

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

ANTHONY D. OKOKURO : CIVIL ACTION  
 :  
v. :  
 :  
COMMONWEALTH OF PENNSYLVANIA :  
DEPARTMENT OF WELFARE, et al. : No. 00-2044

**MEMORANDUM AND ORDER**

**J. M. KELLY, J.** **OCTOBER , 2000**

Presently before the Court is a Motion to Dismiss filed by the Defendant, Commonwealth of Pennsylvania, Department of Public Welfare ("DPW"). The Plaintiff, Anthony D. Okokuro ("Okokuro"), filed a pro se suit in this Court that alleged DPW discriminated against him because of his national origin, his inter-racial marriage, and in retaliation to his actions. DPW now seeks to have the Complaint dismissed for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1) because the Eleventh Amendment to the United States Constitution bars Okokuro's claim. As several attempts to secure representation for Okokuro have failed, the Court finally proceeds to the merits of DPW's Motion to Dismiss. For the following reasons, DPW's motion is denied.

**I. BACKGROUND**

Okokuro's pro se Complaint alleges the following facts. Okokuro, a United States citizen, is an African-American male of

Nigerian origin. His wife is white. Okokuro's Complaint describes several instances of alleged discrimination and ridicule by his colleagues. Okokuro alleges, among other things, that: (1) one of his supervisors, Ms. Vernell Grant, continually referred to his marriage to a white woman as "unfortunate" and "jungle fever"; (2) Ms. Grant called him an "Oreo Cookie" and he once found Oreo Cookies that had anonymously been placed in his desk; (3) Ms. Grant referred to Okokuro's wife as "rich white trash"; (4) Ms. Grant told him that she "likes her coffee black . . . like her men"; (5) Ms. Grant badgered Okokuro regarding his citizenship; (6) another supervisor, Ms. White, suggested he attend an AIDS Seminar because "there are a lot of AIDS cases in Africa," and he subsequently found a condom in his desk drawer; (7) Ms. White often questioned him how he could afford his new clothes; and (8) the Office Manager, Ms. Collins, asked Okokuro to "produce his drug money."

On April 19, 2000, Okokuro filed a pro se Complaint against DPW. The Complaint explained that Okokuro had filed suit in response to "discrimination based on my inter-racial marriage, national original and psychological torture" and DPW's refusal "to pay my medical and legal cost[s] already incurred." Compl. ¶ 3. Okokuro filed an Amended Complaint on June 27, 2000, which

alleged retaliation as another possible claim.<sup>1</sup> Am. Compl. ¶ 3. The Amended Complaint also named as an additional Defendant Don Jose Stovall, an executive officer of the DPW. Okokuro's Amended Complaint seeks both retrospective and prospective relief. Specifically, Okokuro asks the Court to order the Defendants pay his "medical bills and legal expenses" and to "stop black balling" him. Am. Compl. ¶ 4. Okokuro bases his claim on Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. §§ 2000e et seq. (1994). See Plf.'s Resp. to Def.'s Mot. to Dismiss at 1 ("The law that was violated is Title VII of the Civil Rights Act."). DPW filed a Motion To Dismiss Okokuro's claims based on Pennsylvania's Eleventh Amendment sovereign immunity.

## II. STANDARD OF REVIEW

The Eleventh Amendment states: "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. Const. amend. XI. Despite its plain

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<sup>1</sup> Okokuro actually filed a first Amended Complaint on May 2, 2000, which alleged retaliation. Okokuro then filed his second Amended Complaint on June 27, 2000, for which the court subsequently granted him leave. Accordingly, the Court will consider Okokuro's second Amended Complaint.

and seemingly limited language, however, the United States Supreme Court has interpreted the Eleventh Amendment as barring suits brought by citizens against their own states as well. Hans v. Louisiana, 134 U.S. 1, 10 (1890). Consequently, the Eleventh Amendment bars any action in federal court, irrespective of the citizenship of the complainant, when a "state is the real, substantial party at interest and any relief will effectively run against the state." Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 101 (1984).

A state's sovereign immunity, however, is not absolute. First, complainants may bring suit against state officials for prospective relief because, as the state is not a real party in interest, these suits technically do not implicate the Eleventh Amendment. Ex Parte Young, 209 U.S. 123, 159-60 (1908).

Moreover, if a state is indeed the real party in interest to a suit, the Supreme Court has recognized two exceptions to the states' Eleventh Amendment sovereign immunity. First, a state can voluntarily waive its immunity by consenting to the suit. Edelman v. Jordan, 415 U.S. 651, 664 (1974). Second, under limited circumstances, Congress can abrogate a state's Eleventh Amendment immunity. Seminole Tribe v. Florida, 517 U.S. 44, 55 (1996). A Court must dismiss any portion of a claim in which a state is a real party in interest and for which an exception to sovereign immunity does not exist.

### III. DISCUSSION

For any portion of Okokuro's claim to circumvent Pennsylvania's sovereign immunity, it must fall within a recognized exception to the Eleventh Amendment. It is well settled that Pennsylvania has not voluntarily consented to suit in federal court. 42 Pa. Cons. Stat. Ann. § 8512(b); Lavia v. Pennsylvania Dep't of Corrections, 224 F.3d 190, 195 (3d Cir. 2000). Therefore, the analysis turns on whether Pennsylvania is a real party in interest to this suit and, if so, whether Congress validly abrogated Pennsylvania's state sovereign immunity when it enacted Title VII. Okokuro's suit names the DPW and one of its officers, Don Jose Stovall, as Defendants. The Court will discuss each of these claims separately.

#### A. Okokuro's Claim Against Pennsylvania Officials

The Court finds that, to the extent that Okokuro seeks injunctive relief against Pennsylvania state officials, his claim should not be dismissed. The Eleventh Amendment bars suits against state officials in their official capacity when the state, rather than the official, is the real party in interest. Pennhurst, 465 U.S. at 101. This determination turns on whether a plaintiff seeks retroactive or prospective relief.<sup>2</sup> Will v.

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<sup>2</sup> DPW's reliance on Cory v. White, 457 U.S. 85 (1982) for the proposition that "the type of relief sought is irrelevant" is misplaced; the instant case involves not only a claim brought

Michigan Dep't of State Police, 491 U.S. 58, 71 (1989); Ex Parte Young, 209 U.S. at 166-68. Retroactive relief typically takes the form of money damages, which necessarily requires payment from government coffers. Ford Motor Co. v. Department of Treasury, 323 U.S. 459, 464 (1945). Because courts consider the state the real party in interest to these actions, the Eleventh Amendment bars them unless one of the two recognized exceptions to sovereign immunity will avail the complainant. Will, 491 U.S. at 71; DeMarco v. Department of Corrections, No. CIV. A. 99-2310, 1999 WL 997751, at \*2 (E.D. Pa. Nov. 2, 1999). Claims for prospective injunctive relief, however, merely compel a state officer's future compliance with federal law. Idaho v. Couer d'Alene Tribe, 521 U.S. 261, 281 (1997). Such a suit does not require action or payment by the state as an entity. Courts do not consider these suits to be brought against the state; therefore, the Eleventh Amendment does not bar them. Ex Parte Young, 209 U.S. at 159-60.

Okokuro makes out a claim for injunctive relief. The Court must liberally construe his pro se Amended Complaint. See, e.g., Urrutia v. Harrisburg County Police Dep't, 91 F.3d 451, 456 (3d Cir. 1996); Micklus v. Carlson, 632 F.2d 227, 236 (3d Cir. 1980).

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against Pennsylvania but also one against its officials. Although the relief sought from Pennsylvania may not matter, the relief sought from Pennsylvania's state officials greatly affects whether that portion of his suit will survive this Motion to Dismiss. Ex Parte Young, 209 U.S. at 159-60.

In essence, it seeks future compliance by a state officer with the mandates of Title VII. It names a Pennsylvania official, Don Jose Stovall, as an additional Defendant and clearly requests that the Court order the Defendants to "stop black balling" him. Am. Compl. ¶ 4. As DPW has not attacked the sufficiency of Okokuro's pleading but rather its appropriateness under the Eleventh Amendment, the Court accepts for the time being that Okokuro has set forth a claim for injunctive relief against Don Jose Stovall. Accordingly, this portion of his claim survives DPW's Motion to Dismiss. Okokuro cannot, however, seek monetary relief from state officials acting in their official capacity; this form of relief must come from the state itself.

B. Okokuro's Claim Against the Commonwealth of Pennsylvania

The remainder of Okokuro's claim seeks monetary rather than injunctive relief. As Pennsylvania is the real party in interest to this portion of Okokuro's claim, the Ex Parte Young exception will not save it. Accordingly, Okokuro's claim for monetary relief will only survive if Congress validly abrogated Pennsylvania's sovereign immunity when it enacted Title VII.

As a threshold matter, the Court finds that Okokuro bases his claim on Title VII. Okokuro's pro se Complaint did not specify under which statute he sought relief. Although the facts alleged in that Complaint would in and of themselves implicate

Title VII, Okokuro's own Response to DPW's Motion to Dismiss clearly invoked his right to relief under Title VII. See Plf.'s Resp. to Def.'s Mot. to Dismiss at 1. As DPW has not contended that Okokuro has failed to state a claim for relief under Title VII, the only question before the Court is whether the Eleventh Amendment bars a claim under Title VII for monetary damages against a state.

The United States Supreme Court has already resolved this issue. In Fitzpatrick v. Bitzer, 427 U.S. 445, 447-48 (1976), The Supreme Court stated that:

[I]n the 1972 Amendments to Title VII of the Civil Rights Act of 1964, Congress, acting under § 5 of the Fourteenth Amendment, authorized federal courts to award money damages in favor of a private individual against a state government found to have subjected that person to employment discrimination on the basis of "race, color, religion, sex, or national origin."

Id. at 447-48. The Court also stated that there was "no dispute" that, in extending the scope of Title VII to "States as employers, Congress exercised its power under § 5 of the Fourteenth Amendment." Id. at 453 n.9. Although Fitpatrick was decided long before the Supreme Court's recent willingness to scrutinize Congress' abrogation of the states' sovereign immunity,<sup>3</sup> that decision nevertheless directly controls the case

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<sup>3</sup> See, e.g., College Sav. Bank v. Florida Prepaid Postsecondary Educ. Expense Bd., 527 U.S. 666, 670 (1999); Florida Prepaid Postsecondary Educ. Expense Bd. v. College Sav. Bank, 527 U.S. 627 (1999); City of Boerne v. Flores, 521 U.S.

sub judice. Accordingly, the Court will not consider whether Title VII validly abrogates states' sovereign immunity under the Supreme Court's recent decisions.<sup>4</sup> The Court will not dismiss Okokuro's claim on sovereign immunity grounds.

Finally, DPW's Reply asks the Court to order Okokuro to file another amended complaint. The Court will not do so for two reasons. First, DPW's Reply seems to ask the Court to order Okokuro to provide it a more definitive statement of his claims. See Fed. R. Civ. P. 12(e). Federal Rule of Civil Procedure 12(g), however, requires that a party making a motion under Rule

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507, 519 (1997); Seminole Tribe, 517 U.S. at 55. The Supreme Court has established a two-part test for determining whether Congress has validly abrogated the states' sovereign immunity. That test considers whether Congress: (1) unequivocally expresses its intent to abrogate; and (2) acts pursuant to a valid exercise of power. Seminole Tribe, 517 U.S. at 55; Flores, 521 U.S. at 519. Congress' exercise of power is only valid if there is "a congruence and proportionality" between the injury remedied and the means chosen to remedy it, id. at 520, and Congress seeks to remedy only "constitutional violations" or acts that "have a significant likelihood of being unconstitutional." Id. at 532.

<sup>4</sup> This Court should not revisit issues already decided by the Supreme Court, even if the Supreme Court appears to have rejected or altered the rationale underlying the resolution of those issues. Agostini v. Felton, 521 U.S. 203, 237 (1989) (stating that federal courts should "follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions."); In re Employment Discrimination Litig., 198 F.3d 1305, 1317 (11th Cir. 1999) (citing Agostini in support of its decision not to decide whether Title VII validly abrogated state's sovereign immunity); see also Bazargani v. Haverford State Hospital, 90 F. Supp. 2d 643, 649 (E.D. Pa. 2000) (citing Fitpatrick with approval); Irizarry v. Commonwealth of Pennsylvania Dep't of Transportation, No. CIV. A. 98-6180, 1999 WL 269917, at \*3 (E.D. Pa. Apr. 19, 1999) (same).

12 must consolidate all other Rule 12 objections or defenses in the initial Rule 12 motion; failure to do so results in waiver of that defense or objection unless otherwise provided for in Federal Rule of Civil Procedure 12(h)(2). See Fed. R. Civ. P. 12(g). Rule 12(h)(2) permits that motions based on the failure to state a claim, failure to join an indispensable party and failure to state a legal defense can be made at essentially any time prior to judgment. Rule 12(h)(2) does not provide such leniency for motions for Rule 12(e) motions for a more definitive statement. As DPW filed its Motion to Dismiss pursuant to Rule 12(b)(1), it should have raised the vagueness of Okokuro's Amended Complaint at that time as well. Its failure to do so precludes it from making that objection now.

Second, the Court finds that Okokuro's Amended Complaint puts DPW on notice of the claims alleged against it, thereby satisfying Federal Rule of Civil Procedure 8(a). As set forth above, Okokuro seeks relief under Title VII. He has described many instances of alleged discrimination and, when known to him, the parties responsible. Accordingly, the Court will not order Okokuro to make a more definitive statement of his claims.

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**O R D E R**

**AND NOW**, this                    day of October, 2000, in consideration of the Motion to Dismiss for Lack of Subject Matter Jurisdiction filed by the Defendant, Commonwealth of Pennsylvania, Department of Public Welfare (Doc. No. 8), the pro se Response filed by the Plaintiff, Anthony D. Okokuro, and the Reply thereto filed by the Defendant, it is ORDERED that the Motion to Dismiss is DENIED.

BY THE COURT:

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JAMES MCGIRR KELLY, J.