COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
FOURTH DIVISION
CIVIL ACTION NO. 07-CI-04844

LISA SHUCK, LAURA MARCO, BOBBYE CARPENTER, BRENDA PALMER, TIUA CHILTON, GINA WILSON AND LORI CREECH — PLAINTIFFS

v. **ORDER**

UNIVERSITY OF KENTUCKY, JOSEPH MONROE, KENNETH CLEVIDENCE AND ALEXANDRA SILVER MCCONNELL — DEFENDANTS

Defendants, University of Kentucky, Joseph Monroe, Kenneth Clevidence, and Alexandra Silver McConnell ("Defendants"), by and through counsel, have moved the Court to reconsider its June 7, 2011 Order overruling their motion for separate trials for the Plaintiffs, Lisa Shuck, Laura Marco, Bobbye Carpenter, Tiua Chilton, Gina Wilson and Lori Creech ("Plaintiffs"). The Court did indicate on the record that counsel for Defendants would have an opportunity to file a Reply to Plaintiffs' consolidated response. The Court, however, entered its Order immediately following the hearing before considering the Defendants' Reply. This was inadvertent. The Defendants' Reply has been filed and entered of record and the Court has now reviewed it along with the Motion to Reconsider.

For the reasons set forth more fully below, Defendants' Motion to Reconsider is **SUSTAINED**. Plaintiffs contended that joinder of their claims is proper in this gender discrimination/employment case because they have pleaded a pattern and practice of discrimination as well as common issues of law and fact. Plaintiffs relied on *Alexander v. Fulton County,* 207 F.3d 1303 (11 Cir. 2000). The Court initially was persuaded by *Alexander v. Fulton*

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County until the recent United States Supreme Court decision in *Wal-Mart Stores, Inc. v. Dukes, et al.*, rendered June 20, 2011.

Therein the United States Supreme Court held that it is not enough for plaintiffs to plead a pattern of discrimination to justify class certification. Although this is not a class certification case, the principal is the same. The United States Supreme Court held that reciting questions such as "Do all of us plaintiffs indeed work for Wal-Mart? Do our managers have discretion over pay? Is there an unlawful employment practice? What remedies should we get?" are not sufficient to obtain class certification. Rather, plaintiffs must demonstrate that the class members "have suffered the same injury." *Id.*

The United States Supreme Court explains that this does not mean merely that they have all suffered a violation of the same provision of law. Title VII, for example, can be violated in many ways—by intentional discrimination, or by hiring and promotion criteria that result in disparate impact, and by the use of these practices on the part of many different superiors in a single company. The mere claim by employees of the same company that they have suffered a Title VII injury, or even a disparate-impact Title VII injury, gives no cause to believe that all their claims can productively be litigated at once. *Id.*

This Court considered the Federal Rules of Civil Procedure which provide that "[a]ll persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action." *Fed.R.Civ.P. 20(a).* A party seeking joinder of claimants under Rule 20 must establish two prerequisites: 1) a right to relief arising out of the same transaction or

occurrence, or series of transactions or occurrences, and 2) some question of law or fact common to all persons seeking to be joined. *Id.*

In its reliance on said rule, this Court considered that several courts from other jurisdictions have concluded that allegations of a "pattern or practice" of discrimination may describe such logically related events and satisfy the same transaction requirement. *See Mosley v. General Motors Corp.*, 497 F.2d 1330, 1332 (8th Cir. 1974). In interpreting Rule 20, this Court relied on *Mosley* and *Blesedell v. Mobil Oil Co.*, 708 F.Supp. 1408, 1422 (S.D.N.Y.1989). Both cases held that "a company-wide policy purportedly designed to discriminate against females in employment arises out of the same series of transactions or occurrences."

Defendants contend that the evidence in this case clearly establishes that each of the Plaintiffs' claims present a variety of issues and had little relationship to one another. Although the second prong of Rule 20 does not require that *all* questions of law and fact raised by the dispute be common, but only that *some* question of law or fact be common to all parties. *See Mosley, supra*, at 1334.

Several courts have found that the question of the discriminatory character of Defendants' conduct can satisfy the commonality requirement of Rule 20. *Id.*(finding that whether the threat of a racially discriminatory policy hangs over a racial class is a question of fact common to all the members of the class); *Blesedell,* 708 F.2d at 1422 (noting that "[i]n employment discrimination cases under Title VII, courts have found that the discriminatory character of a defendant's conduct is common to each plaintiff's recovery"). The *Wal-Mart* decision challenges these holdings.

Defendants contend that each of the Plaintiffs' claims are based on separate and independent facts, and each Plaintiff's claim must be evaluated on its own merit. Defendants

further contend that each Plaintiff held a different position and rank and worked at different periods of time under different commanding officers depending on the shift to which she was assigned. Moreover, each Plaintiff has different educational backgrounds and varying experience levels. After reviewing *Wal*-Mart and the Defendants' Reply, this Court is persuaded that separate trials are warranted.

Based on the foregoing analysis, Defendants' Motion to Reconsider is **SUSTAINED.**

IT IS FURTHER ORDERED that the trials be set to begin on **December 5, 2011 through December 15, 2011**. Eight (8) trial days are reserved. Trial proceedings will not take place on Fridays. The Court does not have a preference which Plaintiff's trial takes place first. Counsel can make that determination. A final pre-trial conference or trial readiness conference is scheduled for **Friday, November 4, 2011 at 3:00 p.m.**

Counsel shall confer with each other and their witnesses about the feasibility of these dates. If for any reason counsel believes these dates will not work, please notify the Court immediately. Additionally, if counsel believes that all six (6) plaintiffs cannot be tried within that time frame, please advise the Court. Particular care will be taken not to use the same pool of jurors for each of these trials.

SO ORDERED this 27th day of June, 2011.

Pamela R. Goodwine
JUDGE, FAYETTE CIRCUIT COURT
FOURTH DIVISION

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Order was mailed, first class, postage prepaid, on this _____day of June, 2011, to the following:

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WILMA F. LYNCH, CLERK
FAYETTE CIRCUIT COURT

BY: A Salvador D.C.