

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ORANNA BUMGARNER FELTER,)
et al.,)
)
Plaintiffs,)
)
v.)
)
GALE NORTON,)
Secretary of the Interior, et al.)
)
Defendants.)
_____)

No. 1:02 CV 2156 (RCL)

OBJECTION TO PLAINTIFFS’ DESIGNATION OF RELATED CASES

Defendants hereby object, pursuant to Local Civil Rule 40.5(c)(3), to the designation by the plaintiffs of this action as related to Cobell v. Norton, Civil Action No. 96-1285. Contrary to plaintiffs’ submitted notice of relatedness, a comparison of plaintiff’s complaint to this case reveals that they do not involve common property or funds so as to be related within the meaning of Rule 40.5(a). Because sufficient grounds do not exist for an exception to the ordinary judicial policy that cases be randomly assigned, defendants respectfully request that this lawsuit be transferred to the Calendar Committee for random reassignment. A separate, proposed order is being filed to accompany this Objection.

I. BACKGROUND

A. Cobell v. Norton

Cobell v. Norton, Civil No. 96-1285, is a class action filed in 1996 by individual Indian beneficiaries against the Secretary of the Interior and other federal officials concerning the government’s responsibilities with respect to the Individual Indian Money (“IIM”) accounts of

the individual Indian beneficiaries. In 1999, this Court issued a decision and declaratory judgment concerning certain trust duties owed by the government to the class members and remanded the case to the agencies for further action. See Cobell v. Norton, 91 F. Supp. 2d 1, 58-60 (D.D.C. 1999). In that opinion, this Court specifically found that the agencies had failed to provide an accounting of trust funds as required by law to the class members. Id. This trust litigation is pending.

B. Felter v. Norton

The complaint in Felter v. Norton was filed on November 4, 2002. Attached to the complaint was a Notice of Designation of Related Civil Case, indicating the case “relates to common property.” Below that check-off, plaintiffs’ attorney listed in Item 3 of the form a case in the District of Utah styled Ute Distribution Corp. v. Secretary of the Interior, No. 95-CV-376B and listed in line 4 the case, presumably but not specified, in this District styled Elouise Cobell . Norton, No. 96-1285 (RCL).

The 323 Felter plaintiffs allege in their Amended Complaint that seek redress for the numerous wrongs committed against them no later than August 21, 1961, by defendants, the United States and the Secretary of the Interior and three other named Interior Department officials, in incorrectly implementing and unlawfully terminating the “federally-recognized ‘Indian’ status” of each plaintiff as a member of the Uinta Band of Utes of the Uinta and Ouray Reservation, Utah. They assert that defendants’ actions, completed in August 1961, in improperly carrying out the provisions of the Ute Partition Act of 1954 (“UPA”), Publ. L. No. 671, 68 Stat. 868, codified at 25 U.S.C. §§ 677-677aa (1982), caused the loss of their ownership and interest in federal trust property by virtue of their termination from federal supervision.

These individuals seek declaratory judgments that they remain federally recognized as Indians, that certain of their property should be placed again in federal trust status, and that they should again receive federal services afforded to recognized Indians. They also ask for an accounting of funds they allege were previously held in trust for them before their status as federally supervised or restricted Indians was terminated finally in 1961.

II. ARGUMENT

A. STANDARDS

Local Civil Rule 40.3 states that, except as otherwise provided under the rules, civil cases “shall be assigned to Judges of this court selected at random” Random assignment of cases promotes important policy goals by reducing opportunities for judge-shopping, ensuring a fair distribution of cases among judges, and eliminating perceptions of favoritism in judicial assignments. See Dale v. Executive Office of the President, 121 F. Supp. 2d 35, 37 (D.D.C. 2000), quoting Tripp v. Executive Office of the President, 196 F.R.D. 201, 202 (D.D.C. 2000).

Local Civil Rule 40.5 provides for exceptions to the random assignment of cases under Local Civil Rule 40.3. That rule provides, in pertinent part, that civil cases are deemed related:

[W]hen the earliest is still pending on the merits in the District Court and they (i) relate to common property, or (ii) involve common issues of fact, or (iii) grow out of the same event or transaction or (iv) involve the validity or infringement of the same patent.

Local Civil Rule 40.5(a)(3). Cases that meet the related-case criteria are assigned to the judge to whom the oldest related case is assigned. Local Civil Rule 40.5(c)(1). See Dale, 121 F. Supp. 2d at 37.

Local Rule 40.5 is not intended to provide a “wide-ranging” exception to the over-all policy of random assignment of cases. See Keepseagle v. Glickman, 194 F.R.D. 1, 3 (D.D.C.

2000), quoting Sculimbrene v. Reno, No. 99-2010, Memorandum and Order at 2 (D.D.C. Jan. 24, 2000). Therefore, a party seeking to invoke the related-case exception to the random assignment of cases bears the burden of establishing that the cases at issue are related within the meaning of Rule 40.5. Dale, 121 F. Supp.2d at 37, citing Tripp v. Executive Office of the President, 194 F.R.D. 340, 342 (D.D.C. 2000). Under Rule 40.5(c)(1), when a Judge determines that a related case designation is unwarranted under the rules, that Judge may transfer that case to the Calendar Committee for random reassignment.

Recently, this Court ruled on the federal defendants' objections to notices of related cases filed in several accounting cases brought by different Indian tribes all of whom claimed that their cases were related to Cobell. See, e.g. Assiniboine and Sioux Tribe of the Fort Peck Indian Reservation v. Norton, Civil No. 02-35 (RCL); Standing Rock Sioux Tribe v. Norton, Civil No. 02-40 (RCL); Three Affiliated Tribes of the Fort Berthold Reservation v. Norton, Civil No. 02-253 (RCL); Shoshone-Bannock Tribes of the Fort Hall Reservation v. Norton, Civil No. 02-254 (RCL); Chippewa Cree Tribe of the Rocky Boys' Reservation v. Norton, Civil No. 02-276 (RCL); Crow Tribe v. Norton, Civil No. 02-284 (RCL).

In denying each of the federal defendants' objections, the Court set out five reasons, identical in each of the cases, why it deemed the tribal accounting cases related to Cobell:

1. The Department of the Interior manages tribal trust land in the same way it manages individual Indian trust land. Assiniboine and Sioux Tribes of the Fort Peck Reservation v. Norton, 211 F.2d 157, 158 (D. D.C. 2002).

2. Some land leases cover many tracts of land that are held in trust by the government for tribes and individual Indians. Id., at 159.

3. The Department of the Interior places moneys collected from tribal and individual Indian leases of trust land into the same Department of the Treasury account. Id.

4. The Interior Department uses the same systems to manage tribal trust accounts as it uses to manage individual Indian trust accounts. Id.

5. To the extent that the trust accounts are managed by the same computer systems, the security of those systems is an issue of fact in the tribal trust fund cases as it is in Cobell. Id., at 159-60.

The Court also rejected defendants' argument there that disparate treatment of individual and tribal trust account holders constituted a reason for finding Cobell and those tribal cases as unrelated. Id., at 60.

B. THIS CASE IS NOT RELATED TO COBELL WITHIN THE MEANING OF RULE 40.5 OR MEASURED BY THE TESTS IN THE COURT'S DENIAL OF RELATEDNESS OBJECTIONS IN THE TRIBAL TRUST FUND CASES

The facts of the case at bar demonstrate clearly that plaintiffs designation of Felter to Cobell as involving "common property" is without merit. No property of the 323 Felter plaintiffs involved in this case is held in trust at all. The whole essence of the instant case is contained in complaints about the termination of the plaintiffs' trust property and their status as federally-recognized Indians. There simply is no trust property at issue in Felter.

In 1954, Congress enacted the Ute Partition Act, codified at 25 U.S.C. § 677-677aa ("UPA") which provided for the division of tribal assets between the "full-blood" and "mixed-blood" members of the Ute Indian Tribe of the Uintah and Ouray Reservation of Utah, and for the termination of Federal supervision over the property of the "mixed-blood" individuals. 25 U.S.C. § 677; Affiliated Ute Citizens v. United States, 406 U.S. 128, 133-34 (1972).

The plaintiffs in the case at bar claim to be some of the “mixed-blood” individuals or their descendants and their Amended Complaint seeks redress for transactions and events surrounding the UPA and its complete implementation in 1961.

As part of the statutory termination process, the UPA required that the assets of the Tribe be divided pro-rata between the “mixed-blood” group, and the Tribe based upon the relative number of persons comprising the final membership roll of each group. 25 U.S.C. § 677i. Those assets not susceptible to equitable and practicable distribution remained in trust for the Tribe, and were to be managed jointly by the Tribal Business Committee, and the authorized representative of the “mixed-blood” group, which is the Ute Distribution Corporation (UDC). 25 U.S.C. §§ 677i, 677j; Affiliated Ute Citizens v. United States, 406 U.S. at 133-35, 141-44.

The UPA provides for removal of federal restrictions on the “property of each individual “mixed-blood” member of the tribe,” and requires that, on the removal of such restrictions, the Secretary “publish in the Federal Register a proclamation declaring that the Federal trust relationship to such individual is terminated.” 25 U.S.C. § 677v. The result of such termination is clearly spelled out:

Thereafter such individual shall not be entitled to any of the services performed for Indians because, of his status as an Indian. All statutes of the United States which affect Indians because of their status as Indians shall no longer be applicable to such member over which supervision has been terminated, and the laws of the several States shall apply to such member in the same manner as they apply to other citizens within their jurisdiction.

Id. (Emphasis added.)

On August 26, 1961, the Secretary published in the Federal Register the required proclamation, entitled “Ute Indian Tribe of the Uintah and Ouray Reservation in Utah, Termination of Federal Supervision over the Affairs of the Individual mixed-blood Members”

(“Termination Proclamation”). 26 Fed. Reg. 8042.

Plaintiffs do not contend in the Amended Complaint that their property is now held in trust. Indeed, much of the gravamen of their Amended Complaint is plaintiffs’ loss for having been terminated from federal trust status and their effort to seek restoration of that status.

These plaintiffs not having any trust property for which defendants are in anyway or any longer responsible, none of the factors this Court found to relate Cobell to the tribal trust fund cases is applicable to the instant case. All of the Court’s reasons there were based upon the trust status of both tribal and individual property and funds. These plaintiffs have no trust status and therefore can have no “common property” with the Cobell plaintiffs for any property that is the subject matter of the Amended Complaint here.

III. CONCLUSION

Because Felter v. Norton and Cobell are not “related” within the meaning of Local Civil Rule 40.5(a)(3), this case should be transferred to the Calendar Committee for random reassignment.

Dated this 20th day of May, 2003.

Respectfully submitted,

THOMAS L. SANSONETTI
Assistant Attorney General

By: _____

R. ANTHONY ROGERS (D.C. Bar No. 54056)
Senior Attorney
General Litigation Section
Environment & Natural Resources Division
U.S. Department of Justice
P.O. Box 663
Washington, D.C. 20004
Telephone: (202) 305-0483
Fax: (202) 514-8865/-305-0506
Attorney for Defendants

Of Counsel:

William McConkie
Attorney
Office of the Solicitor
Pacific Southwest Region
6201 South State Street
Salt Lake City, Utah 84138-1180
Telephone: (801) 524-5677 ext. 227
Fax: (801) 524-4506

Scott Keep
Assistant Solicitor
Branch of Tribal Governments and Alaska
Division of Indian Affairs
Office of the Solicitor
U.S. Department of the Interior
1849 C Street, N.W.
MS 6456
Washington, D.C. 20240
Telephone: (202) 208-6456
Fax: (202) 208-3490