

Divided 7th Circ. Narrows Magistrate Judge Powers

By **Jessica Corso**

Law360, New York (June 19, 2017, 8:26 PM EDT) -- A split panel of the Seventh Circuit on Friday ruled that magistrate judges cannot dismiss lawsuits as frivolous without a defendant's knowledge or consent, a ruling that Circuit Judge Richard Posner objected to as "a waste of time."

Two judges on a three-judge panel of the appellate court on Friday revived Tracey Coleman's lawsuit against Wisconsin's Labor and Industry Review Commission, which Coleman accuses of denying him due process in a racial discrimination complaint against the high school where he used to work.

Although Coleman consented to having a federal magistrate judge review his petition to precede in forma pauperis, in other words, without paying a filing fee, that magistrate had no authority to dismiss the lawsuit as frivolous in the course of his review, the court ruled.

The U.S. Constitution only gives Congress-appointed Article III judges the right to dismiss a lawsuit on the merits unless both parties consent to a case being heard in front of a magistrate judge, the Seventh Circuit pointed out.

Even though the Wisconsin agency likely would have agreed with the decision to dismiss the case against it — and told the appellate court as much — it hadn't even been served before the magistrate judge ruled on the case, the majority said.

Under the Magistrate Judges Act, the law that gives magistrate judges their authority, one side's permission to proceed, even if it is the losing side, isn't enough, the Seventh Circuit ruled.

"The fact that it is the plaintiff who commences the suit does not mean that the other parties named in the complaint do not count as 'parties' prior to service of process," according to an opinion authored by Chief Judge Diane Wood. "That is the crucial element missing here: In our case, only one side of the 'v' has consented to the magistrate judge, and under the statute, that is not enough."

In a dissenting opinion, Judge Posner called the ruling "a waste of time," noting that the magistrate judge can simply recommend the case's dismissal and the district court judge will likely comply.

"Such a waste of time can be avoided — without any negative consequences for anyone — simply by interpreting ... 'consent of the parties' as satisfied by the plaintiff's consenting to a magistrate judge's exercising jurisdiction at the screening stage and the defendant's not objecting," Posner wrote. The

defendant's nonobjection, he said, was implied by the fact that dismissal could only benefit that party.

"For why, to return to what seems to me the only sensible interpretation of the consent requirement, would a defendant ever refuse to consent to the dismissal of a suit against him?" Posner asked.

In her majority opinion, Judge Wood agreed that it is possible that the district court judge who receives Coleman's resuscitated case will dismiss it at the behest of the magistrate judge, but she said it was important to follow the process anyway.

"We realize that this adds one extra step, but it is not a particularly burdensome one, and it does not mean that parties in the commission's position must be served before the case can be resolved," the majority ruled. "It just means that the district judge must enter any post-screening orders that dispose of the entire case."

Circuit Judge Ann Claire Williams joined Judge Wood in her opinion.

Because this was at least the third time that the Seventh Circuit has heard a dispute over a magistrate's power to dismiss a lawsuit and because the previous two opinions contradicted each other, all of the appellate court judges were asked right away if they wanted to hear Coleman's case in front of the entire bench.

The majority demurred but Circuit Judges Frank Easterbrook and Diane Sykes said they would have liked to rule on the case. If they had, they would have been inclined to disagree with the majority on the panel, according to a brief dissent written by Easterbrook and joined by Sykes that was also filed Friday.

They gave a different reason for differing from the majority than Posner, however, noting that cases can have multiple defendants, some defendants can be tricky to locate and that it does not make sense to hold up a case sitting before a magistrate judge while awaiting the agreement to all parties.

"The suit A v. B & C could go on for years before C is finally dismissed or discovered to be nonexistent; why can't A and B agree in the meantime that their dispute will be resolved by a magistrate judge?" Easterbrook asked.

Travis Crum of Mayer Brown LLP, who was appointed to represent Coleman on appeal, said that the Seventh Circuit was right to err on the side of caution because both the Constitution and Congress have limited the power of non-Article III judges.

"Congress made clear that consent of parties was necessary and it did so because it wanted to keep magistrate judges within their constitutional bounds," Crum told Law360. He said the ruling is an "important marker to lay down as to the constitutional authority of magistrate judges."

Coleman alleges that the Wisconsin high school where he was employed as a maintenance worker fired him after three weeks on the job because he was African-American. The high school claims to have fired him for sexually harassing another employee, according to the Seventh Circuit's opinion.

He sued Wisconsin's labor review board for allegedly violating due process in his case against the school.

In dismissing the case in 2015, Magistrate Judge William E. Duffin said that he couldn't "discern any plausible claim for relief that may be heard in federal court."

A representative for the Wisconsin attorney general's office didn't immediately respond to a request for comment on Monday.

Coleman filed the complaint pro se and attorneys Travis Crum and Charles Rothfeld of Mayer Brown LLP were appointed to represent him on appeal.

The labor commission is represented by Anthony Russomanno of the Wisconsin attorney general's office.

The case is Tracey Coleman v. Department of Labor Review Commission, case number 15-3254, in the U.S. Court of Appeal for the Seventh Circuit.

--Editing by Stephen Berg.

Correction: A previous version of this story misspelled Charles Rothfeld's name. The error has been corrected.