[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 16-15046
Non-Argument Calendar

D.C. Docket No. 3:d14-cv-00338-MCR-CJK

THE FISHING RIGHTS ALLIANCE, INC.,
KURT THEODORE, an individual,
JACK HEXTER, an individual,

Plaintiffs-Appellants,

versus

PENNY PRITZKER, et al.,

Defendants-Appellees,

CHARTER FISHERMAN'S ASSOCIATION,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida

( )

Before JULIE CARNES, JILL PRYOR, and EDMONDSON, Circuit Judges.

PER CURIAM:

Charter Fisherman's Association ("CFA") appeals the district court's denial of its motion to intervene as a defendant in the underlying civil action. No reversible error has been shown; we affirm the denial of intervention and dismiss the appeal for lack of jurisdiction.

The underlying civil action involves a challenge to Amendment 40 to the Reef Fish Fishery Management Plan. Briefly stated, Amendment 40 divides into two components the recreational sector for Gulf of Mexico red snapper: one for for-hire federal charter vessels and one for private anglers. Amendment 40, 80 Fed. Reg. 22,422 (Apr. 22, 2015) (codified at 50 C.F.R. pt. 622). Each component is then governed by separate annual quotas and season closure provisions. Id. Plaintiffs allege Amendment 40 is unlawful because it fails to satisfy certain national standards required of all Fishery Management Plans.

CFA -- invoking Fed. R. Civ. P. 24(a)(2) and (b)(1)(B) --filed a motion to intervene as a defendant in the underlying civil action. CFA is an organization of charter-for-hire captains and fishers whose businesses are now governed by

Amendment 40. In support of its motion, CFA asserted that Amendment 40 allows the charter-for-hire businesses "to harvest a predetermined and non-decreasing portion of the recreational red snapper quota," which will "potentially result in a more predictable season length, better business planning, and improvements to the economic performance of for-hire businesses." CFA also contended that its interests were inadequately represented because no named defendant "has a direct financial interest in affirmation of the challenged rules."

The district court denied CFA's motion to intervene, concluding that CFA was unentitled either to intervention of right under Rule 24(a)(2), or to permissive intervention under Rule 24(b)(1). The district court did allow CFA to present its arguments to the court in the form of an amicus brief.

We review de novo the district court's denial of intervention of right. Huff v. Comm'r, 743 F.3d 790, 795 (11th Cir. 2014). We review the district court's denial of a motion for permissive intervention only for abuse of discretion, however. Mt. Hawley Ins. Co. v. Sandy Lake Props., Inc., 425 F.3d 1308, 1312 n.7 (11th Cir. 2005).

A third party seeking to intervene as a matter of right under Rule 24(a)(2) must demonstrate, among other things, an interest in the subject matter of the underlying litigation that is "direct, substantial and legally protectable." Id. at 1311. The interest must "be one which the substantive law recognizes as

belonging to or being owned by the applicant": that is, "an interest that derives from a legal right." Id. (emphasis in original). A pure economic interest is not enough. Id. "In deciding whether a party has a protectable interest . . . courts must be flexible and must focus on the particular facts and circumstances of the case." Huff, 743 F.3d at 796 (quotations and alterations omitted).

CFA has failed to demonstrate the requisite "direct, substantial and legally protectable" interest necessary to compel intervention of right. CFA asserts only that its members stand to benefit economically from Amendment 40 and, thus, will be prejudiced if it is repealed. CFA has identified no interest deriving from a legal right.

On appeal, CFA contends this case is controlled by the Court's decision in United States v. S. Fla. Water Mgmt. Dist., 922 F.2d 704 (11th Cir. 1991). There, a group of farming organizations moved to intervene in a suit between the United States and the local water district. Similar to this case, the farming organizations contended that their members relied on the water district's services for maintaining their crops and, thus, the outcome of the litigation would impact directly their members' livelihood.

To the extent the United States alleged violations of state permitting laws and breach of contract, we concluded that the farming organizations were unentitled to intervention of right because they demonstrated (1) no legal right to

the water district's services (even though their economic livelihood depended on those services); (2) no legal right to participate in the state's permitting decisions; and (3) no third-party beneficiary right under the contracts at issue.

In S. Fla. Water Mgmt. Dist., we did, however, reverse the district court's denial of intervention and grant the farming organizations intervention to the extent the United States asked the district court to translate a narrative state regulation into numeric limits. In essence, the United States sought to preempt the state administrative procedure established for interpreting the state regulation. Because the farming organizations had a legal right under the applicable state statute to participate and to comment in that administrative process -- a right that would have been lost had the United States prevailed -- we determined that the farming organizations had a legally protectable interest sufficient to satisfy the criteria for intervention of right on that issue.

CFA has identified no comparable right. Amendment 40 was approved following the prescribed administrative process in which CFA was legally entitled to -- and in fact did -- participate. Thus, unlike the intervenors in S. Fla. Water Mgmt. Dist., CFA will lose no legal right to participate in the administrative process as a result of the underlying litigation. And CFA has identified no legal right also to participate now in the judicial review of the promulgated amendment.

Because CFA's members' interest in the underlying litigation is purely economic, CFA has failed to demonstrate a "direct, substantial, and legally protectable interest." See Mt. Hawley Ins. Co., 425 F.3d at 1311; S. Fla. Water Mgmt. Dist., 922 F.2d at 710. CFA is, thus, entitled to no intervention of right.

CFA has also failed to demonstrate that the district court abused its discretion in denying permissive intervention. On appeal, CFA asserts only that permissive intervention should have been granted because CFA's defense of Amendment 40 "shares with the main action common questions of law and fact." We stress that whether to allow permissive intervention under Rule 24(b) "is wholly discretionary." Bayshore Ford Trucks Sales, Inc. v. Ford Motor Co., 471 F.3d 1233, 1246 (11th Cir. 2006). Thus, "even though there is a common question of law or fact, or the requirements of Rule 24(b) are otherwise satisfied, the court may refuse to allow intervention." Id. On this record, we see no abuse of discretion.

Because the district court's denial of intervention was proper, we dismiss this appeal for lack of jurisdiction. For background, see Davis v. Butts, 290 F.3d 1297, 1298 (11th Cir. 11th Cir. 2002) (citing Fed. Trade Comm'n v. Am. Legal Distrib., 890 F.2d 363, 364 (11th Cir. 1989)).

DISMISSED.