UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, and BAY MILLS INDIAN COMMUNITY, SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS, GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS, LITTLE RIVER BAND OF OTTAWA INDIANS, and LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS, Plaintiff-Intervenors, -v- STATE OF MICHIGAN, et al., Defendants.	)	No. 2:73-cv-26 Honorable Paul L. Maloney

ORDER DENYING MOTION FOR RECONSIDERATION

The Coalition to Protect Michigan Resources and the Bay De Noc Great Lakes Sports Fishermen (collectively, "Proposed Intervenors") have filed a motion for reconsideration (ECF No. 1987) of this Court's order denying their motion to intervene (ECF No. 1985). All seven parties oppose the Proposed Intervenors' motion for reconsideration (ECF Nos. 2013, 2017). "District courts have inherent power to reconsider interlocutory orders and reopen any part of a case before entry of a final judgment." *Mallory v. Eyrich*, 922 F.2d 1273, 1282 (6th Cir. 1991). In this district, a motion for reconsideration may be granted when the moving party demonstrates a "palpable defect" by which the Court and parties have been misled and a showing that a different disposition of the case must result

from the correction of the mistake. W.D. Mich. LCivR 7.4(a). Typically, "courts will find justification for reconsidering interlocutory orders when there is (1) an intervening change of controlling law; (2) new evidence available; or (3) a need to correct a clear error or prevent manifest injustice." *Rodriguez v. Tenn. Laborers Health & Welfare Fund*, 89 F. App'x 949, 959 (6th Cir. 2004). The decision to grant or deny a motion for reconsideration is within the district court's discretion. *See Evanston Ins. Co. v. Cogswell Props., LLC*, 683 F.3d 694, 681 (6th Cir. 2012) (citation omitted).

As articulated in the opinion and order denying the Proposed Intervenors' motion to intervene, the Court found that the Proposed Intervenors failed to meet their burden under Rule 24(a)(2) in establishing any of the four elements necessary for intervention of right (ECF No. 1985 at PageID.11668). Notably, although the Court found that the Proposed Intervenors failed to meet all four elements under Rule 24(a)(2), the Court also noted that "the untimeliness of the motion is the most compelling reason to deny the Proposed Intervenors' motion to intervene" (*Id.*), and that because the Proposed Intervenors failed to establish the timeliness of their motion, "the Court [could] deny the motion on this basis alone" (*Id.* at PageID.11674).

The gravamen of the Proposed Intervenors' motion for reconsideration is that the Court was "misled" by counsel for the State of Michigan at the motion hearing on August 25, 2022. At the motion hearing, counsel for the State represented to the Court that the State adequately represents the interests of the Proposed Intervenors—namely, the preservation of the Great Lakes fishery—and that the Proposed Intervenors' interests would not be impaired absent intervention (*see* ECF No. 1986 at PageID.11719-27). The Court accepted the State's

representations, given that the State has a legal duty to preserve the Great Lakes fishery—a resource held in public trust (ECF No. 1985 at PageID.11676-78). Thus, the Court held that "the Proposed Intervenors have failed to prove that their broad interests in protecting and conserving the Great Lakes fishery will be impaired absent their intervention" (*Id.* at PageID.11677). In their motion for reconsideration, the Proposed Intervenors argue that the Court erred in finding that the State adequately represents the Proposed Intervenors' interests merely based on the State's counsel's assertions at the August 25 hearing.

Further, the Proposed Intervenors also argue that the Court was "misled" (they do not state by whom) that "micro-level" issues are "small issues," and that these small interests are unworthy of permitting intervention. The Court adopted the term "micro-level interest" based on the Proposed Intervenors' counsel's argument at the August 25 hearing, where counsel specifically described micro-level interests as "narrow issues" (ECF No. 1986 at PageID.11701). To avoid forcing any party to divulge information in breach of the confidentiality agreement, the Court assumed, for purposes of the order denying the motion to intervene, that the State and Proposed Intervenors diverged on certain "micro-interests," and therefore, that they "have differences in the resolution of specific, narrow issues addressed in the successor decree" (ECF No. 1985 at PageID.11679). Now, the Proposed Intervenors take issue with the Court's interpretation of the term "micro-interest" and that such an interest is small or narrow (*see* ECF No. 1988 at PageID.11784) ("There is no determination in the [*Wineries*] decision that 'micro' interests are 'small interests.' The [*Wineries*] decision clearly assigns no such spectrum of importance to interests depending

on whether they are broad or 'micro.'").[1] In other words, the Proposed Intervenors argue that because the Court interpreted the term "micro-interests" to mean small, specific, or narrow interests, the Court incorrectly found that divergence on small issues does not amount to inadequate representation.

In essence, the Proposed Intervenors' motion for reconsideration argues that the Court's order denying the motion to intervene contains a palpable defect in finding that the State adequately represents the interests of the Proposed Intervenors. Contemporaneous with their motion for reconsideration, the Proposed Intervenors filed a motion to file five affidavits under seal that "help fully explain the Proposed Intervenors' interest in the case" (ECF No. 1989 at PageID.11790). The Proposed Intervenors assert that these affidavits establish that their interests and the State's interests diverge on important issues, and that the Court erred in finding otherwise.

Although the Proposed Intervenors' motion for reconsideration thoroughly argues why the Court erred in finding that the State adequately represents their interests, notably absent from the motion for reconsideration is any argument refuting the Court's conclusion that the motion to intervene was untimely. Even if the Court considered the five affidavits that the Proposed Intervenors filed and found that the State and Proposed Intervenors' interests do indeed diverge on substantial issues, the fact that the motion to intervene was untimely still requires the Court to deny the motion to intervene. *See Grubbs v. Norris*, 870

[1] *See Wineries of the Old Mission Peninsula v. Twp. of Peninsula*, 41 F.4th 767 (6th Cir. 2022).

F.2d 343, 345 (6th Cir. 1989) ("The proposed intervenor must prove each of the four factors; failure to meet one of the criteria will require that the motion to intervene be denied.").

As noted above, the Court found the untimeliness of the Proposed Intervenors' motion to intervene to be "the most compelling reason" to deny the motion (ECF No. 1985 at PageID.11668). The motion for reconsideration does not contain any argument asserting that the Court's analysis regarding the timeliness element of Rule 24(a)(2) contained an error amounting to a "palpable defect." More importantly, the motion for reconsideration does not change the date that the Proposed Intervenors filed their motion to intervene. Therefore, the Court need not reconsider the other three elements under Rule 24(a)(2). The Proposed Intervenors' motion to intervene was untimely, and that conclusion ends the inquiry into whether intervention is proper: it is not.

Accordingly,

IT IS HEREBY ORDERED that the Proposed Intervenors' motion for reconsideration (ECF No. 1987) is **DENIED**.

IT IS SO ORDERED.

Date: October 4, 2022

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge