

FEB. 22. 2017 12:24 PM NO. 5094 P. 2

SUPERIOR COURT OF NEW JERSEY

CHAMBERS OF
PHILLIP LEWIS PALEY
JUDGE



MIDDLESEX COUNTY COURT HOUSE
P.O. BOX 984
NEW BRUNSWICK, NEW JERSEY 08903 - 0984

February 21, 2017

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Re: P.D. (a pseudonym) v. Middlesex County
Docket No. MID-L-3811-14

Dear counsel:

As you know, on February 9, 2017, I forwarded to all counsel a lengthy letter, summarizing my views on several motions brought before the court. I understand that my letter did not address the defense application regarding plaintiff P.D.'s claim for punitive damages under the New Jersey Law Against Discrimination, N.J.S.A. § 10:5-1 et seq. ("LAD"). I will endeavor to correct my omission at this time.

As you know, the background of this matter was summarized in my earlier letter; it is incorporated in this letter by reference.

Defendant County of Middlesex ("County") sought summary judgment on three disparate claims: P.D.'s request for injunctive and declaratory relief; P.D.'s

claims brought under the Constitution of the State of New Jersey; and his claims under the LAD.

The court's letter noted that P.D. did not oppose the County's application for summary judgment on his claims regarding cruel and unusual punishment; defendant's motion for summary judgment on that issue was granted.

As to P.D.'s claims for injunctive relief, the court found that he had not demonstrated any "reasonable expectation" or "demonstrated probability" that he will return to the Middlesex County Adult Correction Center ("ACC") in the future. Accordingly, the court granted the County's motion for summary judgment as to injunctive relief.

As to P.D.'s claims that the conditions of his incarceration were unconstitutional as applied to someone with his limited cognitive functioning, the court concluded that there is a genuine dispute of material fact as to whether the restraints imposed during his incarceration were arbitrary or excessive in relation to the institutional need to preserve order and security. The court noted that the burden imposed on P.D. was a heavy one; notwithstanding, the court denied the County's application for summary judgment on that claim.

As to P.D.'s claims under the LAD, the County had argued that no evidence demonstrated that he was treated differently from non-disabled inmates. The court held that the adequacy of ACC's accommodations for P.D. and his individual needs was an issue for the finder of fact to address; it denied summary judgment on that issue.

As to P.D.'s motion for summary judgment based on ACC's policy, practice; or custom, specifically its failure to consider an inmate's mental health or cognitive limitations, except in extreme circumstances, the court denied that application as well.

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The County had also sought summary judgment on the issue of punitive damages, raised by plaintiff as a viable claim as part of his discrimination claim. In City of Newport v. Facts Concerts, Inc., 453 U.S. 247 (1981), the Court found that punitive damages could not be awarded against a municipal defendant in a suit brought under 42 U.S.C. §1983. This is consistent with authority under the Americans With Disabilities Act, 42 U.S.C. § 12101 (“ADA”), Doe v. County of Centre, Pa., 242 F.3d 437 (3d Cir. 2001), and the Racketeer Influenced and Corrupt Organizations Act (“RICO Act”), Genty v. Resolution Trust Corp., 937 F.2d 899, 914 (3d Cir. 1991). The prohibition extends to claims under the New Jersey Civil Rights Act (“NJCRA”). See Facts Concerts, Inc., *supra*, at 271; Harvard v. State, 2016 N.J. Super. Unpub. LEXIS 1559 at *67-68 (Law Div. June 29, 2016). The circumstances here are analogous; the court should dismiss P.D.’s punitive damages claims.

P.D. concedes that punitive damages are unavailable against municipal defendants under the NJCRA. He contends, however, that the LAD, which does authorize punitive damages, is distinct from the statutory authority cited. Our Supreme Court has established two prerequisites for punitive damages under LAD. Rendine v. Pantzer, 41 N.J. 292, 313 (1995). A plaintiff must show: “(1) ‘actual participation in or willful indifference to the wrongful conduct on the part of upper management’ and (2) ‘proof that the offending conduct [is] ‘especially egregious.’” Cavuoti v. N.J. Transit Corp., 161 N.J. 107, 113 (1999) (quoting Rendine, *supra*, at 314). Here, ACC’s upper management adopted the policies and practices whereby P.D. was subjected to wrongful conduct. ACC’s failure to establish reasonable accommodations for P.D. that it provided for other mentally ill inmates was especially egregious. At trial, P.D. will show conduct or omissions by ACC that create an inference of “knowledge of a high degree of probability of harm and reckless indifference to the consequences.” *Id.* As such, summary judgment is inappropriate.

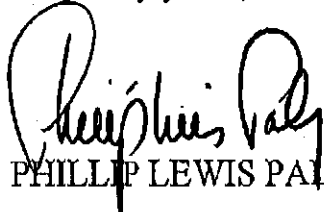
ANALYSIS: The court outlined in its February 9th letter the standards applicable to a motion for summary judgment. See R. 4:46-2; Judson v. People's Bank & Trust Co. of Westfield, 17 N.J. 67, 73-75 (1954); Brill v. Guardian Life Ins. Co., 142 N.J. 520, 540 (1995), among other cases cited.

The court recognizes the unique nature of punitive damages, which are awarded only in exceptional cases, upon a showing that a party has acted in an especially egregious or outrageous matter. The proofs necessary to support an award of punitive damages must consist of a showing by clear and convincing evidence that the conduct of the offending party was malicious—an evil-minded act—or occurred in wanton and willful disregard of plaintiff's rights—that is, deliberate conduct with knowledge of a high degree of probability of harm to another who foreseeably might be harmed by that conduct and reckless indifference to the consequences. See Model Civil Jury Charges § 8.61, Punitive Damages, Law Against Discrimination (Claims).

The New Jersey authority cited above [Rendine, supra] suggests that New Jersey courts are more liberal in considering claims for punitive damages than will courts in other jurisdictions. In this case, a determination of the reasonableness of accommodations made for P.D. during his incarceration is required; such a determination is more appropriate for the finder of fact. See Cavuoti, supra, at 113. Accordingly, the County's application for summary judgment on the punitive damages claim under the LAD is **DENIED**.

A form of order conforming to this ruling accompanies this letter, which will be faxed to all counsel as a courtesy.

Very truly yours,


PHILLIP LEWIS PALEY

Plp: hs

Encl.

Phillip Lewis Paley, J.S.C.
Superior Court of New Jersey
Middlesex County Courthouse
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FILED

FEB 21 2017

Hon. Phillip Lewis Paley

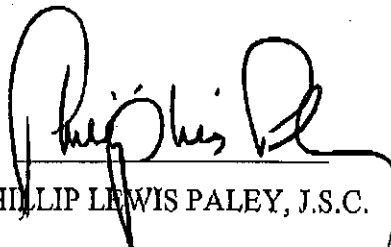
<p>P.D. (a pseudonym), Plaintiff, v. Middlesex County Defendant.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION MIDDLESEX COUNTY DOCKET NO. L-3811-14 CIVIL ACTION SUPPLEMENTARY ORDER</p>
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THIS MATTER having been opened to the court on motions by the American Civil Liberties Union of New Jersey Foundation, attorneys for plaintiff, for partial summary judgment, and Hoagland, Longo, Moran, Dunst & Doukas, LLP, attorneys for defendant, for summary judgment, and the court having considered the moving papers and any opposition submitted thereto, the arguments of counsel, and for good cause shown;

IT IS on this 21th of February, 2017, **ORDERED AND ADJUDGED:**

1. Defendant's motion for summary judgment on the punitive damages claim under the New Jersey Law Against Discrimination, N.J.S.A. § 10:5-1 et seq. is **DENIED**.

A copy of this order will be mailed to all parties.


PHILLIP LEWIS PALEY, J.S.C.

SUPERIOR COURT OF NEW JERSEY

Middlesex County Courthouse

P.O. Box 964

New Brunswick, New Jersey 08903-0964



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