

1992 WL 175511

Only the Westlaw citation is currently available.
United States District Court, N.D. Illinois, Eastern
Division.

Isaac GREEN, Plaintiff,
v.

Allyn SIELAFF, individually and in his capacity as
Acting Director of the Illinois Department of
Corrections; Joseph Cannon, individually and in
his capacity as the Warden and Chief
Administrative Officer of the Illinois State
Penitentiary, Joliet Branch; Eugene Buldak; Mary
Jurich; Warren W. Wols, Defendants.

No. 71 C 1403. | July 23, 1992.

Opinion

MEMORANDUM OPINION

KOCORAS, District Judge:

*1 This matter comes before the court on petitioner George Peter's motion for reconsideration of this court's denial of his motion to intervene. Peter has also filed a motion to enforce obedience to the permanent injunction entered by this court on January 9, 1976 pursuant to Fed.R.Civ.P. 71. Petitioner Steve Jorgensen has also filed a motion to enforce obedience to this court's permanent injunction or in the alternative to intervene pursuant to Fed.R.Civ.P. 24. Finally, Ruthanne DeWolfe has filed a motion for class certification nunc pro tunc pursuant to Fed.R.Civ.P. 23(b)(2). For the reasons set forth below, Peter's motion for reconsideration is granted, and he will be allowed to intervene pursuant to Rule 24. All other motions are presently denied.

BACKGROUND

On January 9, 1976, Judge McGarr of this court entered an injunction barring Allyn Sielaff, the former director of the Illinois Department of Corrections, as well as his "successors, agents, servants, and employees" from enforcing any rule or regulation "which prohibits or restricts the sources from which inmates of Illinois corrections institutions may receive otherwise admissible publications. The injunction ordered the Illinois Department of Corrections "henceforth [to] allow and permit inmates to order, solicit, receive as gifts or

otherwise obtain publications from friends, relatives ... department stores, magazine distributors, publishers, wholesale or retail establishments, or from any other source of publications or written materials."

In November, 1987, the Illinois Department of Corrections promulgated new regulations banning the receipt of all catalogs other than for books or periodicals by prison inmates. It is this regulation which is being challenged.

Petitioner George Peter is currently an inmate at Dixon Correctional Center. Peter filed a motion to intervene in order to petition for a rule to show cause why this court should not hold the current Director of the Illinois Department of Corrections, Howard Peters, in civil contempt for allegedly violating the injunction entered by Judge McGarr.

On June 2, 1992, we issued a Memorandum Opinion and Order denying Peter's motion to intervene. Peter now asks us to reconsider this ruling. In addition, Steve Jorgensen, also an inmate at Dixon Correctional Center has filed a motion to intervene and to enforce Judge McGarr's injunction. Finally, Ruthanne DeWolfe has filed a motion for class certification pursuant to Rule 23(b)(2).

DISCUSSION

Several key events have occurred since we issued our Memorandum Opinion which have led us to reconsider our previous ruling on Peter's motion to intervene. Our prior ruling denying Peter's motion was based in part on the fact the Judge McGarr had apparently certified a class in the original action. We came to this conclusion based on a minute order issued by Judge McGarr authorizing Ruthanne DeWolfe to act as the class representative. We stated in our opinion that Peter had not made any showing that his interests could not be adequately represented by DeWolfe and the class.

*2 Because the file for this case was stored at the Federal Records Center, we had no access to any other orders in this case other than what was submitted by the parties. However, it has now come to the attention of both the parties and the court that Judge McGarr had never actually certified a class in this case.

Moreover, at the last status hearing, all parties expressed a desire that this matter be efficiently adjudicated. Representatives of the Department of Corrections stated that they would like a ruling on the propriety of the ban on catalogs, yet expressed concern that the pleadings be

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consolidated so that they would not have to respond to an indefinite amount of motions. Moreover, Peter has now sought leave to amend his petition to seek a rule to show cause to move simply for an order directing defendants to discontinue their ban on catalogs within 20 days, rather than seeking civil contempt.

In light of the foregoing events, we now grant Peter's motion to intervene to seek a court order enforcing Judge McGarr's injunction. The issue before us will be whether the new regulation violates Judge McGarr's injunction. Since the resolution of this issue with respect to Peter will resolve it with respect to all inmates of the Illinois Department of Corrections, we see no reason to grant Jorgensen's motion to intervene. His participation as a party adds nothing towards resolving this issue on the merits, since in his petition he raises the identical issues as Peter. Rather, having an additional party only increases the burden and expenses of the litigation on all parties.

However, Jorgensen's Rule 71 motion to enforce obedience to the injunction is granted. Rule 71 provides "when an order is made in favor of a person who is not a party to the action, that person may enforce obedience to the order by the same process as if a party ..." Fed.R.Civ.P. 71. Judge McGarr's injunction extended relief to all inmates in Illinois correctional institutions. Therefore, Jorgensen is entitled to seek enforcement of the injunction pursuant to Rule 71.

In addition, Ruthanne DeWolfe's motion for certification is denied because at this point in time she does not

represent any inmates. There is no point in certifying a headless class under these circumstances, particularly where we have a willing plaintiff who seeks adjudication of the same issue.

In summary, Peter's motion to reconsider is granted, and he is given leave to intervene in this action. Jorgensen's motion to enforce obedience to the injunction is also granted. All other motions are denied. Now that the procedural nature of the case has been more clearly defined, defendants are given twenty-one days to file a response to the petition for a rule to show cause why we should not issue an order directing them to discontinue their ban on catalogs because the regulation violates Judge McGarr's injunction. Peter will be given twenty-one days to file his response.

CONCLUSION

***3** For the reasons set forth above, Peter's motion to reconsider is granted, and he is given leave to intervene in this action in order to petition for a rule to show cause why the court should not issue an order directing defendants to discontinue their ban on catalogs. In addition, Jorgensen's motion to enforce obedience to the injunction is granted. All other motions are presently denied.