

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Gary v. Sheahan

188 F.3d 891 (7th Cir. 1999) · Decided August 19, 1999

SUMMARY

The Seventh Circuit held that a petition for leave to appeal under Federal Rule of Civil Procedure 23(f) must be filed within ten days of the original class-certification order, or a timely reconsideration disposition. A belated motion to decertify does not restart the Rule 23(f) period unless the district court materially alters the class-certification decision; the petition was therefore dismissed for lack of jurisdiction.

CASE DETAILS

COURT	United States Court of Appeals for the Seventh Circuit
WRITING FOR THE COURT	Frank H. Easterbrook; Evans; Wood
JURISDICTION	Federal
DECIDED	August 19, 1999
DISPOSITION	dismissed
PROCEDURAL POSTURE	The defendants petitioned under Federal Rule of Civil Procedure 23(f) for permission to take an interlocutory appeal from the district court's denial of a motion to decertify a class.
STANDARD OF REVIEW	The court addressed appellate jurisdiction under Federal Rule of Civil Procedure 23(f) and did not review the merits of class certification or decertification.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Tania Hayes, Michael F. Sheahan v. Kenya Gary

TOPICS

- interlocutory appeal
- class actions
- appellate jurisdiction
- appellate procedure
- civil procedure

PRACTICE AREAS

- Civil procedure
- Appellate procedure
- Class actions

QUESTIONS PRESENTED

1. Whether a party may obtain interlocutory review under Federal Rule of Civil Procedure 23(f) by filing a petition within ten days after the denial of a motion to decertify a class when the motion was filed more than ten days after the original class-certification order.
2. Whether a belated or successive motion for reconsideration or decertification restarts the ten-day period for a Rule 23(f) petition.
3. Whether the exception for a materially altered decision applies when the district court denies the motion and leaves the class definition unchanged.

HOLDINGS

1. A party may not use a motion to decertify or a motion for reconsideration filed more than ten days after the class-certification order to create a new ten-day window for seeking permission to appeal under Rule 23(f).
2. An untimely or successive motion for reconsideration does not extend or restart the time for seeking appellate review under Rule 23(f).
3. If a district judge responds to a belated reconsideration motion by materially altering the class-certification decision, the party aggrieved by that alteration may seek permission to appeal within the normal Rule 23(f) period; that exception does not apply when the motion is denied and the class definition remains unchanged.

KEY QUOTATIONS

“if the request for reconsideration is filed more than ten days after the order “granting or denying class action certification under this rule”, then appeal must wait until the final judgment.” (188 F.3d at 891-92)

“The petition for leave to appeal is dismissed for want of jurisdiction.” (188 F.3d at 893)

FACTUAL BACKGROUND

The district court certified a class on April 10, 1997. More than a year later, the defendant moved to decertify the class, and the district court denied that motion on March 31, 1999. The defendant then sought permission to appeal within ten days of the denial, but the Seventh Circuit held that the delayed motion to decertify could not reopen the ten-day period for seeking a Rule 23(f) appeal.

PROCEDURAL HISTORY

The district court certified the class on April 10, 1997. In August 1998, the defendant moved to decertify the class, but the district court denied that motion on March 31, 1999. The petition for leave to appeal was filed within ten days of the denial, but the motion to decertify had been filed more than ten days after the original class-certification order. The Seventh Circuit dismissed the petition for lack of jurisdiction.

DISPOSITION

dismissed

CASES CITED

- Blair v. Equifax Check Services, Inc., 181 F.3d 832 (7th Cir. 1999)
- Browder v. Director, Department of Corrections, 434 U.S. 257, 98 S. Ct. 556, 54 L. Ed. 2d 521 (1978)
- Charles v. Daley, 799 F.2d 343, 347-48 (7th Cir. 1986)
- Midland Coal Co. v. Director, OWCP, 149 F.3d 558, 563-64 (7th Cir. 1998)
- FTC v. Minneapolis-Honeywell Co., 344 U.S. 206, 211, 73 S. Ct. 245, 97 L. Ed. 245 (1952)

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