

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

JAMES GEORGE DOURIS : CIVIL ACTION
 :
 v. :
 :
 SCOTT BROBST, et al. : NO. 99-3357

MEMORANDUM AND ORDER

HUTTON, J.

February 14, 2000

Presently before this Court are Defendant Scott Brobst's ("Brobst") Motion to Dismiss Plaintiff's Complaint Pursuant to F.R.C.P. 12(b)(6) (Docket No. 4), Plaintiff James George Douris's ("Douris") Reply to Defendant's Motion to Dismiss (Docket No. 6), and Brobst's Motion to Dismiss Plaintiff's Complaint Pursuant to F.R.C.P. 12(b)(6) (Docket No. 5).\¹ For the reasons stated below, Defendant's Motion is **GRANTED**.

I. BACKGROUND

Upon accepting as true the facts alleged in the Complaint and all reasonable inferences that can be drawn from them, the pertinent facts of this case are as follows. Douris is a disabled male of at least 43 years of age. On March 12, 1998, he went to the Bucks County Department of Human Services to apply for a job he

¹ The Court is unclear as to why it possesses two substantively identical motions to dismiss. Nevertheless, the Court notes the following differences between the documents: the date that each was signed by counsel; counsel's signature; and the date of entry by the Clerk of Court. The Court bases the foregoing on Brobst's first Motion to Dismiss as Plaintiff filed a response to that document.

saw advertised elsewhere. Douris asked Defendant Marie Costello ("Costello"), an employee of Bucks County, for a job application and requested that due to his disability (i.e., "carpool tunnel" syndrome) he be allowed to complete the application at home. Costello rejected Douris's request.

On December 9, 1998, Douris filed a charge of age and disability discrimination against Bucks County with the Equal Employment Opportunity Commission ("EEOC") and the Pennsylvania Human Relations Commission ("PHRC"). On March 10, 1999, Bucks County filed a response to Douris's administrative charge. The response stated that applicants may complete employment applications at home where there is a "request for accommodation due to a special need." (Compl. at ¶ 10 (referencing Ex. B which is not attached to the Complaint currently in the Court's possession)).

On May 6, 1999, Douris returned to the Bucks County Department of Human Resources seeking an employment application. On this date, Douris suffered from an additional disability to his knee which limited his ability to walk, turn, and use steps. Douris asked Costello for an application and requested that he be allowed to complete the application at his home. Costello provided Douris with an application. Douris then exited the Department of Human Resources. Before he could board an elevator, Costello blocked

Douris's attempt at egress. Douris then "used such force as was necessary to get past [Costello] and leave the building" (Compl. at ¶ 11). At an unspecified time thereafter, Costello contacted the Doylestown Borough Police Department and filed "false criminal charges against" Douris. (Compl. at ¶ 11).

On May 10, 1999, Brobst, a police officer for the Doylestown Borough Police Department, charged Douris with "Disorderly Conduct and Harassment." Douris filed the instant lawsuit on July 1, 1999.

The Complaint states that Brobst, in both his personal and professional capacity, violated Douris's rights to use public facilities as guaranteed by the Americans with Disabilities Act ("ADA"). This violation allegedly occurred when Brobst coerced and/or intimidated Douris by bringing false criminal charges against him. (Compl. at ¶¶ 25-27). Douris also claims that Brobst retaliated against him in violation of the ADA. (Compl. at ¶¶ 29-32). Douris also states a 42. U.S.C. § 1983 claim against Brobst, claiming that under the color of state law, Brobst knowingly filed false and baseless charges against Douris which violated his constitutional rights. (Compl. at ¶¶ 42-46). Brobst, pursuant to Federal Rule of Civil Procedure 12(b)(6), seeks dismissal of the aforementioned claims.

II. LEGAL STANDARD

When considering a motion to dismiss a complaint for failure

to state a claim under Rule 12(b)(6),² this Court must "accept as true the facts alleged in the complaint and all reasonable inferences that can be drawn from them. Dismissal under Rule 12(b)(6) . . . is limited to those instances where it is certain that no relief could be granted under any set of facts that could be proved." Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990) (citing Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988)); see H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 249-50 (1989). A court will only dismiss a complaint if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." H.J. Inc., 492 U.S. at 249-50 (quoting Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)). Nevertheless, a court need not credit a plaintiff's "bald assertions" or "legal conclusions" when deciding a motion to dismiss. Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997).

III. DISCUSSION

Brobst argues that Douris's claims of ADA violations should be dismissed on the following grounds: (a) Douris failed to exhaust

¹. Rule 12(b)(6) provides that:

Every defense, in law or fact, to a claim for relief in any pleading . . . shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: . . . (6) failure to state a claim upon which relief can be granted

Fed. R. Civ. P. 12(b)(6).

his administrative remedies; and (b) the ADA does not impose individual liability. Brobst also argues that he is entitled to qualified immunity on Douris's § 1983 claim.

The Court first considers whether under the ADA and § 1983, Brobst may be individually liable to Douris. While the Third Circuit has not addressed the issue of individual liability under the ADA, in considering the issue of individual liability under Title VII, it concluded "that Congress did not intend to hold individual employees liable under Title VII." Sheridan v. E.I. DuPont de Nemours & Co., 100 F.3d 1061, 1078 (3d Cir. 1996) (en banc), cert. denied, 521 U.S. 1129 (1997). Trial courts in this district have held that the ADA does not provide a cause of action against individual employees. See, e.g., Schumacher v. Souderton Area Sch. Dist., No. CIV.A. 99-1515, 2000 WL 72047, at *3 (E.D. Pa. Jan 21, 2000); Metzgar v. Lehigh Valley Housing Auth., No. CIV.A. 98-3304, 1999 WL 562756, at *3 (E.D. Pa. July 27, 1999); Fullman v. Philadelphia Int'l Airport, No. CIV.A. 98-3674, 1999 WL 310639, at *4 (E.D. Pa. May 10, 1999); Brannaka v. Bergey's, Inc., No. CIV.A. 97-6921, 1998 WL 195660 (E.D. Pa. Mar. 30, 1998). Moreover, "Courts of Appeals that have directly addressed the issue of individual liability under the ADA have applied the Title VII analogy and concluded that no such liability exists." Meara v. Bennett, 27 F. Supp. 2d 288, 290 (D. Mass. 1998) (citing Mason v. Stallings, 82 F.3d 1007, 1009 (11th Cir. 1996); EEOC v. AIC Sec. Investigations,

Ltd., 55 F.3d 1276, 1279-82 (7th Cir. 1995)). In light of these decisions, the Court concludes that the ADA, like Title VII, does not impose individual liability. Therefore, the Court dismisses Douris's ADA and Title VII claims against Brobst in his individual capacity.

The Court now considers whether Brobst is liable in his capacity as a police officer to Douris for the violation of his alleged ADA right to use public facilities. Douris's claim regarding Brobst's violation of his right to use public facilities is without merit. Douris discusses this claim in the context of Costello's failed attempt to prevent him from removing an employment application from the building that houses the Bucks County Department of Human Resources. Brobst was not involved in that event in any way and therefore cannot be liable for violating Douris's rights in the manner alleged. Accordingly, Douris's cause of action against Brobst for violating his rights under the ADA with regard to the use of public facilities is dismissed.

The Court now considers whether Brobst is entitled to dismissal of Douris's second theory of recovery, retaliation under the ADA. The ADA states as follows: "No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this

chapter." 42 U.S.C. § 12203(a). Douris asserts that Brobst filed false charges against him, at least in part, because he had filed a previous charge of discrimination with the PHRC and the EEOC. Brobst responds that Douris not only failed to exhaust his retaliation claim at the administrative level but also failed to name Brobst as a defendant in his administrative filing.

Douris admits that he never filed a retaliation charge with either the EEOC or the PHRC. (See Pl.'s Reply to Def.'s Mot. to Dismiss at 4). Douris argues, however, that "[i]t is settled law in this Circuit that one does not have to keep filing administrative charges for each act." (See Pl.'s Reply to Def.'s Mot. to Dismiss at 4). Douris then contends that his failure to file a charge of retaliation with the PHRC or EEOC is lawful because Brobst's actions fall within the scope of his original charge. (See Pl.'s Reply to Def.'s Mot. to Dismiss at 4).

When a retaliation claim is not specifically presented to the EEOC, the test for whether that claim can be presented to the district court is "whether the acts alleged in the subsequent . . . suit are fairly within the scope of the prior EEOC complaint, or the investigation arising therefrom." Waiters v. Parsons, 729 F.2d 233, 237 (3d Cir. 1984). While the EEOC was on notice of Douris's complaints against Bucks County for alleged age and disability discrimination, the EEOC would not have been expected to initiate a retaliation investigation against Brobst

based on Douris's charge. See Watson v. SEPTA, No. CIV.A. 96-1002, 1997 WL 560181, at *6-7 (E.D. Pa. Aug. 28, 1997) (dismissing retaliation claim where EEOC charge mentioned sex and disability discrimination but not retaliation); Fieno v. Pocopson Home, CIV.A. No. 96-5343, 1997 WL 220280, at *5 (E.D. Pa. Apr. 29, 1997) (dismissing retaliation claim where not mentioned in EEOC filing). Accordingly, Douris's retaliation claim under the ADA is dismissed.

The Court now considers whether Brobst may claim qualified immunity with regard to Douris's § 1983 claim. Brobst argues that as a police officer who acted reasonably in charging Douris with (but not arresting or placing him in custody for) harassment and disorderly conduct, he is entitled to qualified immunity. Douris's argument against qualified immunity hinges on his incorrect assumption that Brobst, by filing the instant 12(b)(6) Motion, admits that by charging Douris with harassment and disorderly conduct, he retaliated in bad faith against Douris. Douris ignores, however, settled Third Circuit jurisprudence that a court need not credit a plaintiff's "bald assertions" or "legal conclusions" when deciding a motion to dismiss. See Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997).

A police officer is entitled to qualified immunity under 42 U.S.C. § 1983 if his conduct did not violate a clearly established statutory or constitutional right of the plaintiff, of which a reasonable officer would have known. See Sharrar v. Felsing, 128

F.3d 810, 826 (3d Cir. 1997) (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S. Ct. 2727 (1982)). Thus, qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law." Malley v. Briggs, 475 U.S. 335, 341 (1986). The defendant has the burden of pleading and proving qualified immunity. See Harlow, 457 U.S. at 815.

When resolving issues of qualified immunity, a court must first determine whether the plaintiff has alleged a deprivation of a constitutional right. See Torres v. McLaughlin, 163 F.3d 169, 172 (3d Cir. 1998)(internal citations omitted). Only after satisfying that inquiry should the court then ask whether the right allegedly implicated was clearly established at the time of the events in question. Id. Even if both inquiries are satisfied, if the officer's actions were objectively reasonable in light of the constitutional rights at issue, the officer is entitled to qualified immunity. See Giuffre v. Bissell, 31 F.3d 1241, 1252 (3d Cir. 1994).

The Supreme Court and the Third Circuit have each made clear that suits against individual officers should be dismissed as early as possible if the right that plaintiff claims was violated was not clearly established by law. See Larsen v. Senate of Commonwealth of Pennsylvania, 154 F.3d 82, 87 (3d Cir. 1998) (quoting Mitchell v. Forsyth, 472 U.S. 511, 526, 105 S. Ct. 2806 (1985)). A qualified immunity claim should only be submitted to a jury if "the

historical facts material" to the reasonableness of an officer's knowledge are in dispute. Sharrar, 128 F.3d at 828.

The historical facts material to the instant matter clearly establish that Douris was never arrested or placed in custody. Indeed, Brobst merely charged Douris with the misdemeanors of disorderly conduct and harassment. Douris claims, however, that Brobst's conduct rose to the level of a constitutional violation, "to wit, Liberty, Equal Protection, and Substantive Due Process." (Compl. at ¶ 42). The crucial question is whether there are sufficient facts to determine that the Complaint is not frivolous. See Colburn v. Upper Darby Twnshp., 838 F.2d 663, 666 (3d Cir. 1988); Pilla v. Delaware River Port Auth., No. CIV.A. 98-5723, 1999 WL 345918, at *2 (E.D. Pa. May 7, 1999). Douris's Complaint sets forth no facts which support his allegations that he suffered constitutional violations of his liberty interest, his equal protection rights, or substantive due process. The Court concludes that Brobst violated none of Douris's constitutional rights and therefore dismisses Douris's § 1983 claim without considering whether Brobst is entitled to qualified immunity.

An appropriate Order follows.

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O R D E R

AND NOW, this 14th day of February, 2000, upon consideration of Defendant Scott Brobst's ("Brobst") Motion to Dismiss Plaintiff's Complaint Pursuant to F.R.C.P. 12(b)(6) (Docket No. 4), Plaintiff James George Douris's ("Douris") Reply to Defendant's Motion to Dismiss (Docket No. 6), and Brobst's Motion to Dismiss Plaintiff's Complaint Pursuant to F.R.C.P. 12(b)(6) (Docket No. 5), IT IS HEREBY ORDERED that Defendant's Motion is **GRANTED**.

BY THE COURT:

HERBERT J. HUTTON, J.