

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

RONALD B. WESLEY : CIVIL ACTION
 :
v. :
 :
 :
DONALD T. VAUGHN, et al. : No. 99-1228
 : No. 99-1229

MEMORANDUM ORDER

J. M. Kelly, J.

JULY 10, 2001

Presently before the Court are the Motions for Clarification, to Dismiss and for Summary Judgment filed by the Defendants, Defendants Donald T. Vaughn ("Vaughn"), William D. Conrad ("Conrad"), Tyrone Reddick ("Reddick"), Eric Thompson ("Thompson"), James Yankura ("Yankura"), Robert Cavalari ("Cavalari") and Richard Eldridge ("Eldridge") (collectively referred to as the "Defendants"). In this case, the Plaintiff, Ronald B. Wesley ("Wesley"), sued the Defendants for various violations of federal law. The Defendants recently filed the instant Motions. Wesley, who is currently proceeding pro se,¹ did not respond to them. For the following reasons, the Motion for Clarification will be granted, while the Motions to Dismiss and for Summary Judgment will be denied.

The Defendants' Motion for Clarification asks the Court to

¹ Wesley has had at least two court appointed attorneys that have represented him at different stages of this case, but for various reasons became dissatisfied with their legal assistance. Although the Court directed the Clerk of Court on June 5, 2001, to find another attorney to represent Wesley, those efforts have not yet been fruitful.

amend its Order of March 22, 2001. Specifically, the Defendants ask the Court to amend its statement that Wesley's "claim under 42 U.S.C. § 1983 for violations of the ADA remain intact." The Defendants correctly note that, while Wesley's ADA claims remain intact, the Court's Order of February 28, 2001 found that Wesley's claims under § 1983 for violations of the ADA did not survive the Defendants' Renewed Motion for Summary Judgment. The Court will therefore amend its Order of March 22, 2001, to correctly reflect its Order of February 28, 2001.

The Defendants' Motions to Dismiss and for Summary Judgment, however, will be denied. These Motions are merely photostatic copies of motions previously filed with and ruled on by this Court. On June 7, 2001, the Defendants filed a Motion to Dismiss, document number 51, which was an exact photostatic reproduction of a motion to dismiss that they filed on August 6, 1999. The Court ruled on that original motion on November 18, 1999. Also on June 7, 2001, the Defendants filed a Motion for Summary Judgment, document number 53, which is an exact reproduction of a motion for summary judgment that the Defendants had filed on April 10, 2000. The Court ruled on that original motion on May 3, 2000.²

At best, the Defendants filed these new Motions

² Interestingly, the Defendants did not file a copy of their more recent Renewed Motion for Summary Judgment, which they filed on August 1, 2000.

accidentally. At worst, they filed them in order to take advantage of an unsophisticated pro se opponent and to gain a second bite at the apple in the hopes that the Court did not recognize that these Motions had been filed once before. If such were the case, the Defendants would run afoul of the law of the case doctrine and would subject themselves, and their counsel, to possible sanctions pursuant to Federal Rule of Civil Procedure 11. The Court will, however, give the Defendants the benefit of the doubt in this first instance, and treat these Motions simply as motions for reconsideration.

Federal Rule of Civil Procedure 59(e) and Local Civil Rule 7.1(g) of the United States District Court for the Eastern District of Pennsylvania allow parties to file motions for reconsideration or amendment of a judgment. Fed. R. Civ. P. 59(e); E.D. Pa. R. Civ. P. 7.1(g). Courts should grant these motions sparingly, however, reserving them for instances when: (1) there has been an intervening change in controlling law; (2) new evidence has become available; or (3) there is a need to prevent manifest injustice or correct a clear error of law or fact. See, e.g., General Instrument Corp. v. Nu-Tek Electronics, 3 F. Supp. 2d 602, 606 (E.D. Pa. 1998), aff'd, 197 F.3d 83 (3d Cir. 1999); Environ Prods., Inc. v. Total Containment, Inc., 951 F. Supp. 57, 62 n.1 (E.D. Pa. 1996). Mere dissatisfaction with the Court's ruling is not a proper basis for reconsideration.

Burger King Corp. v. New England Hood and Duct Cleaning Co., No. 98-3610, 2000 WL 133756 at *2 (E.D. Pa. Feb. 4, 2000).

In the instant case, because the new Motions to Dismiss and for Summary Judgment are simply reproductions of earlier motions, they do not identify a change in controlling law, the discovery of new evidence, or the presence of a manifest error of law or fact in the Court's disposition of the originally filed motions. Nor do they present any other reason why the Court should alter its disposition of those earlier motions. Accordingly, they could only have been filed because of the Defendants' dissatisfaction with the Court's previous rulings. These Motions will therefore be denied.³

Accordingly, it is **ORDERED** that:

1. The Defendants' Motion for Clarification (Doc. No. 40) is **GRANTED**. The third full sentence of the second page of the Court's Order of March 22, 2001, shall be **AMENDED** to read:
"Although many of Wesley's claims did not survive the Defendants' Motion to Dismiss and Motion for Summary

³ In the alternative, these Motions could be dismissed because their certificates of service are also photostatic reproductions of the earlier certificates of service, which violates both the Federal and Local Rules of Civil Procedure. See Fed. R. Civ. P. 5(d) ("All papers after the complaint required to be served upon a party, together with a certificate of service, must be filed with the court. . . ."); E.D. Pa. R. Civ. P. 7.1(d) ("Every motion not certified as uncontested shall be accompanied by a written statement as to the date and manner of service of the motion and supporting brief.").

Judgment, his claim for injunctive relief under the ADA remains intact."

2. The Defendants' Motion to Dismiss (Doc. No. 51) is **DENIED**.
3. The Defendants' Motion for Summary Judgment (Doc. No. 53) is **DENIED**.

BY THE COURT:

JAMES MCGIRR KELLY, J.