Robertson v. Goode

United States District Court for the Eastern District of New York

March 1, 1999, Decided

97-CV-6979 (JG)

Reporter
1999 U.S. Dist. LEXIS 2381 *; 1999 WL 115439

WAYNE ROBERTSON, Plaintiff, -against- VICTOR GOODE, DAVE FIELDS, SUSAN BRYANT, ELLEN RONDOT, JOHN DELANEY, DINESH KHOSLA, KATHERINE FITZGERALD, JOHN CICERO, and JOHN and JANE DOE of the May 1, 1991 Academic Standing Committee, Individually in Their Capacity as Employees of the City University of New York, College of Law at Queens College, Defendants.

Disposition: [*1] Defendants' motion to dismiss all causes of action against them granted.

Case Summary

Procedural Posture

Defendant administrators filed a motion, pursuant to *Fed. R. Civ. P. 12(b)(6)*, to dismiss plaintiff student's action that sought injunctive relief and monetary damages under *42 U.S.C.S. §§ 1981* and *1983*, and the Civil Rights Act of 1964, tit. VII, *42 U.S.C.S. § 2000e et seq.*

Overview

Plaintiff student was enrolled in the law school run by defendant administrators. During his last term, he was informed that he did not have the required number of credits to graduate. Plaintiff then petitioned for a waiver of the graduation requirements, but never received a written response. On May 20, 1991, he received information over the phone that his petition was denied. Over the next several years, plaintiff was unable to resolve his graduation status. In late 1997, plaintiff filed suit, pro se, seeking injunctive relief and monetary damages under *42 U.S.C.S. §§ 1981* and *1983* and the Civil Rights Act of 1964, tit. VII, *42 U.S.C.S. § 2000e et seq.*

In response, defendants filed a motion to dismiss pursuant to *Fed. R. Civ. P. 12(b)(6)*. The court granted the motion and dismissed the action because the statute of limitations on plaintiffs' claims began running on May 20, 1991, and plaintiff did not file his complaint until well after the three-year limitations period on all his claims had expired.

Outcome
The court granted defendant administrators' motion to dismiss, and dismissed plaintiff student's action, because all plaintiff's claims were barred by the applicable statute of limitations.

Counsel: WAYNE ROBERTSON, Plaintiff, pro se, Brooklyn, N.Y.

Steven L. Banks, Gary P. Weinstein, Of Counsel, ELIOT SPITZER, Attorney General of the State of New York, New York, N.Y., for Defendants.

Judges: JOHN GLEESON, United States District Judge.

Opinion by: JOHN GLEESON

Opinion

MEMORANDUM AND ORDER

JOHN GLEESON, United States District Judge:

Wayne Robertson, plaintiff *pro se*, brought this action against ten individuals in their official capacity as employees of the City University of New York ("CUNY"), College of Law at Queens College, seeking injunctive relief and monetary damages under *42 U.S.C. § 1983*, *42 U.S.C. § 1981*, and Title VII of the Civil Rights Act of 1964, *42 U.S.C. § 2000e et seq.* [1] Defendants move

[1] In his complaint filed November 25, 1997, plaintiff alleges several causes of action under various federal and state laws. In his Memorandum of Law in Answer to Defendants' Motion to Dismiss, however, plaintiff states that he brings this action under *§§ 1981* and *1983* and under Title VII.

to dismiss all causes of action pursuant to *Federal Rule of Civil Procedure 12(b)(6)*. The motion is granted.

[*2] *BACKGROUND*

Wayne Robertson, an African-American, enrolled at CUNY Law School at Queens College in September of 1988. In May 1991, during his final semester of law school, he received failing grades in Advanced Legal Analysis and in Criminal Procedure. Plaintiff claims that he never failed any quizzes in Advanced Legal Analysis and that he passed the final exam in that course. Furthermore, according to plaintiff, another student in the same course failed all the quizzes as well as the final exam, yet passed the course nonetheless.

Because plaintiff failed these courses, he earned only eighty-four of the eighty-seven credits necessary to graduate. On May 1, 1991, plaintiff petitioned the Academic Standing Committee for a waiver of the graduation requirements. He never received a written response. On May 20, 1991, plaintiff inquired over the phone about the status of his petition. An "unknown individual female" told him that his petition must have been denied because she had no information regarding it. Complaint at 6. According to plaintiff, however, Tom Marsh, a white male who was in plaintiff's law school class, failed Evidence in the Spring of 1991, but received a waiver from **[*3]** the Academic Standing Committee allowing him to graduate without the required eighty-seven credits. Marsh, plaintiff claims, needed at least four more credits to earn his juris doctor.

In November 1991, plaintiff requested a review of his law school transcript. On his transcript, he found a passing grade for Criminal Procedure, one of the courses he thought he had failed. Gloria Kopp, supervisor of the records department, confirmed that plaintiff's transcript reflected a passing grade for that course, but informed him that the grade was a mistake. Plaintiff met the same day with Victor Goode, then Dean of Academic Affairs, who, according to plaintiff, "confirmed the fact that the passing grade would have counted." Complaint at 7. According to plaintiff, because of what Goode told him, plaintiff decided not to pursue the matter further.

In the Spring of 1993, plaintiff had fallen $ 346 behind in payments for his Perkins Loan, which he had gotten through CUNY in 1988. According to plaintiff, he apparently attempted to remit $ 346 to CUNY in order to become current on his loan payments and to be able to register for classes for the Fall 1993 term. Ellen Rondot, however, told plaintiff **[*4]** that CUNY could not accept his money because the "default rate deadline had passed." Complaint at 8. Plaintiff then contacted Doug Strauss, the Director of Finance for Queens College, who arranged an agreement with plaintiff wherein plaintiff would pay $ 150 a month until half the loan was paid or until he could make a lump sum payment.

In June 1995, plaintiff remitted $ 1,625 to Ellen Rondot in order to register for fall classes or to register as a visiting student at another law school in the area. He requested that CUNY send copies of his transcript to Brooklyn, Rutgers, and Seton Hall Law Schools. CUNY, according to plaintiff, did not send out copies of his transcript until August 15, 1995, forty-five days after he had originally requested they be sent. Because the transcripts went out late, the law schools to which plaintiff applied as a visiting student denied him admission.

Plaintiff next wrote a letter to Dave Fields, Dean of CUNY, who told plaintiff there was nothing he could do (about the transcripts, presumably) and that Ellen Rondot had the final say on the matter. On September 7, 1995, plaintiff called Fields to ask if he could register for classes for the Fall 1995 **[*5]** term. Fields told plaintiff that he could not register because the deadline had already passed.

Plaintiff sat for the New York State Bar exam on February 27 and 28, 1996. On May 8, 1996, the New York State Board of Law Examiners wrote plaintiff a letter stating that the results of his exam would be "null and void" until CUNY Law School certified his application. Complaint at 13. On May 12, 1996, plaintiff met with Sue Bryant, Dean of Academic Affairs at CUNY Law School. Bryant urged plaintiff to return to school in order to make up the four credits in dispute. Plaintiff then contacted Kristen Booth Glen, Dean of CUNY Law School, in order to arrange a meeting with the Academic Standing Committee. On June 27, 1996, plaintiff went before the Academic Standing Committee to discuss his problem formally and petition for a waiver. The next day, plaintiff called Bryant, who informed him that the Academic Standing Committee had denied his request for a waiver. According to plaintiff, she offered him the option of independent study.

Plaintiff then went to California to take that state's bar exam. On July 27, 1996, plaintiff sat from 9:00 to 12:00 for the morning portion of the exam, but was **[*6]** not permitted to sit for the remainder of the test because CUNY had not forwarded to the California Board of Bar Examiners a transcript certifying plaintiff's eligibility to take the exam.

On September 12, 1996, plaintiff sent a letter to Bryant threatening legal action if the Academic Standing Committee did not review his case again. Plaintiff sent Bryant another letter in February 1997, stressing "the urgency of the situation and importance of parties working together." Complaint at 17. According to plaintiff, on March 14, 1997, eight days after the close of summer school registration, he received an application for summer studies. On April 14, 1997, plaintiff formally requested to review his records pursuant to what plaintiff describes as the Buckley Amendment of the Family Educational Privacy Act. On November 25, 1997, plaintiff initiated this action.

Oral argument on defendants' motion to dismiss occurred on December 18, 1998. This Court deferred entering judgment on that motion in order to provide the parties additional incentive and time to reach settlement on the underlying issues. After more than two months, the parties have come no closer to reaching an agreement.

DISCUSSION

[*7] A. *The Standard for Dismissal Under Rule 12(b)(6)*

A federal court's task in determining the sufficiency of a complaint is "necessarily a limited one." *Scheuer v. Rhodes, 416 U.S. 232, 236, 40 L. Ed. 2d 90, 94 S. Ct. 1683 (1974)*. The inquiry focuses not on whether a plaintiff might ultimately prevail on his claim, but on whether he is entitled to offer evidence in support of the allegations in the complaint. *See id.* "Indeed it may appear on the face of the pleadings that a recovery is very remote and unlikely but that is not the test." *Id.* *Rule 12(b)(6)* warrants a dismissal only if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson,*

355 U.S. 41, 45-46, 2 L. Ed. 2d 80, 78 S. Ct. 99 (1957); *see also* Hamilton Chapter of Alpha Delta Phi, Inc. v. Hamilton College, 128 F.3d 59, 62 (2d Cir. 1997). In addition, in ruling on defendants' motion, the Court must accept as true all the factual allegations in the complaint and must draw all reasonable inferences in favor of the plaintiff. *See* Hamilton, 128 F.3d at 62 (citing Hospital Bldg. Co. v. Trustees of Rex Hosp., **[*8]** 425 U.S. 738, 740, 48 L. Ed. 2d 338, 96 S. Ct. 1848 (1976)).

B. *The Title VII Claim Construed as a Title VI Claim*

Title VII relates only to unlawful employment practices undertaken by employers, employment agencies, or labor organizations. *See* 42 U.S.C. § 2000e-2 (1998). In order to bring a viable claim under Title VII, a plaintiff must fit within the statute's definition of "employee." *See* O'Connor v. Davis, 126 F.3d 112, 115 (2d Cir. 1997), *cert. denied*, *522 U.S. 1114, 140 L. Ed. 2d 112, 118 S. Ct. 1048 (1998)*. Title VII defines the term "employee" as "an individual employed by an employer," 42 U.S.C. § 2000e(f). When Congress uses the term "employee" without defining it precisely, courts should presume that Congress had in mind "the conventional master-servant relationship as understood by the common-law agency doctrine." Nationwide Mut. Ins. Co. v. Darden, 503 U.S. 318, 322-23, 117 L. Ed. 2d 581, 112 S. Ct. 1344 (1992) (quoting Community for Creative Non-Violence v. Reid, 490 U.S. 730, 739-40, 104 L. Ed. 2d 811, 109 S. Ct. 2166 (1989)).

In this case, plaintiff clearly cannot be considered an employee of CUNY Law School, no matter how broad a definition is given **[*9]** to that term. Plaintiff was a law student at CUNY, not a member of the faculty or staff. He did not have a master-servant relationship with the law school as understood through traditional agency doctrine. Plaintiff, therefore, cannot bring a claim against CUNY under Title VII.

The allegations plaintiff has described in his complaint appear better suited to an action brought under Title VI of the Civil Rights Act of 1964. Title VI states: "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d (1998). CUNY is an arm of the State of New York that receives federal assistance through federally financed student loans and other federal subsidies. *See* Chinn v. City Univ. of N.Y. Sch. of Law at Queens College, 963 F. Supp. 218, 224 (E.D.N.Y. 1997). Plaintiff alleges that CUNY employees discriminated against him based on his race. This action, therefore, properly lies under Title VI, not Title VII. Because plaintiff is acting *pro se*, his complaint must be "liberally **[*10]** construed" and held to "less stringent standards than formal pleadings drafted by lawyers." Hughes v. Rowe, 449 U.S. 5, 9, 66 L. Ed. 2d 163, 101 S. Ct. 173 (1980) (per curiam); *see also* LaBounty v. Coughlin, 137 F.3d 68, 71 (2d Cir. 1998). I thus interpret plaintiff's pleadings liberally and construe his complaint as setting forth a claim under Title VI. *See* Polanco v. United States Drug Enforcement Admin., 158 F.3d 647, 650 (2d Cir. 1998) (holding that, because *pro se* complaints are liberally construed, district court erred by conclusorily construing plaintiff's complaint as brought pursuant to *Bivens*).

C. *The Time Bar For All Claims*

1. *The Applicable Statute of Limitations*

Plaintiff brings his claims under Title VI and under *42 U.S.C. §§ 1981* and *1983*. For the applicable statute of limitations in Title VI actions, federal courts look to the limitations period used in analogous federal discrimination actions, such as those brought pursuant to *42 U.S.C. §§ 1981* and *1983*. *See Morse v. University of Vt., 973 F.2d 122, 126 (2d Cir. 1992)*; *Doe v. Southeastern Univ., 732 F. Supp. 7, 9 (D.D.C. 1990)*.

In *Wilson v. Garcia, 471 U.S. 261, 85 L. **[*11]** Ed. 2d 254, 105 S. Ct. 1938 (1985)*, the Supreme Court observed that, considering the broad remedial purpose and wide diversity of claims embraced by *42 U.S.C. § 1983*, "the federal interests in uniformity, certainty, and the minimization of unnecessary litigation" support the conclusion that a single appropriate statute of limitations should apply to all *§ 1983* actions. *Id. at 275*. Characterizing a violation of *§ 1983* as "an injury to the individual rights of the person," *id. at 277*, the Court stressed that courts should view *§ 1983* claims as personal injury actions and consequently apply the corresponding state statute of limitations for such actions to all *§ 1983* claims. *See id. at 280*. In *Goodman v. Lukens Steel Co., 482 U.S. 656, 96 L. Ed. 2d 572, 107 S. Ct. 2617 (1987)*, the Court extended the *Wilson* analysis to causes of action under *§ 1981*.

Actions under both *§§ 1981* and *1983*, therefore, fall within New York's three-year limitations period for personal injury cases. In *Owens v. Okure, 488 U.S. 235, 102 L. Ed. 2d 594, 109 S. Ct. 573 (1989)*, the Court affirmed a Second Circuit decision holding that, in states (like New York) with more than one statute **[*12]** of limitations for intentional torts, the residual or general personal injury limitations period applies to *§ 1983* actions. Thus, because New York's statute of limitations for general personal injury actions is three years, the three-year limitations period applies in this case to plaintiff's *§§ 1983* and *1981* actions. Furthermore, since the statute of limitations for Title VI is based upon that for *§§ 1983* and *1981*, plaintiff's Title VI claim is also subject to the three-year limitations period.

2. *The Accrual Date*

Although state law provides the statute of limitations period in federal discrimination cases, federal law governs the issue of when such claims accrue. *See Cullen v. Margiotta, 811 F.2d 698, 725* (2d Cir.), *cert. denied*, *483 U.S. 1021 (1987)*. Under federal law, a claim accrues when the plaintiff "knows or has reason to know" of the injury that is the basis of the action. *Id.; see also Morse v. University of Vt., 973 F.2d 122, 125 (2d Cir. 1992)*. In examining the timing of accrual in the context of discrimination claims, the Supreme Court has instructed that "the proper focus is on the time of the discriminatory act, not the point at which the consequences **[*13]** of the act become painful." *Chardon v. Fernandez, 454 U.S. 6, 8, 70 L. Ed. 2d 6, 102 S. Ct. 28 (1981)*. Thus, "the timeliness of a discrimination claim [under *42 U.S.C. § 1983*] is measured from the date the claimant receives notice of the allegedly discriminatory decision." *O'Malley v. GTE Serv. Corp., 758 F.2d 818, 820 (2d Cir. 1985)*; *see also Cervantes v. IMCO, Halliburton Servs., 724 F.2d 511, 513-14 (5th Cir. 1984)* (holding that *§ 1981* claim accrued when employer notified plaintiff he would not be rehired).

In this case, the statute began running on plaintiff's *§ 1983*, *§ 1981*, and Title VI claims on May 20, 1991, the day he says that CUNY Law School's Academic Standing Committee let him know

that it would not waive the school's graduation requirements and allow him to receive his law degree despite failing two courses. *See* *Tadros v. Coleman, 898 F.2d 10, 12* (2d Cir.) (holding that statute of limitations in *§ 1981* action began running on day plaintiff had notice he would not be reappointed as visiting lecturer), *cert. denied*, *498 U.S. 869, 112 L. Ed. 2d 149, 111 S. Ct. 186 (1990)*. That day represents the date plaintiff received notice of the allegedly **[*14]** discriminatory decision. Plaintiff did not file his complaint in this Court until November 27, 1997, over three years after the three-year limitations period on all his claims had expired. The record provides no evidence of bad faith or deliberate misconduct by defendants in delaying plaintiff's filing of a complaint to suggest that they should be equitably estopped from raising the statute of limitations defense. *See* *Farkas v. Farkas, 168 F.3d 638, 1999 U.S. App. LEXIS 2715, 1999 WL 89042*, at *3-*7 (2d Cir. 1999); *O'Malley, 758 F.2d at 822*. Nor has plaintiff advanced any other reasons that would justify overlooking his failure to file suit in a timely manner.

All plaintiff's claims are barred by the applicable statute of limitations and, therefore, must be dismissed for that reason. I therefore need not examine the issues raised by defendants regarding the sufficiency of the pleadings and the *Eleventh Amendment*.

CONCLUSION

For the reasons stated above, defendants' motion to dismiss all causes of action against them is granted.

So Ordered.

JOHN GLEESON, U.S.D.J.

DATE: March 1, 1999

Brooklyn, New York

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