United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

February 28, 2007

Before

Hon. RICHARD D. CUDAHY, *Circuit Judge*

Hon. RICHARD A. POSNER, *Circuit Judge*

Hon. ILANA DIAMOND ROVNER, *Circuit Judge*

Nos. 06-3603, 06-3706 and 06-4133

LYNNE CARNEGIE,
Plaintiff-Appellee,

v.

HOUSEHOLD INTERNATIONAL, INC., HOUSEHOLD BANK, HOUSEHOLD TAX MASTERS, INC., et al.,
Defendants-Appellees,
Cross-Appellants,

APPEAL OF:
CHERYL REYNOLDS and
FRANCINE SCHWARTZ,
Appellants,
Cross-Appellees.

] Appeals from the United States District Court for the Northern District of Illinois, Eastern Division.

] No. 98 C 2178

] Elaine E. Bucklo, Judge.

The district court has granted final approval of a class action settlement (the *Carnegie* settlement) in the income-tax refund anticipation loan ("RAL") action against Household International and H&R Block and related defendants, and Cheryl Reynolds and Francine Schwartz, her attorney, have appealed. The district court ordered each to post an appeal bond in the amount of $1,479,295 within 14 days in order to proceed. Rather than post the bond or file a motion to stay, Reynolds and Schwartz filed a separate notice of appeal challenging the bond order. The defendants request dismissal based on the appellants' failure to post the required bonds.

Both the appeal from the final order approving the settlement and the appeal from the order imposing the appeal bond are without merit, and we summarily dismiss the appeals. Neither Reynolds nor Schwartz has standing to challenge the district court order approving the settlement, and their response to the motion to dismiss largely ignores this threshold issue. Reynolds voluntarily dismissed herself from the case in 2005. Even if she had not dismissed her claims, she received her RAL in 1993 and is not a member of the settlement class, which consists of people who received RALs from Beneficial National Bank through an H&R Block office between April 8, 1994 and December 31, 1996. Individuals who are not class members or who have opted out of a class are not bound by or subject to res judicata as a result of the settlement, and therefore ordinarily lack standing to object to settlement on appeal. *Gautreaux v. Chicago Housing Authority,* No. 05-3968 , 2007 WL 120791, *6 (7th Cir. Jan. 19, 2007); 4 *Newberg on Class Actions*, § 11:55. *Cf. Devlin v. Scardelletti*, 536 U.S. 1, 10 (2002) ("nonnamed class members are parties to the proceedings in the sense of being bound by the settlement" and therefore can challenge the settlement on appeal). Reynolds does not establish any exception to this general rule. Without citing to any authority, Reynolds argues that she has standing to object to the settlement as a "would-be" class member, because she has a pending state RAL class action with a period extending from 1987-1999, and the underlying *Carnegie* settlement extinguishes claims for the period of 1994-1996. None of Reynolds's individual claims, however, are affected by the underlying settlement. Her other unsupported attempts to establish standing do not warrant discussion in light of her voluntary dismissal.

Finally, Reynolds claims to have standing because the district court granted her leave to intervene, but this is a mischaracterization of the district court's ruling. In response to the defendants' motion for "voluntary dismissal" of her claims for failure to prosecute, Reynolds responded that Federal Rule of Civil Procedure 41(b) did not apply and suggested that she remain on in the role of an intervenor. The district court simply denied the motion to dismiss without explanation in a minute order. There is nothing to suggest that Reynolds was granted intervenor status or that such status would have survived her subsequent motion to voluntarily dismiss.

Schwartz does not attempt to argue that she has standing to challenge the merits of the settlement but contends that she is entitled to fees for all of her work that benefitted the *Carnegie* class counsel. Both this court and the district court criticized Schwartz's performance before she was removed from the case. The district court had noted that Schwartz "violated her ethical duties as a member of the trial bar in her continuous efforts to penalize the class and their attorneys for her own dereliction of responsibility as former class counsel." This court commented that the representation by Schwartz and the other counsel for the prior settlement class "was almost certainly inadequate." *Reynolds v. Beneficial National*

Bank, 288 F.3d 277, 284 (7th Cir. 2002). At several times in the present response, Schwartz misrepresents the district court proceedings. For instance, she complains that the district court denied her leave to respond to the bond motion, even though she did not attempt to respond to the bond motion on the merits. She also represents that the district court denied as moot Reynolds's objections to the *Carnegie* settlement and her arguments in support of standing. Only after Schwartz and Reynolds filed a *corrected* motion for leave to reinstate claims and objections to the settlement did the district court deny as moot the *original* motion and objections. The district court addressed the merits of the corrected motion and the issue of Reynolds's standing in its order approving the settlement. Given the history of Schwartz's involvement in this case – her questionable attempts to negotiate a settlement, her attempts to mislead the court, and her continued attempts to thwart current counsel – the district court properly denied her request for fees. Accordingly,

IT IS ORDERED that appeals no. 06-3603 and no. 06-4133 are summarily **DISMISSED**.

IT IS FURTHER ORDERED that the defendants' motion to maintain documents under seal is **GRANTED**.

In light of the disposition of these appeals, **IT IS FINALLY ORDERED** that the defendants' motion to strike the appellants' docketing statement for failure to serve them with a copy is **DENIED** as moot.