

Allgood v City of New York

2022 NY Slip Op 30612(U)

February 25, 2022

Supreme Court, New York County

Docket Number: Index No. 154745/2018

Judge: J. Mabelle Sweeting

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 62

X-----X

ISIAH ALLGOOD,

Plaintiff,

-against-

Index No. 154745/18

THE CITY OF NEW YORK, THE NEW YORK CITY
DEPARTMENT OF CORRECTIONS, MANHATTAN
HOUSE OF DETENTION and CORRECTION OFFICER
BEAUFORT,

Motion Seq. #001

Defendants.

X-----X

HON. J. MACHELLE SWEETING, J.S.C.

Defendants The City of New York (“the City”), The New York City Department of Corrections (“DOC”), Manhattan House of Detention (“MHD”)¹ and Correction Officer Beaufort (“Beaufort”) collectively (“Defendants”) move for dismissal of the complaint pursuant to CPLR 3211 (a)(7). Alternatively, they move to dismiss the complaint, pursuant to CPLR 3212.

This action is based on plaintiff’s claim of alleged religious discrimination in which plaintiff seeks compensatory and punitive damages for physical and emotional harm. The complaint alleges as follows:

On February 27, 2017, plaintiff, a practicing Muslim, attempted to visit an inmate at the MDC in New York, New York. At the time, plaintiff wore a head covering called a kufi and a long outer garment which formed at the neck and ran down to his knees called a thobe, which is customary attire for Muslims. Upon arrival at MDC, plaintiff was subjected to a customary search by correction officers, in which plaintiff went through a metal detector and removed his thobe.

¹ The caption states Manhattan Houses of Detention, but the parties testified that the facility’s name is Manhattan Detention Complex (“MDC”).

Plaintiff wore a t-shirt and jeans beneath his thobe. After being patted down by the officers he was told that he had to see the inmate without wearing the thobe. Plaintiff claims that he had visited the facility previously while wearing his thobe and that denying him access to the inmate was an act of discrimination. Plaintiff also claims that he felt intimidated in the presence of the officers.

The complaint asserts causes of action, *inter alia*, for alleged violations of the First, Fifth and Fourteenth Amendments of the United States Constitution; violations of the New York State Constitution, common law negligence and negligent hiring, training and retention.

On May 12, 2017, plaintiff served a notice of claim against the City and this action commenced on September 26, 2017. Issue was joined upon the service of defendant Beaufort's answer. On July 11, 2019, plaintiff served a verified Bill of Particulars and on June 27, 2020, plaintiff served his Note of Issue.

Now, pending before the court is a motion filed on behalf of all of the defendants in which they seek an order of dismissal. In support of their motion, defendants submit plaintiff's 50-h transcript and his deposition testimony, and Beaufort's deposition testimony. At his 50-h hearing, plaintiff testified that he was taken into a room right of the waiting area and was told to remove all of his clothing and strip searched. Plaintiff alleges that after he dressed, he was told that he was "not allowed to come in like this," meaning he was not able to wear "my religious garment, my thobe." As he dressed, plaintiff was told that he could not see the inmate while wearing the thobe. Plaintiff told the officer that he was going in wearing everything, as part of his religious garment, and the officer told him that he could not come in. Seven to eight minutes later, plaintiff left the MDC.

At his deposition, plaintiff did not state that he was strip searched, but instead, testified that he removed his thobe so that the officers could examine him underneath his garment. At the deposition, plaintiff was specifically asked whether he was required to remove any other clothing, to which plaintiff replied "No." Plaintiff referred to several officers being there, but could only recall Beaufort, who denied him access to the inmate if he chose to wear his thobe. Plaintiff stated that he eventually left the facility.

In his deposition testimony, Beaufort could not recall his encounter with plaintiff. He discussed his customary procedure with visitors to the facility, based on his training. He also discussed the procedure for searching visitors. While some visitors are told to lift up outer garments for the purpose of examination, Beaufort testified that he personally did not order Muslim men to remove their religious garments while entering MDC. He stated that, as a correction officer, he did not ask any Muslims to pull up their outer garments in the last four years.

In their motion to dismiss for failure to state a cause of action and/or for summary judgment, the City defendants argue, first, that plaintiff's claim of violation of the New York State Constitution should be dismissed because plaintiff failed to seek an alternative remedy prior to bringing this action, namely, an Article 78 proceeding. Additionally, defendants argue that plaintiff's state and Federal claims against the City must be dismissed because plaintiff failed to plead his claims with specificity.

Second, defendants argue that plaintiff's claim of negligence should be dismissed because he failed to plead or establish a special duty owed to him, which is necessary in suits brought against municipal defendants.

Third, defendants argue that the City is entitled to a defense of governmental function immunity because the complaint alleges a discretionary governmental function, as opposed to a ministerial function, and discretion was duly exercised.

Fourth, defendants argue that the claim of negligent retention, hiring and training should be dismissed because the officer acted within the scope of his employment.

Next, defendants argue that plaintiff's claims of violation of the First and Fourteenth Amendments should be dismissed because insufficient facts were alleged.

Lastly, defendants argue that plaintiff's claim of alleged violations of the Fifth Amendment should be dismissed because it is only applicable to Federal officials, not to City officials.

In opposition, plaintiff opposes only Beaufort's claim of qualified immunity. Plaintiff does not otherwise respond to or oppose any of the arguments asserted by defendants. With regard to Beaufort, plaintiff contends that there is an issue of fact regarding Beaufort's conduct and whether Beaufort violated 42 USC 1983, by failing to provide a reason why plaintiff could not wear his thobe when visiting the inmate.

In reply, defendants argue that since plaintiff failed to respond to most of their defenses, their motion should be granted, as plaintiff's failure to respond is an acknowledgment of the validity of said claims. Regarding Beaufort, the only defendant mentioned in the opposition papers, defendants contend that plaintiff failed to make out a proper 1983 claim and that Beaufort should be dismissed as a defendant.

"It is axiomatic that summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of factual issues" (*Birnbaum v Hyman*, 43 AD3d 374, 375 [1st Dept 2007]). "The substantive law governing a case dictates what facts are material, and '[o]nly disputes over facts that might affect the outcome of the suit under the governing law will

preclude the entry of summary judgment [citation omitted]” (*People v Grasso*, 50 AD3d 535, 545 [1st Dept 2008]). “To prevail on a summary judgment motion, the moving party must provide evidentiary proof in admissible form sufficient to warrant the direction of summary judgment in his or her favor [citation omitted]” (*Kershaw v Hospital for Special Services*, 114 AD3d 75, 81 [1st Dept 2013]). “Once this burden is met, the burden shifts to the opposing party to submit proof in admissible form sufficient to create a question of fact requiring a trial [citation omitted]” (*id.* at 82).

42 USC 1983 provides that every person who, under color of any statute, ordinance, regulation, custom or usage of any state subjects or causes to be subjected any person to the deprivation of any federally protected rights, privileges, or immunities shall be civilly liable to the injured party.

To establish personal involvement, plaintiff must show: (1) defendant participated directly in the alleged constitutional violation; (2) defendant, after being informed of the violation through a report or appeal, failed to remedy the wrong; (3) defendant created a policy or custom under which the unconstitutional practice occurred, or allowed continuance of such a policy or custom; (4) defendant was grossly negligent in supervising subjects who committed wrongful acts; or (5) defendant exhibited deliberate indifference to rights of inmates by failing to act on information indicating that unconstitutional acts were occurring (*see Grullon v City of New Haven*, 720 F.3d 133,139 [2d Cir 2013]).

Here, plaintiff alleges that Beaufort participated directly in a constitutional violation by refusing to allow him to see an inmate because he was wearing religious attire, while not explaining why his wearing such attire was wrong. In his deposition testimony, Beaufort admits that he does not recall this incident, but asserts that he did not discriminate against any individuals for religious

reasons during the course of his employment. The credibility of the parties is at issue here and such issues of credibility cannot be resolved on a summary judgment motion (*see Hutchins v Yuter*, 108 AD3d 416, 417 [1st Dept 2013]).

Accordingly, it is hereby

ORDERED that the motion of defendants City of New York, New York City Department of Corrections and Manhattan House of Detention to dismiss the complaint is granted, and the complaint is dismissed in its entirety against said defendants, with costs and disbursements to said defendants as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendants; and it is further

ORDERED that the action is severed and continued against defendant Correction Officer Beaufort; and it is further

ORDERED that the caption shall be amended to remove the City of New York, New York City Department of Corrections and Manhattan House of Detention as defendants in this action and that all future papers filed with the court shall bear the amended caption.

Dated: February 25, 2022

ENTER:



HON. J. MACHEELS SWEETING, J.S.C.