

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

AMITHA NANAYAKKARA : CIVIL ACTION
 :
 v. :
 :
 EDWARD KRUG, et al. : NO. 95-CV-6418

MEMORANDUM ORDER

J. M. KELLY, J.

December , 1997

Presently before the Court is Defendants' Motion for Dismissal Pursuant to the Prison Litigation Reform Act. 42 U.S.C. § 1997e(e) ("PLRA").

Plaintiff Amitha Nanayakkara ("Nanayakkara") claims that he was transferred from a halfway house to a prison in retaliation for exercising his First Amendment right to testify at a state senate hearing on prison conditions. Nanayakkara is seeking damages for economic losses and emotional distress. Defendants' motion to dismiss is based on a provision of the PLRA that states: "[n]o Federal civil action may be brought by a prisoner . . . for mental or emotional injury suffered while in custody without a prior showing of physical injury." 42 U.S.C. § 1997e(e). For the following reasons, Defendants' motion is denied.

Section 1997e(e) does not apply to this case. Nanayakkara filed his complaint prior to enactment of the PLRA. The Supreme Court has set out guidelines for determining whether a statutory provision applies to pending cases:

the court's first task is to determine whether Congress has expressly prescribed the statute's proper reach. . . . If Congress has done so, of course, there is no need to resort to judicial default rules. When, however, the statute contains no such express command, the court must determine whether the new statute would have retroactive effect, i.e., whether it would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed. If the statute would operate retroactively, our traditional presumption teaches that it does not govern absent clear congressional intent favoring such a result.

Landgraf v. USI Film Prods., 551 U.S. 244, 280 (1994).

Congress did not prescribe the temporal reach of the PLRA. Under the judicial default rules, § 1997e(e) does not apply to this case because it impairs a substantive right. When Nannayakarra filed his complaint, he was entitled to seek damages for mental or emotional injury without alleging physical injury. Application of § 1997e(e) in this case would eliminate a claim that was legally cognizable when brought and "extinguish liability for conduct giving rise to liability at the time it occurred." Thomas v. Hill, 963 F. Supp. 753, 758 (N.D. Ind. 1997). Therefore, § 1997e(e) does not apply to cases filed before its enactment. Id.; Harris v. Lord, 957 F. Supp. 471, 474 (S.D.N.Y. 1997); Ramirez v. City and County of San Francisco, No. C89-4528, 1997 WL 33013, at *8 (N.D. Cal. Jan. 23, 1997).

The only case cited by the Defendants that discusses the effect of § 1997e(e) on pending cases is Craig v. Eberly, No. 95-M-368 (D. Colo. June 29, 1997), appeal pending, No. 97-1308 (10th Cir.). In Craig, the court dismissed a claim for mental

and emotional injuries filed by a prisoner prior to the enactment of the PLRA. Craig, slip op. at 2. After discussing the standards set out in Landgraf, the court held that application of § 1997e(e) to a pending case did not impair substantive rights. Id. The court reasoned that denial of the right to collect compensatory damages for mental or emotional injuries was not a denial of the substantive constitutional right to liberty or to be free from cruel and unusual punishment. Id.

I am not persuaded by the court's reasoning in Craig. The court limits the concept of "substantive" rights to rights specifically enumerated in the Constitution. Further, the court takes its standards from Landgraf, and then holds that § 1997e(e)'s limitation of the right to recover compensatory damages is a procedural change that applies to pending cases. Craig, slip op. at 2-3. Landgraf held, however, that a statutory provision providing for recovery of compensatory damages was a substantive change in the law that did not apply to pending cases. Landgraf, 511 U.S. at 282-83. Section 1997e(e) impairs the substantive right to recover damages for emotional injuries. Therefore, consistent with Landgraf, § 1997e(e) does not apply to cases filed before its enactment.

Further, even if § 1997e(e) applied to cases pending at its enactment, it would not require dismissal of this case. Nannayakarra held a job when he resided in the halfway house and he alleges that he sustained economic damage as a result of his transfer to prison. Nannayakarra's claim is not solely for

emotional harm, he seeks compensatory and punitive damages for his lost wages and benefits. See Barnes v. Ramos, No. 94 C 7541, 1996 WL 599637, at *1 (N.D. Ill. 1996).

Therefore, upon consideration of the Defendant's motion and the responses thereto, it is ORDERED that Defendants' Motion for Dismissal pursuant to the Prison Litigation Reform Act is DENIED.

BY THE COURT:

JAMES MCGIRR KELLY, J.