

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

THERESA VICTORY, et al.	:	CIVIL ACTION
	:	
v.	:	NO. 18-5170
	:	
BERKS COUNTY, et al.	:	

ORDER-MEMORANDUM

AND NOW, this 17th day of October 2019, upon considering the Defendants’ Motion to decertify (ECF Doc. No. 220), and Plaintiffs’ Response (ECF Doc. No. 229), it is **ORDERED** Defendants’ Motion to decertify (ECF Doc. No. 220) is **DENIED**.

Analysis

On July 8, 2019, we granted Plaintiffs’ motion for class certification of their Equal Protection injunction claims under Fed.R.Civ.P. 23(b)(2) supported by detailed findings warranting class treatment of prospective equitable relief at our upcoming trial for:

All current and future female inmates committed to the Berks County Jail System who have the Trusty custody-level classification but denied assignment to the Community Reentry Center (“CRC”) and denied access to the privileges and services available to men assigned to the CRC.¹

Following the close of discovery, the Berks County Defendants move to decertify the class because (1) the individual claims for injunctive relief of class representatives Mses. Victory and Velazquez-Diaz are moot; and, (2) Mses. Victory and Velazquez-Diaz cannot adequately represent the interests of the class under Fed. R. Civ. P. 23(a)(4). We reject these arguments.

First, the mootness of class representatives Mses. Victory or Velazquez-Diaz’s individual claims for injunctive relief do not preclude the class from presenting a live case or controversy

¹ ECF Doc. Nos. 186, 187.

for injunctive relief. A class representative may continue to represent the class even when her individual claims are mooted if the class claims are particularly susceptible to mootness.²

In our July 8, 2019 Memorandum, certifying a class of female Trusty inmates with Mses. Victory and Velazquez-Diaz as class representatives, we explained:

Mses. Victory and Velazquez-Diaz adduce evidence showing potential class members would be unable to litigate their claims for injunctive relief individually because of the administrative exhaustion requirement and the short length of incarceration for female Trusty inmates. From January 2016 to May 2019, female Trusty inmates held Trusty status for an average forty-nine days during their incarceration. In 2018, the Commonwealth incarcerated female Trusty inmates in the Berks County for an average fifty-seven days. Female Trusty inmates could not file lawsuits seeking injunctive relief because they would fail to exhaust administrative remedies before their claims for injunctive relief became moot. Ms. Victory exhausted her remedies and filed suit but Berks County released her shortly after we granted her motion for injunctive relief. Berks County released two other plaintiffs who earlier joined in this action—Anabell Dealba and Samantha Huntington—before we could rule on their motions for preliminary injunctive relief. Mses. Victory and Velazquez-Diaz

² See, e.g., *Cty. of Riverside v. McLaughlin*, 500 U.S. 44, 51-52 (1991) (“It is true, of course, that the claims of the named plaintiffs have since been rendered moot; eventually, they either received probable cause determinations or were released. Our cases leave no doubt, however, that by obtaining class certification, plaintiffs preserved the merits of the controversy for our review.”); *U.S. Parole Comm’n v. Geraghty*, 445 U.S. 388, 399 (1980) (“Some claims are so inherently transitory that the trial court will not have even enough time to rule on a motion for class certification before the proposed representative’s individual interest expires.”); *Sosna v. Iowa*, 419 U.S. 393, 399 (1975) (“But appellant brought this suit as a class action and sought to litigate the constitutionality of the durational residency requirement in a representative capacity. When the District Court certified the propriety of the class action, the class of unnamed persons described in the certification acquired a legal status separate from the interest asserted by appellant. We are of the view that this factor significantly affects the mootness determination.”); *Gayle v. Warden Monmouth Cty. Corr. Inst.*, 838 F.3d 297, 307 (3d Cir. 2016) (“A plaintiff who files a motion to certify a class prior to the expiration of his individual claims does not lose his interest in accurate resolution of his legitimate efforts to serve as class representative, merely because the District Court, as a technical matter, denies or terminates the motion without actually deciding it.”) (internal quotation and citation omitted).

show the putative class members' inability to seek injunctive relief individually.³

We determined Berks County female Trusty inmates class claims for injunctive relief are particularly susceptible to mootness.

We explained how Ms. Victory is an adequate class representative despite, as noted above, her release from Berks County Jail System. Since our July 8 Memorandum, Ms. Velazquez-Diaz has been released from Berks County Jail System. We appreciate both individual claims for injunctive relief are now moot. But mootness of the representatives' claims for injunctive relief does not warrant class decertification.⁴ We reject Berks County Defendants' decertification argument based on mootness of class representative's individual claims.

Second, Defendants argue Mses. Victory and Velazquez-Diaz cannot adequately represent the interests of the class because the two (1) are not incentivized in the outcome of claim for injunctive relief; and, (2) have a "conflict of interest" because they seek money damages when the class seeks injunctive relief. We deny these same arguments for the reasons stated in our July 8, 2019 Memorandum analyzing adequacy under Rule 23(a)(4).⁵ We then explained: "Ms. Victory's damages claims under the Equal Protection Clause arise from the same policy as the class members' claim for injunctive relief: Berks County's policy of treating female Trusty inmates differently than male Trusty inmates. A finding in favor of Mses. Victory and Velazquez-Diaz on their claims for damages for Equal Protection violations would similarly support a claim for injunctive relief."⁶ This remains true. Mses. Victory and Velazquez-Diaz are


³ ECF Doc. No. 186, at p. 43 (citations omitted).

⁴ See e.g., *Sosna v. Iowa*, 419 U.S. 393, 399 (1975).

⁵ See ECF Doc. No. 186 at pp. 46-49.

⁶ *Id.* at p. 49.

incentivized to represent the class. We see no conflict of interest.⁷ We decline to decertify based on Rule 23(a)(4) as Mses. Victory and Velazquez-Diaz continue to satisfy the adequacy requirement.



KEARNEY, J.

⁷ *New Directions Treatment Servs. v. City of Reading*, 490 F.3d 293, 313 (3d Cir. 2007) (“Conflicts of interest are rare in Rule 23(b)(2) class actions seeking only declaratory and injunctive relief.”).