the Plaintiffs seek a bifurcation under Federal Rule of Civil Procedure 42(b) on the issues of qualified immunity and nominal damages from the other matters in the present case. In addition, the Plaintiffs request that the Court hold in abeyance the issues of nominal damages and qualified immunity until the Court has issued final rulings on the Plaintiffs’ request for declaratory, injunctive, and restitution relief, reached either by summary judgment or by trial. The Defendants filed their Joint Opposition on September 27, 2004. Clerk’s No. 187. In turn, the Plaintiffs filed their Reply on September 30, 2004. Clerk’s No. 188. The matter is fully submitted.

I. ANALYSIS

“The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim . . . or issues . . . .” Fed. R. Civ. P. 42(b). “In order for a court to grant bifurcation, the party seeking bifurcation has the burden of demonstrating that judicial economy would be served and that no party would be prejudiced by

separate trials, based on the circumstances of the individual case. *See Real v. Bunn-O-Matic Corp.*, 195 F.R.D. 618, 620 (N.D. Ill. 2000) (citing *Novopharm Ltd. v. Torpharm, Inc.*, 181 F.R.D. 308, 310 (E.D.N.C. 1998)). “The piecemeal trial of separate issues in a single lawsuit is not to be the usual course.” *See Bunn-O-Matic Corp.*, 195 F.R.D. at 620 (citing 9 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2388 (2d ed. 1995)). “District courts possess broad discretion to bifurcate issues for purposes of trial . . . In exercising discretion, district courts should consider the preservation of constitutional rights, clarity, judicial economy, the likelihood of inconsistent results and possibilities for confusion.” *O'Dell v. Hercules, Inc.*, 904 F.2d 1194, 1202 (8th Cir. 1990) (internal citations omitted).

The Plaintiffs argue that if qualified immunity is not granted to the State Defendants, the State’s likely interlocutory appeal will unduly delay a hearing on the merits of the case because the Circuit Court of Appeals may order a stay of the proceedings until a final determination on qualified immunity is made. Also, the Plaintiffs assert that a full hearing on the nominal damages issue would require calling at least thirteen separate defendants to the stand, thereby lengthening the trial. Through bifurcation and abeyance, the Plaintiffs continue, the Court would be freed from unnecessary consideration of complex legal questions. The Plaintiffs conclude that, in any event, the nominal damages issue may well be resolved between the parties if the Plaintiffs other claims for relief are realized.

Most examples for bifurcation under Rule 42(b) have in common the idea that bifurcation is a practical step, based on a common sense separation of claims or issues for the sake of economically resolving the larger dispute in question and avoiding unwarranted prejudice. *See, e.g., O'Dell*, 904 F.2d at 1202 (finding no abuse of discretion when the trial court bifurcated a consolidated tort trial

between a liability phase and damages phase); *Koch Fuels, Inc. v. Cargo of 13,000 Barrels of No. 2 Oil*, 704 F.2d 1038, 1042 (8th Cir. 1983) (affirming district court’s decision to bifurcate a trial in admiralty in order to preserve one claimant’s right to a trial by the court and the other claimant’s right to trial by jury without prejudice to either party); *Int’l Woodworkers of Am. v. Georgia-Pacific Corp.*, 568 F.2d 64, 68 (8th Cir. 1977) (deciding, in a suit alleging discrimination at several locations, that a district court in its discretion may order the separate trial of alleged discrimination at just one of the sites); *Chicago, Rock Island & Pac. R.R. Co. v. Williams*, 245 F.2d 397, 404 (8th Cir. 1957) (finding “eminently proper” the trial court’s bifurcation order to try defendants’ cross-claims separately from the plaintiff’s actions on the merits in a tort action).

The burden on the moving party to show that judicial economy would be served through bifurcation is not met, in this case, by the Plaintiffs’ motion set in the subjunctive mood. *See* Wright & Miller, *Federal Practice* § 2388 (stating that when “any saving in time and expense is wholly speculative, a separate trial will be denied”). In this case, the Plaintiffs’ primary argument for bifurcation is based on a series of speculative events which, should they happen, could result in an undue delay in litigation. That is: 1) that the Court denies the State Defendants their summary judgment request for qualified immunity (thereby leaving them vulnerable to the nominal damages remedy); 2) the State Defendants then choose to file an interlocutory appeal on the issue of qualified immunity/nominal damages; 3) the Circuit Court of Appeals decides to issue a stay of the proceedings; causing, 4) an undue delay in litigation during the pending appeal. In the cases cited *supra*, where bifurcation was deemed proper, the concerns and risks inherent in the absence of bifurcation were readily foreseeable and flowed from the natural course of the litigation in the types of cases. In the present case, the

Plaintiffs' view into the future requires that the Court agree to bifurcation based on several possible outcomes, none of which flow naturally from the claims or issues, rather the results could only accrue as a result of the parties' possible tactical litigation or decisions arising from an unfavorable decision by the Court. The scenarios envisioned by the Plaintiffs are too speculative to warrant bifurcation and abeyance of the qualified immunity/nominal damages issues. Lastly, even if these scenarios did come to pass, the only prejudice likely to be suffered by Plaintiffs would be that associated with the Defendants assertion of their procedural rights.

## II. CONCLUSION

The Court finds that the interests of convenience, avoidance of prejudice, or economy would not be served through bifurcation in this case. For the reasons stated herein, Plaintiffs' Motion to Bifurcate Nominal Damages/Qualified Immunity Issue, and to Hold State Defendants' Summary Judgment Motion on this Issue in Abeyance (Clerk's No. 183) is DENIED.

IT IS SO ORDERED

Dated this \_\_\_19th\_\_\_ day of October, 2004.

  
\_\_\_\_\_  
ROBERT W. PRATT  
U.S. DISTRICT JUDGE