

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

JOHN CALVIN OATES : CIVIL ACTION
 :
 v. :
 :
 CITY OF PHILADELPHIA : NO. 97-3670

MEMORANDUM and ORDER

Norma L. Shapiro, J.

February 4, 1998

Plaintiff John Calvin Oates ("Oates"), proceeding pro se, claims the Philadelphia Civil Service Commission (the "Civil Service Commission") discriminated and retaliated against him in violation of the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq., and violated the Civil Rights Acts, 42 U.S.C. §§ 1983 and 1985; he filed the present action against the City of Philadelphia (the "City").¹ Seven days after the City answered Oates' Third Amended Complaint and before any discovery, Oates filed a motion for partial summary judgment on three of the five counts in his Third Amended Complaint. The City filed a cross-motion for summary judgment on all counts. Oates' motion for summary judgment will be denied and the City's cross-motion for summary judgment will be granted.

¹ On various pleadings filed throughout the course of this action, Oates has alternated between naming the defendant as the City of Philadelphia and the City of Philadelphia Civil Service Commission. Because the standards for liability are the same for a municipality and a municipal entity, the difference is immaterial. See Fenton v. City of Phila., No. 86-3529, 1986 WL 10560, at *1 (E.D. Pa. Sept. 22, 1986), aff'd, 862 F.2d 307 (3d Cir. 1988).

BACKGROUND

Oates was hired by the City of Philadelphia Water Department (the "Water Department") on September 21, 1992, as a waste water treatment operator. (3d Am. Cmpl't. ¶ 5). At the Water Department, Oates was supervised by Major Alston ("Alston") and Robert Overton ("Overton"). See id. at ¶ 6.

The working relationship between Oates, Alston and Overton was less than cordial. Oates alleges Alston referred to him over the public address system as "Happy 'D' clown." Id. at ¶ 18. Alston allegedly discovered Oates sleeping on a bathroom floor during working hours. See Memo from Major Alston to Jim Downs, attached as Ex. J to Def.'s Mem. Supp. Summ. J. ["Alston Memo"]. Oates was reprimanded for his behavior.

On March 23, 1995, Oates was admitted to John F. Kennedy Memorial Hospital for detoxification and was discharged on March 28, 1995. See Note from John F. Kennedy Memorial Hosp., attached as Ex. B to Defs.' Mem. Supp. Summ. J. ["Hosp. Note"].² Oates was evaluated the day of discharge by the City of Philadelphia's Medical Evaluation Unit to determine if he was fit to return to work. See Civil Service Reg. 9.1411, attached as Ex. C to Defs.' Mem. Supp. Summ. J. ["Regulation 9.1411"]. That same day, Oates

² The note states: "John Oates was admitted to our hospital on 3/23/95. His anticipated day of discharge is 2/28/95." Presumably the hospital meant March 28, 1995. (3d Am. Cmpl't. ¶ 37).

asked Jim Downs ("Downs"), an operations supervisor at the Water Department, for a leave of absence to enter a twenty-eight day drug rehabilitation program. See id. at ¶ 38.

Sometime in early April, 1995, prior to being cleared to return to work, Oates traveled to Florida to visit his father. (3d Am. Cmplt. ¶ 41). Oates called his supervisor on April 5, 1995, to inform him he was in Florida. See id. at ¶ 42. On April 10, 1995, Oates sent the Water Department a facsimile transmission requesting a thirty-day leave of absence to remain in Florida with his sick father. See id. at ¶ 44; Fax from Oates, attached as Ex. D to Defs.' Mem. Supp. Summ. J. ["Oates Fax"]. On April 12, 1995, the Water Department denied his leave request and terminated him. See Termination Letter, attached as Ex. E to Defs.' Mem. Supp. Summ. J. ["Termination Letter"].

On May 1, 1995, Oates appealed his leave denial and termination to the Civil Service Commission under Civil Service Regulation 22 ("Regulation 22"), relating to leave of absence. See Civil Service Appeal, attached as Ex. F to Defs.' Mem. Supp. Summ. J. ["Civil Service Appeal"]; Regulation 22, attached as Ex. G to Defs.' Mem. Supp. Summ. J. Commissioners Nicholas DiPiero ("DiPiero") and Joseph Fisher ("Fisher") held a hearing on Oates' appeal. See Civil Service Commission Transcript, attached as Ex. H to Defs.' Mem. Supp. Summ. J. ["Transcript"]; Aff. of Nicholas DiPiero ¶ 9, attached as Ex. O to Defs.' Mem. Supp. Summ. J.

["DiPiero Aff."]; Aff. of Joseph Fisher ¶ 9, attached as Ex. P to Defs.' Mem. Supp. Summ. J. ["Fisher Aff."]. Oates was represented by counsel. See Transcript at 2. On March 4, 1996, the Civil Service Commission denied Oates' appeal by written opinion. See Civil Service Opinion, attached as Ex. K to Defs.' Mem. Supp. Summ. J.

In August, 1995, Oates had filed a charge with the Pennsylvania Human Relations Commission ("PHRC"). See PHRC Complaint No. E-75130D, attached as Ex. S to Def.'s Mem. Supp. Summ. J. ["PHRC Complaint No. E-75130D"]. Oates alleged Alston sexually harassed him and discriminated against him when Oates spurned his sexual advances.

On April 17, 1996, Oates filed a second PHRC charge alleging the Civil Service Commission retaliated against him for filing discrimination charges by upholding his termination. See PHRC Complaint No. E-77924D, attached as Ex. T to Def.'s Mem. Supp. Summ. J. ["PHRC Complaint No. E-77924D"].

Oates filed an action against the City in September, 1996. See Oates v. City of Phila., No. 96-5915 (E.D. Pa.). Oates, represented by counsel, alleged the City violated the Family and Medical Leave Act ("FMLA"), 29 U.S.C. § 2601 et seq., by denying him leave to take care of his father, failing to maintain and restore his employment benefits after he returned from Florida, failing to notify him of his FMLA rights and interfering with his

FMLA rights.³

In May, 1997, Oates filed the present action alleging the Civil Service Commission violated the FMLA by upholding his termination by the Water Department. There are five counts in his Third Amended Complaint: 1) violation of 42 U.S.C. § 1983 for failure to comply with the FMLA and accompanying regulations; 2) conspiracy under 42 U.S.C. § 1985 among Downs, Alston, DiPiero, Fisher, Debi McCarty ("McCarty") (a Water Department manager) and John Cho ("Cho") (a law clerk representing the Water Department at Oates' Civil Service Commission proceeding) to disclose confidential patient records in violation of 42 U.S.C. § 290ee-3; 3) obstruction of justice under 42 U.S.C. § 1985; 4) discrimination under the ADA for refusing to grant Oates a leave of absence to pursue drug treatment; and 5) retaliation under the ADA for filing the discrimination charge with the PHRC.⁴

³ In the past year and a half, Oates has filed the following eight lawsuits, many of which appear to arise out of the same set of facts: Oates v. Overton, No. 97-4490 (E.D. Pa.); Oates v. DiPiero, No. 97-4489 (E.D. Pa.); Oates v. Alston, No. 97-3805 (E.D. Pa.); Oates v. City of Phila., No. 97-3670 (E.D. Pa.); Oates v. Pennsylvania, No. 97-2899 (E.D. Pa.); Oates v. Episcopal Hosp., No. 97-1221 (E.D. Pa.); Oates v. City of Phila., No. 97-1220 (E.D. Pa.); and Oates v. City of Phila., No. 96-5915 (E.D. Pa.). Aside from the present action, all other actions have been settled or dismissed. This court recently granted summary judgment against Oates in Civil Action No. 97-4489, an action against the Civil Service Commissioners who issued the decision out of which this cause of action arises. See Oates v. DiPiero, No. 97-4489, 1997 WL 792904 (E.D. Pa. Dec. 23, 1997).

⁴ Oates does not affirmatively label the retaliation claim as Count Five, but he has set it apart from the other four counts

Oates and the City settled Civil Action No. 96-5915 in June, 1997 for \$78,149.70; Oates signed a release discharging the City of liability in any future actions Oates might file against the City related to his termination and denial of leave. See Settlement Agreement, attached as Ex. R to Def.'s Mem. Supp. Summ. J. [the "Agreement"].

Oates filed a motion for partial summary judgment in this action on Counts One, Two and Four. Oates subsequently limited his motion for partial summary judgment to Counts One and Four. See Pltff.'s 3d Mem. Supp. Summ. J. at 1. The City cross-moved for summary judgment on all claims.

DISCUSSION

I. Standard of Review

Summary judgment may be granted only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A defendant moving for summary judgment bears the initial burden of demonstrating there are no facts supporting the plaintiff's claim; then the plaintiff must introduce specific, affirmative evidence there is a genuine issue for trial. See

in his Third Amended Complaint, so the court will refer to it as Count Five for convenience.

Celotex Corp. v. Catrett, 477 U.S. 317, 322-324 (1986). "When a motion for summary judgment is made and supported as provided in [Rule 56], an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in [Rule 56], must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e).

The court must draw all justifiable inferences in the non-movant's favor. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). A genuine issue of material fact exists only when "the evidence is such that a reasonable jury could return a verdict for the non-moving party." Id. at 248. The non-movant must present sufficient evidence to establish each element of its case for which it will bear the burden at trial. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 585-86 (1986).

II. Claims under § 1985

Counts Two and Three allege conspiracy and obstruction of justice under § 1985. Oates subsequently admitted that "a claim under 42 U.S.C. [§] 1985 is improper." Pltff.'s 3d Mem. Supp. Summ. J. at 1. Therefore, the City's motion for summary judgment on Counts Two and Three of Oates' Third Amended Complaint will be granted.

III. Retaliation

Oates based Count Five of his Third Amended Complaint on alleged retaliation by Alston and Overton after Oates filed a discrimination charge with the PHRC.

Oates previously filed actions against both Alston and Overton based on his termination and their alleged discrimination. Those actions were dismissed with prejudice. See Oates v. Overton, No. 97-4490 (E.D. Pa. Sept. 19, 1997); Oates v. Alston, No. 97-3805 (E.D. Pa. Sept. 17, 1997). Those dispositions are final and binding. "[A] final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." Allen v. McCurry, 449 U.S. 90, 94 (1980); see Rider v. Pennsylvania, 850 F.2d 982, 988 (3d Cir.), cert. denied, 488 U.S. 933 (1988).

In addition, Alston and Overton are not defendants in this action and there is no individual liability under the ADA. See Waring v. City of Phila., No. 96-1805, 1996 WL 208348, at *2 (E.D. Pa. Apr. 26, 1996); Clarke v. Whitney, 907 F. Supp. 893, 895 (E.D. Pa. 1995); see also Sheridan v. E.I. DuPont de Nemours & Co., 100 F.3d 1061, 1078 (3d Cir. 1996) (en banc) (no individual liability under Title VII), cert. denied, 117 S. Ct. 2532 (1997).

Interpreting Oates' pro se pleadings liberally, see, e.g., Haines v. Kerner, 404 U.S. 519, 520 (1972); Micklus v. Carlson,

632 F.2d 227, 235 (3d Cir. 1980), the court assumes Oates is claiming the City is liable under the ADA as their employer. See 42 U.S.C. §§ 12111(2), 12112(a). In Civil Action No. 96-5915, Oates, represented by counsel, alleged the City violated the FMLA by denying him leave to take care of his father, terminating him, failing to maintain and restore his employment benefits after he returned from Florida, failing to notify Oates of his rights under the FMLA and interfering with his rights under the FMLA. See No. 96-5915 Am. Cmplt., attached as Ex. L to Def.'s Mem. Supp. Summ. J. ["No. 96-5915 Am. Cmplt."]. In June, 1997, Oates settled that action with the City. Included in the Agreement was the following language:

John Calvin Oates irrevocably and unconditionally releases and forever discharges the defendant [the City] and each of its agents, directors, officers, employees, representatives, attorneys and affiliates, and their predecessors, successors and heirs, executors, administrators and assigns and all persons acting by, through or in concert with any of them, of and from any and all allegations, causes of action, suits, charges, complaints, claims, liabilities, obligations, and controversies, related to the claims set forth in the complaint in this action, except for the claims he has pending before the Pennsylvania Human Relations Commission at Docket Nos. E-75130D, E-77924D, and in federal court, Civil Action No. 97-CV-1220.

Agreement ¶ 3.

Oates' present action, alleging the Civil Service Commission and the City violated his rights under the ADA by refusing to grant him leave to care for his ill father or to seek drug treatment and then terminating him for his absence, arises from

the same nucleus of operative facts as did Civil Action No. 96-5915. The Agreement stated Oates' former action arose out of "the circumstances leading to the termination of Mr. Oates' employment with the Philadelphia Water Department in April of 1995." Agreement at 1. While the former action was premised on violations of the FMLA, Oates could have raised additional claims in that action, including an ADA claim, arising out of the circumstances surrounding the denial of leave and his termination.

The Agreement, a contract between Oates and the City, is governed by Pennsylvania law; its effect is determined by the language of the Agreement. See Wolbach v. Fay, 412 A.2d 487, 488 (Pa. 1980). "However improvident their agreement may be or subsequently prove for either party, their agreement, absent fraud, accident or mutual mistake, is the law of their case." Buttermore v. Aliquippa Hosp., 561 A.2d 733, 735 (Pa. 1989). As the Pennsylvania Supreme Court stated in Emery v. Mackiewicz, 240 A.2d 68 (Pa. 1968):

If such a release can be nullified or circumvented, then every written release and every written contract or agreement of any kind, no matter how clear and pertinent and all-inclusive, can be set aside whenever one of the parties has a change of mind or whenever there subsequently occurs a change of circumstances which were unforeseen, or there were after-discovered injuries, or the magnitude of a releasor's injuries was unexpectedly increased, or plaintiff made an inadequate settlement. It would make a mockery of the English language and of the Law to permit this release to be circumvented or held to be nugatory.

Id. at 70.

The Agreement clearly precludes Oates from subsequently making claims against the City arising out of his denial of leave and termination. When Oates released the City and all its agents from liability arising out of those events, he waived any right to proceed under the ADA. Summary judgment will be granted on Count Five.⁵

IV. Other Claims

Count One, alleging the City violated § 1983 by failing to adhere to the requirements of the FMLA and related regulations, and Count Four, alleging the city discriminated under the ADA by terminating Oates, both arise out of the same facts resolved by the settlement of Civil Action No. 96-5915. For the reasons stated above, the Agreement is binding on Oates and precludes him from raising these claims. Summary judgment will be granted on Counts One and Four.⁶

An appropriate Order follows.

⁵ The exceptions listed in the Agreement do not apply. First, this is not Civil Action No. 97-1220. Second, Oates filed the present action before he signed the Agreement, at a time when both PHRC charges were also pending; this action does not arise out of the PHRC actions.

⁶ Because the court is granting summary judgment in favor of the City under the terms of the Agreement, it need not address defendant's other arguments.

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

JOHN CALVIN OATES : CIVIL ACTION
 :
 v. :
 :
 CITY OF PHILADELPHIA : NO. 97-3670

ORDER

AND NOW, this 4th day of February, 1998, upon consideration of plaintiff John Calvin Oates' ("Oates") motion for partial summary judgment, Oates' third memorandum of law in support of partial summary judgment, defendant City of Philadelphia's (the "City") response thereto and motion for summary judgment, Oates' opposition to the City's motion for summary judgment, the City's sur reply to Oates' opposition to the City's motion for summary judgment, Oates response to the City's sur reply, and in accordance with the attached Memorandum, it is hereby **ORDERED** that:

1. Oates' motion for partial summary judgment is **DENIED**.
2. The City's motion for summary judgment is **GRANTED**. Judgment is **ENTERED** in favor of the City and against Oates.

Norma L. Shapiro, J.