

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

JOHN CALVIN OATES : CIVIL ACTION
 :
 v. :
 :
 CITY OF PHILADELPHIA : NO. 98-3329

MEMORANDUM and ORDER

Norma L. Shapiro, S.J.

November 15, 1999

Plaintiff John Calvin Oates ("Oates"), proceeding pro se, claims the City of Philadelphia ("City") impermissibly released confidential medical record information and attempted to contact his psychotherapist in violation of federal law. After Oates filed his Third Amended Complaint, the City filed a motion to dismiss, or in the alternative for summary judgment. The City's motion for summary judgment will be granted.

BACKGROUND

Oates was hired by the City of Philadelphia Water Department ("Water Department") as a waste water treatment operator on September 21, 1992. (Am. Cmpl. ¶ 1) Oates was admitted to John F. Kennedy Memorial Hospital ("JFK") for detoxification on March 23, 1995 and was discharged on March 28, 1995. See id. at ¶ 17. On March 28, 1995, immediately after his hospital discharge, Oates underwent a required City of Philadelphia Medical Evaluation Unit evaluation to determine whether he was fit to return to work. (Am. Cmpl. ¶ 22). That same day, Oates 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 ¶ 25.

Sometime in early April, 1995, before having been cleared to return to work, Oates went to Florida to visit his father. See id. at ¶ 28. Oates called his supervisor on April 5, 1995, to inform him he was in Florida. See id. at ¶ 31. On April 9, 1995, Oates sent the Water Department a facsimile request for a thirty-day leave of absence to remain with his sick father in Florida. See id. at ¶ 39. On April 12, 1995, the Water Department denied his leave request and terminated him. See id. at ¶ 46.

On May 1, 1995, Oates appealed his termination and denial of leave to the Civil Service Commission ("Commission") under Civil Service Regulation 22 (relating to leave of absence). See id. at ¶ 61. Commissioners Nicholas DiPiero and Joseph Fisher held a hearing on Oates's appeal on January 30, 1996. See id. at ¶ 6. Oates was represented by counsel. The Commission denied Oates's appeal in its written opinion of March 4, 1996. See id. at ¶ 86.

Oates filed his first action against the City in September, 1996. See Oates v. City of Philadelphia, 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.¹ Oates and the City settled Civil Action No. 96-5915 in June, 1997 for \$78,149.70; Oates signed a release discharging the City from 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. G to Def.'s Mem. Supp. Summ. J.

The Settlement Agreement specifically excluded from the release claims then pending before the Pennsylvania Human Relations Commission ("PHRC"), docketed at E-75130D and E-77924D and filed in October, 1996, and one civil action then pending in federal court: Oates v. City of Philadelphia, No. 97-1220 (E.D. Pa). See id. PHRC claim E-75130D alleged that Oates was terminated by his supervisor in retaliation for rejecting sexual advances. See PHRC Cmplt. E-75130D, attached as Ex. H to Def.'s Mem. Supp. Summ. J. Oates second PHRC claim, E-77924D, alleged

¹ In the past two and a half years, 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 Philadelphia., 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 Philadelphia, No. 97-1220 (E.D. Pa.); and Oates v. City of Philadelphia, No. 96-5915 (E.D. Pa.). Aside from the present action, all other actions have been settled or dismissed. This court 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).

that the Commission denied his termination appeal in retaliation for the sexual harassment claims he filed against the Water Department for the alleged acts of his superior. See PHRC Cmplt. E-77924D, attached as Ex. I to Def.'s Mem. Supp. Summ. J. In Civil Action 97-1220, Oates claimed that the City improperly received, accepted and acted upon information regarding his substance abuse. See Oates v. City of Philadelphia, No. 97-1220, 1998 WL 107300 (E.D. Pa. Feb. 18, 1998) The City's motion for summary judgment was granted. See id.

In June, 1998, Oates filed the present action alleging the City violated his right to privacy and confidentiality of detoxification and medical records. There are eight counts in his Third Amended Complaint: 1) violation of the Americans with Disabilities Act ("ADA") by unlawfully obtaining Oates's medical records and using that information in making employment decisions; 2) violation of the ADA for making unlawful inquiries regarding Oates's medical treatment; 3) violation of Oates's rights to privacy and confidentiality under 42 Pa. Cons. Stat. Ann. § 8275; 4) violation of 42 U.S.C. § 290ee-3 by unlawfully obtaining information from Oates's medical file; 5) violation of 42 C.F.R. Part 2.13 by unlawful use of Oates's medical file in a civil service hearing; 6) denial of due process provided by the Fourteenth Amendment and 351 Pa. Code 7.7-201; 7) violation of 42 U.S.C. 2000e-3 by unlawfully obtaining and disseminating

information from Oates's medical file, as an act of retaliation; and 8) violation of 42 U.S.C. 2000e-3 by unlawfully attempting to interrogate Oates' psychotherapist, Angela Landone, as an act of retaliation.

All claims other than the ADA (counts one and two) and the retaliation claims (counts seven and eight) were withdrawn on May 28, 1999. The City filed a motion to dismiss, or in the alternative for summary judgment, on the remaining ADA and retaliation claims in Oates's Third Amended Complaint. The City makes four arguments supporting the motion to dismiss, or in the alternative for summary judgment: (1) Oates does not have standing to bring the ADA claims; (2) Oates's claims are barred by the statute of limitations for alleged unlawful employment practices; (3) Plaintiff's claims are barred by res judicata; and (4) the Settlement Agreement executed between Oates and the City bars the remaining claims.

Discussion

I. Standard of Review

A. Motion for Summary Judgment

In considering a motion to dismiss under 12(b)(6) of the Federal Rules of Civil Procedure, the court must determine, under any reasonable reading of the pleadings, whether the plaintiff is entitled to relief. See Colburn v. Upper Darby Township, 838

F.2d 663, 665-66 (3d Cir. 1988). The court may only consider evidence set forth in the pleadings. Since the court will consider evidence beyond the pleadings, the motion to dismiss will not be decided herein. However, the court's consideration of the motion for summary judgment will be dispositive.

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 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). The presence of a "mere scintilla of evidence"

in the non-movant's favor will not avoid summary judgment. See Williams v. Borough of West Chester, 891 F.2d 458, 460 (3d Cir. 1989) (citing Anderson, 477 U.S. at 249). 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. Standing to Bring Claims Pursuant to the ADA

The City argues that Oates does not have standing to make allegations under the ADA because, at the time he filed this lawsuit on June 29, 1998, he was neither a City employee nor an applicant for City employment. See Def.'s Mem. Supp. Summ. J. at 3. The ADA was enacted to provide "equal employment opportunities for qualified individuals with disabilities." 29 C.F.R. § 1630.1[A]. Title I prohibits disability-based discrimination against any "qualified" individual, applicants or employees, with a "disability." See Americans with Disabilities Act of 1990, § 102(a), 42 U.S.C. § 12112(a).

The class of individuals qualified to receive ADA protection includes former employees. See Ford v. Schering-Plough Corp., 145 F.3d 601, 606-07 (3rd Cir. 1998). In concluding that former

employees with disabilities are included within the protection of the ADA, the Ford court followed the Supreme Court's decision in Robinson v. Shell Oil, which involved the interpretation of "employee" in Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq.; Robinson interpreted "employee" to include former employees under Title VII. See id. at 606 (citing Robinson v. Shell Oil, 519 U.S. 337, 340-46, 117 S.Ct. 843, 846, 136 L.Ed.2d 808 (1997)). The Ford court determined that Robinson was relevant in determining whether former employees are included under the ADA because "the ADA is essentially a sibling statute of Title VII." See id. at 606. The definition of "employee" in Title VII includes former employees as well as current employees. See id. Former employee Oates has standing to sue under the ADA.

III. Statute of Limitations

A charge of employment discrimination must be filed with the appropriate federal, state or local agency within either one hundred and eighty days or, if filed with a state or local agency, within three hundred days after the unlawful employment practice occurred:

A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred . . . in a case of unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice

thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred . . .

42 U.S.C. § 2000e-5(e)(1989); 42 U.S.C. § 12117(a). A plaintiff's cause of action accrues on the date of the alleged unlawful employment practice; the period for statute of limitations begins to run at that time. The three hundred day requirement of 42 U.S.C. § 2000e-5(e) is an inflexible prerequisite to a civil suit. See Alexander v. Gardner-Denver Co., 415 U.S. 36, 47 (1974).

The City contends that Oates's ADA claims are barred because they were not timely filed. See Def.'s Mem. Supp. Summ. J. at 16. Oates initially filed his claims alleging Water Department unlawful employment practices before the PHRC, a state agency, so the three hundred day, not the one hundred and eighty day, time period applies. The City argues that more than three hundred days elapsed between Oates's termination in April, 1995, and his filing the ADA claim with the PHRC in October, 1996. See id. Oates contends that the ADA claims accrued at the Commission hearing on January 30, 1996, and not on his termination in April, 1995, so they are not barred by the three hundred day limitations period set forth in 42 U.S.C. § 2000e-5(e). See Pl. Supp. Br. at 4.

The operative facts giving rise to the ADA and retaliation

claims concern the alleged procurement and use of Oates's medical records at the Commission hearing and attempts to contact Oates's psychotherapist in relation to the hearing. These alleged unlawful employment practices occurred less than three hundred days before Oates filed the ADA claims with the PHRC in October, 1996.² They are not barred by the three hundred-day filing requirement set forth in 42 U.S.C. § 2000e-5(e).

IV. **Res Judicata**

The doctrine of res judicata, or claim preclusion, rests on principles of judicial economy and fairness to litigants. See Blonder Tongue Lab., Inc. v. University of Illinois Found., 420 U.S. 313, 324 (1971). The underlying principle is to give dispositive effect to a prior judgment if a particular claim was or "could have been raised in [an] earlier proceeding." Board of Trustees of Trucking Employees of N.J. Welfare Fund, Inc. Pension Fund v. Centra, 983 F.2d 495, 504 (3d Cir. 1992). Res judicata, or claim preclusion, gives:

dispositive effect to a prior judgment if a particular issue, although not litigated, could have been raised in the earlier proceeding. Claim preclusion requires: (1) a final judgment on the merits of a prior suit involved; (2) the same parties or their privities; and (3) a subsequent suit based on the same cause of action.

²Even if the one hundred eighty day time period was applicable, Oates filed his claims with the PHRC within one hundred and eighty days after the Commission hearing.

Id.

The City argues that Oates's claims are barred by res judicata because all the factual allegations and all the alleged causes of action in the Third Amended Complaint were presented by Oates in previous lawsuits. See Def.'s Mem. Supp. Summ. J. at 7-10. The City contends that Oates's ADA claims are barred because the confidentiality of Plaintiff's medical records was adjudicated in Oates v. City of Philadelphia, No. 97-1220, 1998 WL 107300 (E.D. Pa. Feb. 18, 1998); in that action Oates claimed that the City violated the statutory provisions of privacy and confidentiality regarding his drug treatment. He alleged that the City improperly received, accepted, and acted upon information regarding his substance abuse. See Cmpl't. at ¶ 40, Oates v. City of Philadelphia, No. 97-1220 (E.D. Pa.), attached as Ex. E to Def.'s Mem. Supp. Summ. J. Judge Fullam held that since Oates put his substance abuse at issue by presenting his medical records at the Commission hearing, use of this information by the City was not improper.³ See Oates, 1998 WL 107300. Judge Fullam stated:

Plaintiff was accorded due process of law; if his privacy was violated, it was because he himself disclosed at the civil service hearing that he had been treated for substance abuse; and no rational factfinder

³The ruling that Oates put his substance abuse at issue at the hearing was an alternative holding in the case. Judge Fullam also ruled that Oates did not have standing to bring ADA claims other than the claims in this action.

could conclude that the defendant [the City] intentionally caused any violation of plaintiff's rights.

Id. The City's Motion for Summary Judgment was granted. See id.

"Where two successive lawsuits seek recovery for the same injury, a judgment on the merits operates as a bar for the later suit, even though a different legal theory of recovery is advanced in the second suit." Cemes v. Marathon Oil Corp., 583 F.2d 830, 832 (6th Cir. 1978) (citing Baltimore S.S. Co. v. Phillips, 274 U.S. 316, 319-21 (1927)). Whether Oates introduced his medical records, and put his substance abuse at issue, at the Commission hearing, and whether the records were unlawfully obtained by the City, have been adjudicated by Judge Fullam; the issue cannot be revisited by another judge under another legal theory.

Since (1) Oates put his substance abuse at issue; (2) the parties in this action are the same as the parties in Civil Action 97-1220; and (3) Oates could have raised his ADA claims in the earlier proceeding, Plaintiff is precluded from raising claims concerning the confidentiality of his medical records.

Although Oates has alleged numerous retaliation claims in earlier actions,⁴ the present retaliation claims pursuant to 42

⁴ See, e.g., Oates v. City of Philadelphia., No. 97-3670 (E.D. Pa.) (alleging that Oates's supervisors retaliated against him for filing and threatening to file discrimination suits by creating a hostile work environment).

U.S.C. 2000e-3 have not been raised in prior actions. However, the retaliation claims are precluded because Oates could have raised them in Civil Action 97-1220. The City does not seem to argue the retaliation claims are barred by res judicata, but rather that they are barred by the Settlement Agreement.

V. Settlement Agreement and Release

Interpreting Oates's 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 his 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. D to Def.'s Mem. Supp. Summ. J. ["No. 96-5915 Am. Cmplt."].

In June, 1997, Oates settled Civil Action No. 96-5915.

Included in the Settlement 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.

The Settlement 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).

In Oates v. City of Philadelphia, No. 97-3670, 1998 WL 47870 (E.D. Pa. Feb. 4, 1998), this court determined that Oates's ADA claims did not arise out of the PHRC actions excepted from the general release in the Settlement Agreement. "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." Id. However, on appeal, the court of appeals found the language of the Agreement unclear regarding whether Oates's ADA claims were included within the exception for claim E-75130D then pending before the PHRC, vacated the summary judgment in

favor of the City, and remanded to this court for a determination regarding whether the parties intended to exclude the ADA claims from the release. See Oates v. City of Philadelphia, No. 98-1087 (3d Cir. 1999).

Subsequently, Oates withdrew his claim that his ADA claims were encompassed in PHRC E-75130D, and took the position that these claims were excepted by their relationship to Oates v. City of Philadelphia, No. 97-1220, 1998 WL 107300 (E.D. Pa. Feb. 18, 1998). See Pl.'s Supp. Br. at 2. But the City's motion for summary judgment in Civil Action 97-1220 was granted. See Oates v. City of Philadelphia, No. 97-1220, 1998 WL 107300 (E.D. Pa. Feb. 18, 1998). The ADA claims could have been raised in that action, so they are barred by res judicata.

The City contends Oates's retaliation claims are barred by the Settlement Agreement and release. The Settlement Agreement foreclosed all actions related to the claims underlying the complaint in Civil Action 96-5915 except for certain claims pending before the PHRC and claims in Civil Action 97-1220. See Agreement ¶ 3. The Commission hearing concerned the propriety of Oates's termination from the Water Department, as did Civil Action No. 96-5915 in which the Settlement Agreement was filed. Oates's retaliation claims are barred by the Settlement Agreement unless they are included within one of the three exceptions to the release.

Oates's claims before the PHRC were retaliation claims; however, they are different from the retaliation claims in counts seven and eight of this action. PHRC claim E-75130D alleged that Oates was terminated by his supervisor in retaliation for rejecting his sexual advances. See PHRC Cmplt. E-75130D, attached as Ex. H to Def.'s Mem. Supp. Summ. J. Oates's second PHRC claim, E-77924D, alleged that the Commission denied his termination appeal in retaliation for the sexual harassment claims he filed against the Water Department for alleged acts committed by his superior. See PHRC Cmplt. E-77924D, attached as Ex. I to Def.'s Mem. Supp. Summ. J. The retaliation claims in this action, involving confidentiality of medical records, are different from the retaliation claims Oates asserted before the PHRC; they are not excepted by the Settlement Agreement and the release contained therein and are barred.⁵

Conclusion

Oates has standing to bring the ADA claims, and he has filed these claims in a timely manner. However, the City's motion for summary judgment is granted on two grounds. Summary judgment is granted on the ADA claims because they are barred by res

⁵Oates claims that the ADA claims arose out of Oates v. City of Philadelphia, No. 97-1220 (E.D. Pa.). Judge Fullam granted the City's motion for summary judgment; therefore, Oates's ADA claims are barred by res judicata.

judicata. These claims arise out of and could have been raised in Civil Action 97-1220, already adjudicated. The retaliation claims are not excepted from the Settlement Agreement and release between Plaintiff and the City and are barred by the release of all related claims in that Agreement.

IN THE UNITED STATES DISTRICT COURT
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JOHN CALVIN OATES : CIVIL ACTION
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 CITY OF PHILADELPHIA, et al. : NO. 98-3329

ORDER

AND NOW, this 15th day of November, 1999, upon consideration of Defendant's motion for summary judgment, and Plaintiff's response thereto, it is hereby **ORDERED** that:

1. Defendant's motion for summary judgment is **GRANTED**; judgment is **ENTERED** in favor of defendants.

Norma L. Shapiro, S.J.