

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

DARRELL L. DOWDY,)	
)	
Plaintiff,)	
)	
v.)	1:23CV133
)	
CITY OF DURHAM,)	
)	
Defendant.)	

MEMORANDUM ORDER

Before the court is the Motion to Intervene as Plaintiff by Darryl Howard. (Doc. 9.) The City of Durham ("City") has responded (Doc. 24), and Howard has filed a reply (Doc. 25). Plaintiff Darrell Dowdy consents to Howard's motion. (Doc. 9 at 1.) For the reasons set forth below, the motion will be granted.

Howard seeks to intervene as of right, and permissively, pursuant to Federal Rules of Civil Procedure 24(a)(2) and (b)(1)(B), respectively. Howard argues that failure to permit intervention would impair his ability to protect his interest in the \$6 million judgment he was awarded in his civil action against Dowdy in Howard v. City of Durham, Case No. 1:17cv477, in this court. (Doc. 10 at 4-5.) In that case, a jury concluded that Dowdy, as a detective with the Durham Police Department, violated Howard's constitutional rights to due process by fabricating evidence against him and engaging in a bad faith failure to investigate the case that led to Howard's 1995

convictions for the murders of Doris and Nishonda Washington, which were set aside some 21 years later, and for which Howard was subsequently pardoned by Governor Roy Cooper. Howard v. City of Durham, 68 F.4th 934, 945 (4th Cir. 2023). A more extensive discussion of the facts of that case can be found at Howard, 68 F.4th at 940-45. Alternatively, Howard argues that permissive intervention should be granted, as he shares an interest in the common questions of law and fact in this action; namely, that Howard's full recovery of his jury award is dependent upon the outcome of Dowdy's present action against the City to indemnify him for that judgment. (Doc. 10 at 7-8.)

The City opposes Howard's motion to intervene. It contends both (1) that Howard is not entitled to intervention as of right and (2) that the court should deny permissive intervention because Howard lacks a claim that shares a common fact or legal question and adding him to the case will only unduly delay the proceedings. (Doc. 24 at 4, 10-11.) According to the City, Howard's interest is more than adequately protected by Dowdy, who is incentivized to obtain full indemnity for Howard's \$6 million judgment against him. (Id. at 7.)

On timely motion, "[u]nder Rule 24(a)(2), a district court must permit intervention as a matter of right if the movant can demonstrate '(1) an interest in the subject matter of the action; (2) that the protection of this interest would be impaired because

of the action; and (3) that the applicant's interest is not adequately represented by existing parties to the litigation.'" Stuart v. Huff, 706 F.3d 345, 349 (4th Cir. 2013) (quoting Teague v. Bakker, 931 F.2d 259, 260-61 (4th Cir. 1991)). Under Rule 24(b), the court may permit anyone who "has a claim or defense that shares with the main action a common question of law or fact" to intervene on timely motion. Fed. R. Civ. P. 24(b) (1) (B). "In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b) (3). Thus, where a movant seeks permissive intervention, the movant must satisfy three requirements: (1) the motion must be timely; (2) the claims must have a question of law or fact in common with the main action; and (3) intervention must not result in undue delay or prejudice to the existing parties. See Wright v. Krispy Kreme Doughnuts, Inc., 231 F.R.D. 475, 479 (M.D.N.C. 2005); Solo Cup Operating Corp. v. GGCV Energy LLC, Civil No. WDQ-12-3194, 2013 WL 2151503, at *2 (D. Md. May 15, 2013); Shanghai Meihao Elec., Inc. v. Leviton Mfg. Co., 223 F.R.D. 386, 387 (D. Md. 2004). Trial courts are directed to construe Rule 24 liberally to allow intervention where appropriate. Feller v. Brock, 802 F.2d 722, 729 (4th Cir. 1986) (noting that "liberal intervention is desirable to dispose of as much of a controversy involving as many apparently concerned persons as is compatible with efficiency

and due process" (citations and internal quotation marks omitted)); Capacchione v. Charlotte-Mecklenburg Bd. of Educ., 179 F.R.D. 505, 507 (W.D.N.C. 1998) (same).

Howard's motion is plainly timely, having been filed within 90 days of the filing of this action, less than two weeks after Dowdy filed a first amended complaint, and before the City filed an answer. Howard has an interest in the subject matter of Dowdy's suit against the City, as Howard has already obtained a \$6 million judgment against Dowdy, who now seeks to enforce the City's alleged indemnity obligation for that same judgment. The scope of the City's indemnity obligation is Howard's central interest that could be impaired in this action. See Harrison v. Fireman's Fund Ins. Co., No. ELH-11-1258, 2011 WL 3241452, at *2 (D. Md. July 28, 2011) (holding proposed plaintiff-intervenor's "significantly protectable interest" could be impaired where the ability to satisfy a judgment against a tortfeasor depended on the scope of defendant-insurer's indemnification (quoting Donaldson v. United States, 400 U.S. 517, 531 (1971))); Jones v. Koons Auto., Inc., 752 F. Supp. 2d 670, 690-91 (D. Md. 2010) (granting intervention as a plaintiff to a third-party beneficiary of a promise to pay off a lien). For all practical purposes, whether Dowdy prevails in this case will determine whether Howard is able to collect the bulk of his judgment.

To overcome the "minimal challenge" of showing inadequate

representation, an intervenor who has the "same ultimate objective" as the present party must demonstrate "adversity of interest, collusion, or nonfeasance" to undo a presumption in favor of adequacy. Virginia v. Westinghouse Elec. Corp., 542 F.2d 214, 216 (4th Cir. 1976). Although the City argues that Dowdy is an adequate advocate for Howard's position, it downplays the obvious conflict of interest between Howard and Dowdy; Dowdy has been found liable for acting in bad faith toward, and fabricating evidence against, Howard that resulted in a 21-year wrongful conviction. See Koons Auto., Inc., 752 F. Supp. 2d at 691 (crediting adversity of interest between a lender and borrower in holding that borrower-plaintiff's representation was inadequate to protect the intervenor-lender's interest). Dowdy and Howard are also adverse in Howard's ongoing collection proceedings against Dowdy to enforce the judgment. (Doc. 19-1.) And Howard has a request for attorneys' fees and costs against Dowdy to be resolved. (Doc. 9-1 ¶ 19.) Further, Dowdy has the option of filing for bankruptcy if he is unsuccessful in his action against the City, thus potentially reducing the zealotry of his advocacy against the City. (Doc. 1 ¶ 95 ("Dowdy now faces . . . imminent insolvency and bankruptcy")); see Maxum Indem. Co. v. Biddle Law Firm, PA, 329 F.R.D. 550, 556 (D.S.C. 2019) (noting how the option of bankruptcy may reduce the incentive to litigate effectively). Finally, Dowdy's resources to prosecute the action against the

City are limited by his personal financial situation, whereas allowing Howard to proceed as an additional Plaintiff in the action would help protect his interest in the outcome of this litigation. Ultimately, Dowdy's incentive is to avoid paying the \$6 million judgment; Howard's goal is to be compensated for the full amount of the judgment. Based on this, Howard will be permitted to intervene as of right as Plaintiff.

Even were the court not to find intervention as of right, it is apparent that the motion should be granted under Rule 24(b)'s permissive intervention standard, which is to be liberally construed to dispose of as much of a controversy involving as many concerned persons as is consistent with due process and efficiency. Feller, 802 F.2d at 729; see Moore v. Circosta, No. 20CV911, 2020 WL 6597291, at *2 (M.D.N.C. Oct. 8, 2020) (granting permissive intervention). The motion is timely, as the lawsuit is at its inception. And Howard shares common questions of law and fact with Dowdy, as demonstrated in Howard's proposed complaint. (Doc. 9-1.) In fact, Howard's arguments will directly address the City's alleged obligation to indemnify Dowdy, and the resolution of that question will be the same question raised by Dowdy. (Doc. 10 at 3 ("Howard intends to assert claims that parallel those raised by Plaintiff Dowdy").) Finally, the addition of Howard as Plaintiff will not cause undue delay or prejudice to the parties. Howard's contentions will complement or directly overlap

the legal and factual issues already present in the case. This court is also well-equipped to develop pretrial practices that will avoid unnecessary duplication.

For these reasons,

IT IS THEREFORE ORDERED that Howard's motion to intervene (Doc. 9) is GRANTED, and Howard shall file and serve his proposed complaint forthwith.

/s/ Thomas D. Schroeder
United States District Judge

August 31, 2023