UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 92-2848

(Summary Calendar)

ALLEN LAMAR, ET AL.,

Plaintiffs-Appellees,

UNITED STATES OF AMERICA, ET AL.,

Intervenors-Appellees,

versus

JAMES LYNAUGH, ET AL.,

Defendants-Appellees,

WHITE CLASS,

Intervenor-Appellee,

versus

BILLY WAYNE HORTON,

Movant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(CA-H-72-1393)

(December 20, 1993)

Before WIENER, JOLLY, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

---

* Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Billy Wayne Horton appeals from a district court order denying his motion to intervene in *Lamar v. Collins,* Civil Action Number 72-H-1393. Finding no error, we affirm.

Horton, a state prisoner, filed suit in the Southern District of Texas pursuant to 42 U.S.C. § 1983 (1988), alleging that a consent decree which required the integration of prison cells was violative of his constitutional rights. The district court dismissed Horton's § 1983 claims as frivolous, and we affirmed in *Horton v. Cockrell,* No. 91-4968 (5th Cir. February 24, 1992) (unpublished). Horton then filed a motion to intervene in *Lamar* to pursue his claims for declaratory and injunctive relief.[1] The district judge found that Horton's interests in opposing the consent decree had been adequately represented by a class of defendant-intervenors in *Lamar,*[2] and thus denied intervention. Horton appeals from the denial of intervention.

On appeal, Horton asserts that the district court erred in denying his motion to intervene as a matter of right. We review intervention of right rulings *de novo. Ceres Gulf v. Cooper,* 957 F.2d 1199, 1202 (5th Cir. 1992). To be entitled to intervention of right, a party must meet four requirements:

> (1) the application must be timely;
> (2) the applicant must have an interest in the property or transaction that is the subject of the action;

---

[1] The dismissal of Horton's § 1983 claims was specified to be without prejudice to Horton's right to intervene in the *Lamar* case.

[2] The class of defendant-intervenors consisted of a group of inmates opposed to in-cell prisoner integration.

(3) disposition of the action must impair or impede the applicant's ability to protect that interest; and
(4) the applicant's interest must be inadequately represented by the parties to the suit.

Doe v. Duncanville Indep. Sch. Dist., 994 F.2d 160, 167 (5th Cir. 1993) (citation omitted). Failure to meet any one of the above requirements will prevent a party from intervening as of right.[3] *Kneeland v. NCAA,* 806 F.2d 1285, 1287 (5th Cir.), *cert. denied,* 108 S.Ct. 72 (1987).

The district court denied intervention based on Horton's failure to prove that his interests were inadequately represented in *Lamar.* It is undisputed that the class of defendant-intervenors sought the same outcome which Horton now seeks))a declaration that the consent decree is unconstitutional. If a "party seeking to intervene has the same ultimate objective as a party to the suit, the existing party is presumed to adequately represent the party seeking to intervene unless that party demonstrates adversity of interest, collusion, or nonfeasance." *Kneeland,* 806 F.2d at 1288. Our review of the record indicates that Horton has not demonstrated adversity of interest, collusion, or nonfeasance. We therefore conclude that Horton has not met his burden of showing that his interests were inadequately represented.[4]

---

[3] Although the parties on appeal dispute the timeliness of Horton's application for intervention, we address only the issue of inadequate representation of Horton's interests, as that issue is dispositive.

[4] In his appellate brief, Horton makes several challenges to the manner in which the *Lamar* litigation was conducted. Those challenges are insufficient to establish inadequacy of representation. *See, e.g., Bradley v. Milliken,* 828 F.2d 1186,

Having determined that Horton's interests were adequately represented in *Lamar,* we hold that the trial court did not err in denying intervention as of right. Furthermore, since we fail to find an abuse of discretion by the district court, any allegations concerning permissive intervention cannot be addressed. *See Woolen v. Surtran Taxicabs, Inc.,* 684 F.2d 324, 330-31 (5th Cir. 1982) ("[T]he denial of a motion for permissive intervention under Rule 24(b) is not appealable unless there is an abuse of discretion.").

Accordingly, we **AFFIRM** the district court's order denying Horton's motion to intervene.

1192 (6th Cir. 1987) (stating that "a mere disagreement over litigation strategy . . . does not, in and of itself, establish inadequacy of representation").