

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

RONALD ZAPPAN, : CIVIL ACTION  
Plaintiff :  
 :  
v. :  
 :  
PENNSYLVANIA BOARD OF :  
PROBATION AND PAROLE, :  
WILLIAM WARD, **JAMES** ROBINSON :  
GARY SCICCHITANO, EDWARD :  
JONES, and VERONICA THOMAS :  
Defendants : NO 00-1409

MEMORANDUM AND ORDER

McLaughlin, J.

June 30, 2003

The plaintiff, Ronald Zappan, brought suit against the Pennsylvania Board of Probation and Parole ("the Board"), William Ward, James Robinson, Gary Scicchitano, Edward Jones, and Veronica Thomas ("the individual defendants") for alleged violations of Title VII, 42 U.S.C. § 2000e, et seq. ("Title VII"), the Age Discrimination in Employment Act, 29 U.S.C. § 621, et seq., and the Pennsylvania Human Rights Act, 43 Pa. Cons. Stat. Ann. § 955 ("PHRA"). The plaintiff also sued the defendants under 42 U.S.C. § 1983 for alleged violations of his constitutional rights.

Pending before the Court is the plaintiff's request to schedule a trial on the claims against Ms. Thomas. This request is contained in the plaintiff's memorandum of law **filed** on May 5, 2003. The Court will deny the request.

In considering the plaintiff's request, the Court has reviewed the record to determine whether there is any reason to believe that Ms. Thomas is aware of the plaintiff's suit. The evidence relevant to this inquiry is as follows.

On March 29, 2000, the summons and complaint were served on Ms. Thomas at the Board's office. The summons and complaint were left with the secretary for Mr. Jones. On April 3, 2000, the return *of* service form for Ms. Thomas was filed.

On April 20, 2000, Susan M. Zeamer, the Board's in house counsel, moved for an extension of time to respond to the plaintiff's complaint. The motion was made on behalf of all the defendants.

Between April 20, 2000 and August 24, 2001, Ms. Zeamer, Randall J. Henzes, and Linda J. Laub acted as counsel for all the defendants. The activities of the three defense attorneys during this time included filing a motion to dismiss the plaintiff's complaint and a motion *to* dismiss the plaintiff's amended complaint.

On August 24, 2001, a substitution of attorney was filed on behalf of all the defendants pursuant to Local Rule 5.1(c). Gino J. Benedetti was substituted as counsel for all of the defendants in place of **Mr.** Henzes, **Ms.** Zeamer, **and** Ms. Laub.

At an in court hearing on October 2, 2001, counsel for the parties agreed to dismiss certain counts of the plaintiff's

amended complaint. Based on the parties' agreement, the Court dismissed many of the plaintiff's claims, including claims against Ms. Thomas, in an October 2, 2001 Order. The remaining claims were against: (1) the Board for violating Title VII and (2) the individual defendants in their individual capacities for violating the PHRA and the plaintiff's procedural due process, substantive due process, equal protection, and First Amendment rights.

On January 11, 2002, Mr. Benedetti filed a motion to withdraw as counsel for Ms. Thomas. In support of the motion, Mr. Benedetti attached letters that he and Ms. Laub sent to Ms. Thomas advising her of the lawsuit and asking her whether she wanted the Board to provide her with legal representation. Letters were sent by Ms. Laub to Ms. Thomas via express and certified mail on May 18, 2000, May 11, 2001, June 15, 2001, and July 3, 2001. The May 18, 2000 and May 11, 2001 letters stated that Ms. Thomas was entitled to free legal representation as a former state employee. Mr. Benedetti sent Ms. Thomas a letter on September 11, 2001 stating that he had been retained to represent all the defendants including Ms. Thomas. The letter also advised Ms. Thomas that Mr. Benedetti would withdraw as counsel if he did not hear from Ms. Thomas within the next two weeks. Ms. Laub's and Mr. Benedetti's letters to Ms. Thomas were all sent to 155 Highgate Avenue; Buffalo, NY 14214. This was the last address

that the Board had for Ms. Thomas. Post office receipts for the May 11, 2001, June 15, 2001, and September 11, 2001 letters show that the letters were returned to the senders as unclaimed.

The plaintiff did not contest Mr. Benedetti's motion to withdraw. The Court granted the motion as unopposed on February 1, 2002.

Pretrial proceedings continued. All of the defendants except for Ms. Thomas moved for summary judgment. The Court granted the motion and asked the plaintiff to inform the Court how he intended to proceed with respect to Ms. Thomas.

The plaintiff informed the Court that he wanted to proceed against Ms. Thomas by a letter dated December 17, 2002. In an Order dated February 7, 2003, the Court asked the plaintiff: (1) to explain whether Ms. Thomas was served properly under Federal Rule of Civil Procedure 4 and (2) to inform the Court whether he intended to serve Ms. Thomas again in accordance with the requirements of Federal **Rule** of Civil Procedure 4.

Counsel for the plaintiffs and Mr. Benedetti both filed briefs in response to the Court's February 7, 2003 Order. The plaintiff argued that Ms. Thomas was properly served because the summons and complaint were left for her at what was believed to be her usual place of business.

The Court held a telephone call on March 7, 2003 with counsel for the plaintiff and with Kathleen O'Connell, an

attorney working with Mr. Benedetti on this case. During the telephone conference, Ms. O'Connell stated that her understanding of the facts was that Ms. Thomas was not an employee of the Board at the time service was made on her at the Board's office. The Board's in house counsel entered an appearance for Ms. Thomas believing that it would be able to later confirm that Ms. Thomas wanted the Board to provide legal representation for her. After repeated attempts, neither in house counsel nor **Mr.** Benedetti was able to contact Ms. Thomas.

From the evidence before the Court, it appears that Ms. Thomas has no knowledge of the plaintiff's lawsuit and never ratified legal representation by any of the defense attorneys. On March 29, 2000, a copy of the summons and complaint was left **at** the Board's office for Ms. Thomas. Ms. Laub's letter to **Ms.** . Thomas on **May 18**, 2000, less than two months after the plaintiff served her, identified Ms. Thomas as a former employee of the Board. Ms. O'Connell's representations during the March 7, 2003 telephone conference support the conclusion that **Ms.** Thomas was a former employee when the plaintiff served her and that Ms. Thomas never ratified any legal representation. The series of letters sent by **Ms.** Laub and Mr. Benedetti without a response are further evidence that **Ms.** Thomas is unaware of the suit.

The Court will not enter a default judgment against **Ms.** Thomas based on a record devoid **of** evidence that Ms. Thomas was

properly served or that she has knowledge of the plaintiff's suit. A default judgment entered when there has not **been** proper service of the complaint is void. Gold Kist, Inc. v. Laurinburg Oil Co., 756 F.2d 14, 19 (3d Cir. 1985); see Fed. R. Civ. P. 60(b) (4). The plaintiff has not come forward with any evidence that: (1) Ms. Thomas was a Board employee on March 29, 2000 when the summons and complaint were left at the Board's office; (2) the Board or counsel for the Board was authorized to accept service on behalf of Ms. Thomas; (3) Ms. Thomas ever ratified any legal representation in this case; or (4) Ms. Thomas has any knowledge of the plaintiff's suit. At this point, it does not make sense to schedule a trial date.

An appropriate order follows.

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WILLIAM WARD, JAMES ROBINSON  
GARY SCICCHITANO, EDWARD  
JONES, and VERONICA THOMAS,

Defendants

NO. 00<sup>-1409</sup>

ORDER

AND NOW, this 30<sup>th</sup> day of June, 2003, upon

consideration of the plaintiff's Memorandum of Law Regarding  
Issues Discussed on March 7, 2003 (Docket No. 84), IT IS HEREBY  
ORDERED that the plaintiff's request for the Court to schedule a  
trial on **the** claims against Ms. Thomas is DENIED for the reasons  
set forth in a memorandum of today's date.

BY THE COURT:

*M. McLaughlin*  
MARY A. MCLAUGHLIN, J.

*6/30/03 filed by R. Surayman  
D. DeCicco  
Mailed to: S. Zager  
L. Jacob  
R. Herges*