

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

JAMES W. SMITH : CIVIL ACTION
: :
v. : :
: :
CITY OF PHILADELPHIA, et al. : NO. 98-CV-3338

M E M O R A N D U M

Ludwig, J.

November 9, 1998

Defendants City of Philadelphia, Philadelphia Prison System, Thomas J. Costello, Elsa Legesse, Arthur J. Blackmon, and Helen C. Vesey move to dismiss the complaint for failure to state a claim. Fed. R. Civ. P. 12(b)(6).¹ Jurisdiction is federal question and supplemental. 28 U.S.C. §§ 1332, 1367.

This is a Title VII and § 1983 action. Plaintiff James W. Smith, an African-American who is a correctional officer in the Philadelphia Prison System, is suing for race discrimination and deprivation of his First Amendment rights. Compl. ¶¶ 45, 46. State tort claims are also alleged. Id. ¶¶ 45-57. Defendants are the City, the prison system, and four individual defendants. According to the complaint, plaintiff's injuries consisted of repeated and unpunished racially derogatory remarks and a retaliatory transfer to an undesirable position in the prison

¹ Under Rule 12(b)(6), the allegations of the complaint are accepted as true, all reasonable inferences are drawn in the light most favorable to the plaintiff, and dismissal is appropriate only if it appears that plaintiff could prove no set of facts that would entitle her to relief. See Weiner v. Quaker Oats Co., 129 F.3d 310, 315 (3d Cir. 1997).

system.² The state claims are intentional and negligent infliction of emotional distress, defamation, and false light.

Defendants' motion to dismiss will be granted in part and denied in part, as follows:

1. Violation of Title VII - Granted as to the individual defendants. Individuals cannot be held liable under Title VII, 42 U.S.C. § 2000e et seq. (1994). See Sheridan v. E.I. DuPont de Nemours and Co., 100 F.3d 1061, 1078 (3d Cir. 1996). Denied as to the City. The complaint alleges a "systematic pattern and practice of allowing a racially hostile atmosphere." Compl., ¶ 23. See generally Andrews v. City of Phila., 895 F.2d 1469, 1487 (3d Cir. 1990) (listing the elements of a hostile work environment claim).

2. § 1983 violation - Denied. A policy or custom of retaliating against prison system employees who exercise their First Amendment rights is alleged. Compl. ¶ 46. Protesting racial "discrimination, when practiced by those exercising authority in the name of a public official, is . . . a matter of public concern" and entitled to First Amendment protection. Azzaro v. County of Allegheny, 110 F.3d 968, 978 (3d Cir. 1997). Read in the light most favorable to plaintiff, the alleged retaliation

²As the basis for the § 1983 claim, plaintiff maintains that defendants "took adverse action, pursuant to governmental policy, practice and/or custom, against the plaintiff for retaliation for his exercise of his First Amendment rights." Compl., ¶ 46.

could be "relevant to the electorate's evaluation of the performance of an elected official." Id.

Moreover, contrary to defendant's motion, the complaint does not lack adequate specificity. It sets forth specific dates, names, and details of plaintiff's claim.³

3. Intentional infliction of emotional distress - Denied without prejudice to re-assertion. This workplace claim is disfavored. See Matczak v. Frankford Candy & Chocolate Co., 136 F.3d 933, 940 (3d Cir. 1997) ("[I]t is extremely rare to find conduct in the employment context that will rise to the level of outrageousness necessary to provide a basis for recovery for the tort of intentional infliction of emotional distress." (quoting Cox v. Keystone Carbon Co., 861 F.2d 390, 395 (3d Cir. 1988))); Andrews, 895 F.2d at 1487 ("[T]he only instances in which courts applying Pennsylvania law have found conduct outrageous in the employment context is where an employer engaged in both sexual harassment . . . [and] retaliation for turning down sexual propositions." (citations omitted)).

4. Negligent infliction of emotional distress - Granted - in that no physical injury is averred. See Matczak, 136 F.3d at

³A heightened pleading requirement does not apply to claims of municipal liability under § 1983. See Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit, 507 U.S. 163, 168-169, 113 S. Ct. 1160, 1163, 122 L. Ed. 2d 517 (1993). Even if it remains applicable to claims against individuals, the present complaint clears that hurdle. See Colburn v. Upper Darby Township, 838 F.2d 663, 666 (3d Cir. 1988) (pleading specific conduct, individuals, time, and place of conduct is sufficient to satisfy heightened pleading requirement of § 1983 claims against individuals).

940 ("A plaintiff must allege some form of bodily harm to maintain a claim of negligent infliction of emotional distress." (citing Simmons v. Pacor, Inc., 543 Pa. 664, 676-77, 674 A.2d 232, 238 (1996))).

5. Defamation, false light, and intentional infliction of emotional distress - Granted as to the City of Philadelphia; denied as to the individual defendants. The City is immune from civil suit. See 42 Pa. Cons. Stat. Ann. § 8541 (1998). Immunity does not attach to intentional acts of the individual defendants. See Pa. Cons. Stat. Ann. § 8550 (1998); Wakshul v. City of Phila., 998 F. Supp. 585, 588 (E.D. Pa. 1998) ("Furthermore, while there is a statutory abrogation of immunity of individual employees for intentional torts, this does not remove the immunity of the local agency, here the City.").

6. Defamation - Granted as to defendants Legesse and Blackmon; denied as to the other individual defendants. Legesse and Blackmon were not involved in publishing the alleged statement. Denied as to the remaining defendants because the existence of a conditional privilege cannot be decided at this stage.

7. False light - Granted. Publication in the prison logbook is not sufficient publicity. See Strickland v. University of Scranton, ___ Pa. Super. ___, ___, 700 A.2d 979, 987 (1997) ("The elements to be proven are publicity, given to private facts, which would be highly offensive to a reasonable person and which are not of legitimate concern to the public.").

8. All counts – Granted as to the Philadelphia Prison System. It is not a suable entity separate and distinct from the City. See Bonenberger v. Plymouth Township, 132 F.3d 20, 25 n.4 (3d Cir. 1997) (“As in past cases, we treat the municipality and its police department as a single entity for purposes of section 1983 liability.”) (citing Colburn v. Upper Darby Township, 838 F.2d 663, 671 n.7 (3d Cir. 1988)); Dunsmore v. Chester County Children & Youth Servs., C.A. No. 92-3746, 1994 WL 446880, at *1 (E.D. Pa. Aug. 18, 1994), aff’d, 47 F.3d 1160 (3d Cir. 1995).

Accordingly, the following claims will survive under Count I: Title VII against the City; § 1983 (First Amendment) against the City, Costello, Legesse, Blackmon, and Vesey; and intentional infliction of emotional distress against the four individual defendants. Under Count II, the defamation claim against Vesey and Costello.

Edmund V. Ludwig, J.

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O R D E R

AND NOW, this 9th day of November, 1998, the motion to dismiss of defendants City of Philadelphia, Philadelphia Prison System, Thomas J. Costello, Elsa Legesse, Arthur J. Blackmon, and Helen C. Vesey against plaintiff James W. Smith is granted in part and denied in part, Fed. R. Civ. P. 12(b)(6), as follows:⁴

1. Title VII – Granted as to the individual defendants. Denied as to the City of Philadelphia.

2. § 1983 – Denied.

3. Negligent and intentional infliction of emotional distress – Granted as to negligent infliction. Granted as to the City for intentional infliction; otherwise, denied.

⁴The complaint against the Philadelphia Prison System is dismissed in that it is not a suable party.

4. Defamation - Granted as to the City of Philadelphia,
Legesse, and Blackmon. Denied, as to Vesey and Costello.

5. False light - Granted.

A memorandum accompanies this order.

Edmund V. Ludwig, J.