

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-2515

CECILE M. LESCS; RICHARD A. LAST, Deceased by
Cecile M. Lescs next of kin and power of
attorney; ESTATE OF RICHARD A. LAST, BY
CECILE N. LESCS, EXECUTRIX,

Plaintiffs - Appellants,

versus

MARTINSBURG POLICE DEPARTMENT; WAYNE
CLEVELAND; THEODORE ANDERSON; GEORGE
SMARTWOOD; GLENN MACHER; CITY OF MARTINSBURG,
Incorporated; MARK S. BALDWIN; GEORGE KAROS;
MAX PARKINSON; UNITED STATES POSTAL SERVICE;
WILLIAM WILMOTH; JAMES WRIGHT; JANET RENO;
UNITED STATES DEPARTMENT OF JUSTICE; JOHN
MORAN; RAYMOND WEST; LOUIS FREEH; FEDERAL
BUREAU OF INVESTIGATION; WELLS MORRISON;
VETERANS ADMINISTRATION; HERSHEL GOBER, Acting
Secretary, Veterans Affairs; TOGO D. WEST,
Secretary Veterans Affairs; MARTINSBURG
MEDICAL CENTER; GEORGE MOORE, Director;
RICHARD PELL; THE POSTMASTER GENERAL OF THE
UNITED STATES; HENRRI JAMIOY QUISTIAL; JANE
DOE; JOHN O'NEILL; DALE WATSON; BOB BLITZER;
MARK T. CALLOWAY; WILLIAM J. CLINTON; JOHN
ASHCROFT, United States Attorney General,

Defendants - Appellees.

Appeal from the United States District Court for the Northern
District of West Virginia, at Martinsburg. W. Craig Broadwater,
District Judge. (CA-03-4-3)

Submitted: May 27, 2005

Decided: July 11, 2005

Before WILKINSON, WILLIAMS, and MICHAEL, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Cecile M. Lescs, Appellant Pro Se. Tracey Brown Eberling, STEPTOE & JOHNSON, Martinsburg, West Virginia; Daniel W. Dickinson, Jr., OFFICE OF THE UNITED STATES ATTORNEY, Wheeling, West Virginia; Beverly M. Russell, Kathleen M. Frye, OFFICE OF THE UNITED STATES ATTORNEY, Washington, D.C., for Appellees.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Cecile M. Lescs appeals the district court's order dismissing her civil action alleging claims under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), the Privacy Act, the Freedom of Information Act, and Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971). Lescs asserts the district court erred by granting dismissal or summary judgment to all Defendants without granting her motion for class action certification, allowing her to proceed to discovery, or "hearing evidence about the TIPS Program." Because our review of the record convinces us there is no reversible error, we affirm.

Lescs, proceeding pro se, sought certification for the class of all plaintiffs in court cases against Dow Chemical Company who were harassed by federal and state action in violation of RICO. A refusal to certify a class is reviewed for abuse of discretion. Stott v. Haworth, 916 F.2d 134, 139 (4th Cir. 1990). Moreover, it is plain error to certify a class when a pro se litigant seeks to represent the class. Oxendine v. Williams, 509 F.2d 1405, 1407 (4th Cir. 1975). We find the district court did not abuse its discretion by failing to certify the class.

We likewise find the district court did not abuse its discretion by refusing to allow discovery, see Harrods Ltd. v. Sixty Internet Domain Names, 302 F.3d 214, 245-46 (4th Cir. 2002), or otherwise err by dismissing this action prior to discovery or

trial. The district court was required to rule on Defendants' dispositive motion to dismiss or for summary judgment raising sovereign and qualified immunity issues prior to allowing any discovery. See Harlow v. Fitzgerald, 457 U.S. 800, 817-18 (1982). Moreover, we find Defendants' motion was properly granted prior to trial. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251 (1986).

Accordingly, we deny the motion of the Martinsburg Defendants to dismiss them as parties as moot and affirm the judgment of the district court. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED