

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-010439

07/07/2023

HONORABLE SCOTT BLANEY

CLERK OF THE COURT
P. McKinley
Deputy

FREDDY BROWN, et al.

STEPHEN W TULLY

v.

CITY OF PHOENIX

AARON D ARNSON

BENJAMIN L RUNDALL
MICHAEL G BAILEY
ILAN WURMAN
JUSTIN SCOTT PIERCE
TRISH STUHAN
STEPHEN B COLEMAN
TIMOTHY SANDEFUR
JOSHUA SPEARS
JARED G KEENAN
CHRISTINE KEEYEH WEE
JUDGE BLANEY

RULING

The Court has reviewed and considered Proposed Intervenors' *Motion to Intervene and Request to Stay July 10, 2023 Proceedings*, as well as the record in this case.

As more thoroughly detailed in the March 27, 2023 Preliminary Injunction, Plaintiffs brought this case based in part upon a theory of public nuisance, asking the Court to order Defendant City of Phoenix to abate conditions in "The Zone," a large homeless encampment near downtown Phoenix. Proposed Intervenors are third parties who brought a related case in federal court seeking injunctive relief to preclude the City from conducting clean-up activities in the

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Zone. Until today, Proposed Intervenors have never sought involvement in the case pending before this Court. But now, only one business day prior to the start of the final trial on the merits in this case, Proposed Intervenors seek to intervene pursuant to Rule 24(b)(1)(B), Ariz.R.Civ.P., for the purpose of seeking a stay of proceedings to allow the resolution of motion practice in the federal case.

Pursuant to Rule 24(b)(1)(B), the Court may permit a third party to intervene when the third party “has a claim or defense that shares with the main action a common question of law or fact.” For multiple reasons detailed below, and in the Court’s discretion, the Court denies Proposed Intervenors’ *Motion* and the relief sought therein.

First, Proposed Intervenors failed to comply with the requirements of Rule 24(c)(1)(B), which obligates Proposed Intervenors to attach as an exhibit to their *Motion* “a copy of the proposed pleading in intervention that sets out the claim or defense for which intervention is sought.” Although the *Motion* alludes to the basis for the requested intervention and the subsequent stay that Proposed Intervenors will ultimately seek if permitted to intervene, they did not attach a proposed pleading as an exhibit. Without that exhibit, the Court cannot determine whether Proposed Intervenors actually have a claim or defense that they would assert in this case that shares a common question of law or fact with the claims already asserted herein. *See Lebrecht v. O’Hagan*, 96 Ariz. 288, 289 (1964) (“[The Rule] requires that a person desiring to intervene shall not only state the grounds therefor but the motion shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought.”) (internal quotations omitted).

Second, the Court has already denied the specific relief that Proposed Intervenors intend to seek if permitted to intervene – a stay of the proceedings to allow the federal case to proceed. *See* December 9, 2022 Under Advisement Ruling denying Defendant City of Phoenix’s *Motion to Stay the Case*.

Third, Rule 24 allows the Court to permit a third party to intervene “[o]n timely motion.” Rule 24(a). To determine whether a motion is timely the Court will consider “the stage to which the lawsuit has progressed when intervention is sought and whether the applicant could have attempted to intervene earlier.” *Napolitano v. Brown & Williamson Tobacco Corp.*, 196 Ariz. 382, 384 (2000). Application of that standard to the history of this case establishes that the *Motion* is untimely. Proposed Intervenors filed their *Motion* just one business day prior to the final trial on the merits, after disregarding several milestones in the case at which they could have reasonably sought to intervene. As just a few examples of logical points in the present case at which Proposed Intervenors could have reasonably moved to intervene but failed to do so:

1. Proposed Intervenors could have moved to intervene shortly after August 10, 2022, when Plaintiffs filed the present lawsuit asking the Court to order the City to address

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the homelessness and related conditions in The Zone. From the inception of this lawsuit neither side has been aligned with the positions that Proposed Intervenors seek to advance in the case; that is, none of the existing parties have represented Proposed Intervenors' purported interests;

2. Proposed Intervenors also could have moved to intervene on or before November 30, 2022 – the date that Proposed Intervenors filed their lawsuit against the City in federal court. Instead of seeking to intervene in the existing state case, Proposed Intervenors made the tactical decision to seek relief in a different tribunal;
3. Proposed Intervenors could have moved to intervene, or at a minimum could have sought to file an amicus curiae brief, prior to the October 27, 2022 combined Oral Argument on the City's *Motion to Dismiss* and Evidentiary Hearing on Plaintiffs' *Application for Injunctive Relief*. At the very least, an amicus brief would have placed Proposed Intervenors' arguments before the Court for consideration. The Court notes the Goldwater Institute is the only nonparty that sought to file an amicus brief. The Court ultimately relied in part upon the Goldwater Institute's *Amicus Brief in Support of Plaintiffs and In Support of Motion for Preliminary Injunction* when issuing its March 27, 2023 Preliminary Injunction;
4. Proposed Intervenors could have moved to intervene when the City filed its *Motion to Stay the Case* on December 5, 2022. As stated above, the City's *Motion* asserted nearly identical arguments to those asserted by Proposed Intervenors in their present *Motion*;
5. Proposed Intervenors could have moved to intervene or sought to file an amicus brief prior to the December 15, 2022 follow-up Oral Argument;
6. Proposed Intervenors could have moved to intervene shortly after the Court set the date for the final trial on the merits in conjunction with the issuance of its March 27, 2023 Preliminary Injunction; and
7. Proposed Intervenors could have moved to intervene at the time that the parties were briefing their respective motions for summary judgment.

Instead of moving to intervene at any one of the logical, preceding milestones identified above, Proposed Intervenors – with full knowledge of the issues, arguments, and relief sought in this Court – waited until one business day prior to the final trial on the merits before seeking to intervene. The present *Motion* is therefore untimely.

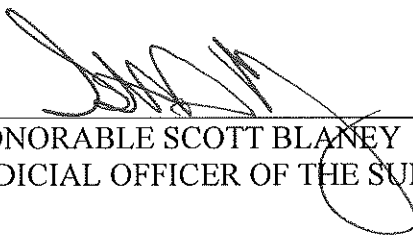
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Fourth, Rule 24(b)(3) requires the Court to consider “whether the intervention will unduly delay or prejudice the adjudication of the original parties’ rights.” *See also Napolitano*, 196 Ariz. at 384 (“The most important consideration, however, is whether the delay in moving for intervention will prejudice the existing parties in the case.”). It is self-evident that a request to stay proceedings in a year-long case, one day before the final trial on the merits and with no firm, alternative date on which the parties can expect final resolution of the issues, leaves the parties in limbo and unduly delays and prejudices the adjudication of the parties’ rights. *See* Rule 1, Ariz.R.Civ.P. (courts are required to construe, administer, and employ the Rules of Civil Procedure to secure the just, speedy, and inexpensive determination of every action).

IT IS THEREFORE ORDERED, for good cause and in the Court’s discretion, denying Proposed Intervenors’ *Motion to Intervene and Request to Stay July 10, 2023 Proceedings*.



HONORABLE SCOTT BLANEY
JUDICIAL OFFICER OF THE SUPERIOR COURT