IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

KENNETH CRAIG MILLER, *Plaintiff*,	§ § § §	
v.	§ §	Case No. 2:17-CV-00496-JRG-RSP
CITY OF EAST MOUNTAIN, BETTY DAVIS, TERRY WAYNE DAVIS, MILTON NEAL COULTER, UPSHUR COUNTY, GREGG COUNTY, and CITY OF NEW SUMMERFIELD, TEXAS, *Defendants*.	§ § § § § § §	

ORDER

Defendant Upshur County and Defendant Gregg County (collectively "County Defendants") filed a Joint Motion for Entry of Final Judgment ("Motion") (Dkt. No. 153), which is now before the Court. The County Defendants' Motion was filed pursuant to Fed. R. Civ. P. 54(b), and the County Defendants argue that "there is no just reason for delay" because they are currently required to actively monitor this matter to protect their interests. (Dkt. No. 153 at 3–5.) After consideration, the Court **DENIES** Defendants' Motion as the County Defendants have not adequately shown that "there is no just reason for delay."

Rule 54(b) of the Federal Rules of Civil Procedure provides

> When an action presents more than one claim for relief--whether as a claim, counterclaim, crossclaim, or third-party claim--or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties ***only if the court expressly determines that there is no just reason for delay***. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

(emphasis added). "'It is left to the sound judicial discretion of the district court to determine the appropriate time when each final decision in a multiple claims action is ready for appeal.'" *Brown v. Mississippi Valley State Univ.*, 311 F.3d 328, 332 (5th Cir. 2002) (quoting *Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 8 (1980)) (internal marks omitted). To enter a Rule 54(b) final judgment, a district court must (1) "have disposed of 'one or more . . . claims or parties'" and (2) make "'an express determination that there is no just reason for delay.'" *Eldredge v. Martin Marietta Corp.*, 207 F.3d 737, 740 (5th Cir. 2000) (quoting Fed. R. Civ. P. 54(b)). Here, both Plaintiff and the County Defendants agree that the first requirement has been satisfied. (Dkt. No. 153 at 3 ("The first requirement is satisfied here because the Court disposed of the County Defendants as parties when it dismissed all claims against them."); Dkt. No. 156 at 1 ("[B]efore the Court can 'dispatch' a portion of the lawsuit for immediate appeal, two things must happen: First, at least one claim for relief or rights and liabilities of at least one party have become finally resolved . . . . [Plaintiff] agrees that the first thing occurred.")). Consequently, the Court focuses its analysis on the second prong—whether "there is no just reason for delay"

Determining whether "there is no just reason for delay" requires the balancing of two policies: (1) "avoiding the 'danger of hardship or injustice through delay which would be alleviated by immediate appeal'" and (2) "'avoiding piecemeal appeals.'" *Eldredge*, 207 F.3d at 740 (citing *PYCA Indus. v. Harrison County Waste Water Management Dist.*, 81 F.3d 1412, 1421 (5th Cir. 1996)). Certification under Rule 54(b) should not be granted routinely as a courtesy to counsel. *PYCA Indus.*, 81 F.3d at 1421.

The County Defendants argue that (1) the Court has already dismissed claims against both County Defendants after giving Plaintiff multiple opportunities to replead; and (2) the County Defendants are "left having to monitor this pending litigation to protect their interests" and that

this is "especially cumbersome" here because the matter is currently on interlocutory appeal and because "the Court has ceased providing electronic notice of filings to the County Defendants' respective counsel." (Dkt. No. 153 at 4–5.)

Here, the Court concludes that the County Defendants have not adequately shown that "there is no just reason for delay." As stated in *Eldredge*, the Court should consider the concern of avoiding piecemeal appeals. *Eldredge*, 207 F.3d at 740 (citing *PYCA Indus.*, 81 F.3d at 1421 (5th Cir. 1996)). That concern is strong here, where five other defendants are involved in the case. Further, the County Defendants have not provided any significant "danger of hardship or injustice through delay which would be alleviated by immediate appeal." While the County Defendants argue that Court has already dismissed claims against both County Defendants after giving Plaintiff multiple opportunities to replead, this fact primarily goes to the first prong in the analysis (that a district court must have "disposed of 'one or more . . . claims or parties'" prior to 54(b) certification). Further, the County Defendants' argument that they are left having to monitor this pending litigation to protect their interests has little force because certification under Rule 54(b) should not be granted merely for convenience. *See PYCA Indus.*, 81 F.3d at 1421. Because the County Defendants have not identified any danger or hardship that outweighs the concern for avoiding piecemeal appeals, the Court **DENIES** the County Defendants' Motion.

SIGNED this 16th day of August, 2019.

ROY S. PAYNE
UNITED STATES MAGISTRATE JUDGE