

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

FILED

JUL 13 1982

CLERK, U. S. DISTRICT COURT  
ALEXANDRIA, VIRGINIA

FRED J. GATEWOOD, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 A. C. GAUDIO, et al., )  
 )  
 Defendants. )

Civil Action No. 82-0401-AM

ORDER

By order of April 29, 1982, this court consolidated the case named above with McElveen, et al. v. Prince William County, et al., Civil Action No. 81-1049-AM, under Fed. R. Civ. P. 42(a). However, for reasons stated below, the court now believes that this action was inappropriate, and VACATES that portion of the order of April 29, 1982, which consolidated this action with McElveen.

McElveen is a prisoner class action wherein plaintiffs alleged injuries stemming from asserted unconstitutional conditions of confinement at the Prince William County jail over a certain time period. Persons who were incarcerated at the jail over that time period automatically became members of the plaintiff class, and are eligible to share in any judgment against defendants arising from that action, unless they have chosen to opt out of the class by so notifying the court. Also, because that case is a class action, the only damages issues addressed were those relating to actual injuries common to members of a plaintiff subclass. (The plaintiff class was divided

by the court into two subclasses, the subclass of pretrial detainees and the subclass of convicted inmates.) The court instructed the jury that it was to award no damages on the basis of harms suffered by individual members of a subclass but not common to that subclass.

If plaintiff's intent in filing his pleading merely was to become a member of the plaintiff class in McElveen, that action was unnecessary, in view of his automatic class membership, which could be defeated only by "opting out." A fortiori, it was unnecessary for the court to consolidate the pleading filed by plaintiff with McElveen, insofar as the intent of consolidation was to constitute him a member of the plaintiff class in that case.

Consolidation with McElveen would be inappropriate under another interpretation of the complaint also: The only damages awards available to class members in McElveen are those representing compensation for harms common to members of a subclass. Persons who allege that they suffered specific compensable harms not common to members of the relevant subclass may file suits separate from McElveen, in order to seek redress for those harms. Plaintiff's intent in filing his complaint may have been to seek compensation for injuries not common to members of the relevant subclass. The court will construe plaintiff's complaint as seeking compensation for such injuries. (If plaintiff only wishes to share in any damages award arising from Mc-

Elveen, he should move the court for dismissal of this suit.)

After the order of April 29, 1982, was issued, defendants filed an answer and a motion to dismiss. These responsive pleadings were (quite properly) framed according to the consolidated posture of the case at that time. In consequence of this court's vacating its order of April 29, 1982, the court now ORDERS that defendants file new responsive pleadings within twenty days of the receipt of this order.

Also, the court reminds plaintiff of Rule 5 of the Federal Rules of Civil Procedure, which requires that every written pleading or other notice after the complaint be served on all parties by mailing it to each party's attorney. The court will grant plaintiff twenty days from receipt of a copy of the defendants' answers and other responsive pleadings within which to file opposing affidavits or other appropriate material, if he wishes to do so. Failure to respond may result in the entry of judgment against plaintiff on the basis of defendants' responsive pleadings.

Let the Clerk send a copy of this order to plaintiff and to counsel for defendants.

DATE:

July 13, 1982

Richard L. Williams  
UNITED STATES DISTRICT JUDGE