2001 WL 1064810

United States District Court, D. Delaware.

Jane DOE, Plaintiff,
v.
Gregg SYLVESTER, Secretary, Delaware Department of Health & Social Services, in His Official Capacity, Renata Henry, Director, Division of Alcoholism, Drug Abuse and Mental Health, in Her Official Capacity, and Jiro Shimono, Director, Delaware Psychiatric Center, in His Official Capacity, Defendants.

No. CIV. A. 99–891. | Sept. 11, 2001.

Attorneys and Law Firms

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Opinion

MEMORANDUM OPINION

MCKELVIE, District J.

***1** This is a civil rights case. Plaintiff, Jane Doe, is a resident of New Castle, Delaware, and receives inpatient services at Delaware Psychiatric Center ("DPC"). Defendants are Gregg Sylvester, Secretary of the Delaware Department of Health and Social Services ("DHSS"), Renata Henry, Director of the Division of Alcoholism, Drug Abuse, and Mental Health ("DADAMH") within DHSS, and Jiro Shimono, Director of DPC. On December 15, 1999, plaintiff filed a complaint asserting claims under Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12131 et seq., and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794. On January 26, 2000, defendants moved to dismiss the complaint under Fed.R.Civ.P. 12(b)(1) and 12(b)(6). Specifically, the defendants contend that the suit should be dismissed on the following grounds: (1) the suit is barred by the Eleventh Amendment; (2) plaintiff has failed to state a legal claim under either Title II of the ADA or Section 504 of the Rehabilitation Act; (3) plaintiff failed to exhaust her claims in state court; (4) plaintiff's claims are barred by the Rooker–Feldman doctrine; and (5) plaintiff's claims are barred under the doctrines of claim preclusion and issue preclusion. This is the court's decision on defendants' motion.

I. *FACTUAL BACKGROUND*

The court draws the following facts from Doe's complaint and from the defendants' amended opening brief. For the purposes of assessing defendants' motion to dismiss, the court accepts as true all of the allegations pled in the complaint and views the facts in the pleadings and all reasonable inferences therefrom in favor of Doe, the non-moving party. *Schrob v. Catterson,* 948 F.2d 1402, 1405 (3d Cir.1991).

Doe has been diagnosed with borderline personality disorder and profound congenital deafness. She has been educated at schools for the deaf, using American Sign Language ("ASL") as her primary language. ASL is currently plaintiff's primary mode of communication. Although English is her second language, she cannot read, write, or understand English well enough to communicate effectively. Plaintiff relies on a sign language interpreter for effective communication with non-signing individuals, because she is unable to understand more than 10–20% of what is said by reading lips. Because she is mentally ill, plaintiff meets the essential eligibility requirements for services offered by DADAMH which oversees both DPC and New Castle Community Mental Health ("CMH"). In August, 1998, Doe was involuntarily committed for treatment at the DPC by the Superior Court for the State of Delaware. *See Delaware Psychiatric Center v. [Jane Doe],* C.A. No. 981–06–056 (Del.Super.1998). She currently receives inpatient services at DPC.

Throughout the first year of plaintiff's stay at DPC, the hospital provided her with a sign language interpreter from 9:00 a.m. to 9:00 p.m. on weekdays and from 11:00 a.m. to 9:00 p.m. on weekends. This service allowed her to communicate with therapists and other staff at the hospital, to participate in therapeutic and group activities, and to interact with her peers. In August of 1999, defendants reduced the number of hours that an interpreter would be provided to plaintiff to four and one-half hours on three days of the week, five and one-half hours on one day of the week, and between seven and nine and one-half hours on the remaining three days. During the three days on which she receives between seven and nine and one-half hours of interpreter service, plaintiff attends addiction groups and "treatment mall," a series of activities that are arranged for hospital patients. According to plaintiff, the interpreters often

arrive late, leave early, or are absent. As a result, plaintiff has missed addiction group, women's group, and planned visits to her future community placement. She has also, at times, been required to participate in community meetings without the aid of an interpreter.

***2** Since the defendants have cut the number of hours that interpreter services are provided to Doe, she has been unable to communicate effectively with staff and other patients for a large part of the day. Her attendance at and ability to benefit from therapy sessions is now dependent on the availability of an interpreter. In addition, plaintiff is excluded from some group therapy sessions that she was previously able to attend with the aid of an interpreter. For instance, plaintiff can no longer attend a Relaxation Group that teaches patients techniques on how to cope with stress upon their departure from the hospital. For a period of time, plaintiff was also excluded from participation in her women's group and community meetings. Defendants have, however, rearranged plaintiff's interpreter schedule to allow her to participate in these meetings.

Doe is also forced to attend individual therapy sessions with her treating psychologist without an interpreter. She alleges that her therapy, therefore, must be primarily conducted using written English, typed on a computer in the psychologist's office. In her complaint, Doe alleges that because she cannot effectively communicate in written English, these sessions have been rather ineffective. Plaintiff further alleges that forcing her to communicate in written English causes her stress and aggravates the symptoms of her mental illness. Doe has repeatedly asked for the services of an interpreter during these therapy sessions. The hospital, however, has refused to provide an interpreter and has given Doe no explanation as to why this service is not being provided.

As of August of 1999, Doe's treatment team at DPC determined that she was ready to be discharged from the hospital and transferred to a community-based setting. Since May of 1999, an apartment in Horizon House, a CPH-contracted supervised community living facility for mentally ill individuals, has been set aside for Doe to occupy upon her discharge from DPC. However, due to her disability, Doe contends that before she can move into the apartment the defendants must equip the Horizon House apartment with certain auxiliary aids. For instance, the apartment must be equipped with a smoke detector with a flashing light, a Telecommunication Device for the Deaf, and flashing lights to signal when somebody is at the door or phoning plaintiff. Defendants must also assure that appropriate modifications are made, such as the hiring of interpreters or ASL proficient staff so that plaintiff can communicate with them. Despite knowing that such modifications were necessary since May of 1999, the defendants have failed to assure that Horizon House is equipped with appropriate auxiliary aids for plaintiff. Therefore, Doe has been forced to remain at DPC. Plaintiff's treatment team has acknowledged that she would have been released to a supervised community placement months ago if she were not deaf.

Furthermore, plaintiff must make transitional overnight stays at her designated apartment before she may be discharged from the hospital and permitted to permanently reside at Horizon House. She cannot begin this transitional period, however, until the appropriate modifications have been made to the facility. In addition, defendants have failed to assure that adequate interpreter services would be provided plaintiff during her transitional daytime visits to Horizon House. As a result, CMH has cancelled a number of these daytime visits. Plaintiff's release date has been delayed by months because these modifications have not been made at the Horizon House apartment.

***3** On December 8, 1999, the Superior Court of the State of Delaware conducted a hearing, pursuant to 16 *Del. C.* § 5010, to determine whether Doe was in need of continued involuntary treatment at a mental hospital. At the hearing, the Superior Court made findings that Doe was a mentally ill person and that she should remain as an inpatient at DPC for observation and treatment for as long as medically indicated. On December 21, 1999, the Superior Court finalized those findings of fact by issuing its final order. *See Delaware Psychiatric Center v. [Jane Doe],* C.A. No. 98I–06–056 (Del.Super. December 21, 1999).

II. *PROCEDURAL BACKGROUND*

On December 15, 1999, plaintiff, Jane Doe, filed a complaint alleging that the defendants, the Secretary of the DHSS, the director of the DADAMH, and the director of the DPC, violated Title II of the ADA, 42 U.S.C. § 12131 et seq., and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, by refusing to make reasonable modifications to her living arrangements and by denying her equal access to services at DPC such as discharge planning services, transitional services, and community-based planning services. Plaintiff seeks a declaratory judgment and injunctive relief to enjoin defendants to make reasonable modifications for the plaintiff's communication needs. Plaintiff also seeks attorneys' fees and costs.

On January 14, 2000, plaintiff moved for a preliminary injunction. On February 11, 2000, defendants filed their Answering Brief in opposition to the motion for preliminary injunction. On February 28, 2000, plaintiff replied in support of her motion for preliminary injunction. On March 7, 2000, plaintiff amended her opening brief in support of her motion for preliminary injunction. On April 28, 2000, the court held a preliminary injunction hearing on this matter.

On January 26, 2000, defendants moved to dismiss plaintiff's claim pursuant to 12(b)(1) and 12(b)(6). On February 14, 2000, defendants amended their opening brief in support of dismissal. On March 8, 2000, plaintiff filed her answering brief opposing the motion to dismiss. On March 21, 2000, the defendants filed their reply brief in support of their motion to dismiss. On April 5, 2000, plaintiff filed a surreply brief in opposition to defendants' motion to dismiss. On May 12, 2000, the United States moved for leave to participate as *amicus curiae* on behalf of Doe to support the constitutionality of applying Title II of the ADA to state entities.

Over the next months, the parties, at the urging of the court in a series of teleconferences, attempted to resolve the dispute amongst themselves. On December 21, 2000, however, the parties jointly reported that they were unable to reach a settlement and requested the court to consider the parties' pending motions.

This is the court's decision on the defendants' motion to dismiss.

III. *DISCUSSION*

A. Are the defendants immune from suit under the Eleventh Amendment?

***4** Defendants contend that this court lacks subject matter jurisdiction to decide plaintiff's claims, because defendants, as officials of the state of Delaware, are immune to suit pursuant to their Eleventh Amendment sovereign immunity.[1] Defendants also contend that Congress unconstitutionally exceeded its authority to abrogate the State's Eleventh Amendment sovereign immunity and to subject the State to suit when it enacted the ADA and Section 504 of the Rehabilitation Act.

Plaintiff argues in opposition that the Eleventh Amendment only prohibits suits against the State for money damages. Therefore, she contends that her action against state officials seeking injunctive relief is not barred. Plaintiff bases her position on the seminal case of *Ex Parte Young,*[2] in which the Supreme Court carved out an exception to Eleventh Amendment immunity by permitting citizens to sue state officials when the plaintiff seeks only prospective injunctive relief to remedy continuing violations of federal law. *Id; see also Balgowan v. State of New Jersey,* 115 F .3d 214, 217 (3d Cir.1997). According to plaintiff, defendants in this case are not immune to suit because the plaintiff's suit is properly brought against state officials seeking prospective injunctive relief under the doctrine of *Ex Parte Young.* Moreover, plaintiff maintains that Congress validly enacted both the ADA and the Rehabilitation Act under the enforcement powers of § 5 of the Fourteenth Amendment, and thus had the power to abrogate the sovereign immunity of the States.

While the Eleventh Amendment bars federal courts from hearing claims against the state for money damages, it does not prohibit a federal court from hearing claims to address alleged continuing violations of federal law that are brought against state officers for prospective injunctive relief. *Ex Parte Young,* 209 U.S. 123, 128 (1908). Moreover, a suit for prospective relief against state officials can be maintained under the *Ex Parte Young* doctrine even when the necessary result of compliance with the injunction will, as defendants assert here, cause the state to directly expend substantial amounts of money. *Edelman v. Jordan,* 415 U.S. 651(1974); *Graham v. Richardson,* 403 U.S. 365 (1971). As stated by the *Edelman* Court, this "ancillary effect on the state treasury is a permissible and often an inevitable consequence of the principle announced in *Ex Parte Young.*" *Edelman,* 415 U.S. at 667–68.

Defendants, however, rely on *Seminole Tribe of Florida v. Florida,* 517 U.S. 44, 74 (1996), for the proposition that the *Ex Parte Young* doctrine is inapplicable when either a plaintiff's claim arises under a specific remedial statute, or when the statute that the defendants allegedly violated is directed against State entities themselves, and not individuals. In *Seminole Tribe,* the Court held *Ex Parte Young* claims could not be brought to enforce a statute in which Congress has prescribed a limited and detailed remedial scheme. The Court reasoned that allowing *Ex Parte Young* claims in such circumstances would permit a broader range of remedies than Congress had intended under the statutory scheme. Defendants contend that the ADA and Rehabilitation Act contain comprehensive remedial provisions and, therefore, argue that under *Seminole Tribe, Ex Parte Young* claims are not permissible under either statute.

***5** Allowing *Ex Parte Young* suits under Title II of the ADA or Section 504 of the Rehabilitation Act does not raise the concerns of judicial over-reaching that were presented by the Supreme Court in *Seminole Tribe.* In contrast to the intricate remedial provisions of the statute at issue in *Seminole Tribe,* the Indian Gaming Regulatory Act, the statutes at issue in the instant case both have broad remedial schemes that were left unspecified by Congress. Section 504 of the Rehabilitation Act authorizes courts to award "any appropriate relief." *W.B. v. Matula,* 67 F.3d 484, 494 (3d Cir.1995). Similarly, Title II of the ADA, which incorporates the enforcement provisions of Section 504, authorizes the same degree of broad relief. 42 U.S.C. § 12133; *Jeremy H. by Hunter v. Mount Lebanon School Dist.,* 95 F.3d 272, 279 (3d Cir.1996).

Moreover, the *Ex Parte Young* doctrine remains applicable even when the statute at issue is directed

against the State entities themselves, rather than individuals. The Third Circuit has held that Section 504 of the Rehabilitation Act authorizes suits against government officials in their official capacity. *W.B. v. Matula,* 67 F.3d at 499. Congress has directed that Title II of the ADA be interpreted in a manner consistent with Section 504 of the Rehabilitation Act. 42 U.S.C. §§ 12134(b), 12201(a). Because Title II of the ADA incorporates the remedies and rights set forth in Section 504, Title II also authorizes suits against public officials in their official capacities. 42 U.S.C. § 121333, *Jeremy H.,* 95 F.3d at 279. Therefore, remedies under Section 504 of the Rehabilitation Act and Title II of the ADA may include prospective relief against state officials under *Ex Parte Young.*

The defendants' next argue that they should be immune from claims for money damages under Section 504 of the Rehabilitation Act and Title II of the ADA because Congress exceeded its authority under § 5 of the Fourteenth Amendment to abrogate a state's Eleventh Amendment sovereign immunity. *E.g. Bd. of Trustees of the University of Ala. v. Garrett,* 531 U.S. 356 (2001); *Florida Prepaid Postsecondary Educ. Expense Bd. v. College Sav. Bank,* 527 U.S. 627, 635 (1999); *City of Boerne v. Flores,* 521 U.S. 507, 520 (1997); *Seminole Tribe of Florida v. Florida,* 517 U.S. 44, 55–58 (1996).

While the Supreme Court has recently held, in *Bd. of Trustees of the University of Ala. v. Garrett et al.,* that Congress did exceed its constitutional authority to abrogate state sovereign immunity when it enacted Title I of the ADA, the Supreme Court has yet not addressed whether Congress also improperly abrogated state sovereign immunity when it enacted Title II of the ADA. *Garrett,* 531 U.S. at 356 n. 1. Nor has the Court of Appeals for the Third Circuit addressed the issue. *Doe v. Division of Youth Services,* 148 F.Supp.2d 462, 485 (D.N.J.2001). Because the court finds that the plaintiff seeks only prospective injunctive relief against state officials and does not seek money damages from the State, it is not necessary for the court to consider this argument.

B. Should the court dismiss the plaintiff's complaint for failure to state a claim under Section 504 of the Rehabilitation Act or Title II of the ADA?

***6** Defendants next argue, under Fed.R.Civ.P. 12(b)(6), that plaintiff fails to state a claim upon which relief may be granted. A court may dismiss a claim pursuant to Fed.R.Civ.P. 12(b)(6) only if, from the face of complaint, it appears that the plaintiff will be unable to prove any set of facts in support of her claim that would entitle her to relief. *Conley v. Gibson,* 355 U.S. 41, 45–46 (1957). In deciding the defendants' motion to dismiss, court must construe the facts in the complaint in the light most favorable to the plaintiff and all of the allegations set forth in the complaint should be taken as true. *Scheuer v. Rhoades,* 416 U.S. 232, 236 (1974).

Section 504 of the Rehabilitation Act was the first federal statute to provide broad prohibitions against discrimination on the basis of disability. It applies only to programs and activities that receive federal financial assistance. Title II of the ADA, enacted in 1990, incorporates these prohibitions and protections and extends them to all state and local government programs and activities, regardless of whether they receive federal financial assistance. The substantive provisions of the two statutes are similar.

Section 504 of the Rehabilitation Act provides, "No otherwise qualified individual with a disability ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance ...." 29 U.S.C. § 794(a).

Title II of the ADA states that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132.

In support of their motion to dismiss, defendants argue that plaintiff has not alleged a violation under the ADA with regard to her community placement. Under Title II of the ADA, the placement of persons with mental disabilities into community settings is appropriate when (a) the State's treatment professionals have determined community placement to be appropriate, (b) the placement is not opposed by the affected individual, and (c) the placement can be reasonably accommodated in light of the State's available resources and the needs of other mentally disabled persons. *Olmstead v. L.C.,* 527 U.S. 581, 587 (1999).

From the face of the plaintiff's complaint, it is not clear to this court that she will be unable to put forth sufficient facts to entitle her to relief under the ADA. Plaintiff has alleged that, as of August of 1999, her treatment team at DPC determined that she was ready to be discharged from the hospital and transferred to a community-based setting, and that since May of 1999, an apartment in Horizon House, a CPH-contracted supervised community living facility for mentally ill individuals, has been set aside for her to occupy upon her discharge from DPC. Plaintiff has also alleged that she did not oppose transfer to the Horizon House apartment. Rather, she states that she could not be transferred there because of the defendants' failure to make the modifications to the apartment that due to her disability were necessary for her safety, health, and well-being. Last, plaintiff avers that such

modifications were reasonable in light of the State's available resources and the needs of other mentally disabled persons. Ultimate factual determinations regarding the appropriateness of the community placement, the costs of the specific accommodations requested, and the reasonableness of these requests are not for the court to decide in the context of a motion to dismiss. Therefore, the Court finds that plaintiff has stated a claim under Title II of the ADA.

***7** Regarding the Rehabilitation Act, defendants argue that plaintiff has presented insufficient facts to prove that she is an "individual with a disability" within the meaning of Section 504, specifically under 29 U.S.C. § 705(20)(A). However, Section 705(20)(A) specifies that the definition in that section is to be used "[e]xcept as otherwise provided in subparagraph B." 29 U.S.C. § 705(20)(A). The appropriate definition of "individual with a disability" for use in Section 504 is thus found in 29 U.S.C. § 705(B), which defines the term as a person who "(i) has a physical or mental impairment which substantially limits one or more of such person's major life activities; (ii) has a record of such an impairment; or (iii) is regarded as having such an impairment." 29 U.S.C. § 705(B); *School Bd. of Nassau County, Fla., et al. v. Arline,* 480 U.S. 273, 279 (1987). Taking all of the well pled facts and allegations of the complaint as true, the court finds that the plaintiff has provided sufficient basis to prove that she is an "individual with a disability" entitled to relief under the Rehabilitation Act.

C. Should the court dismiss the plaintiff's complaint for failure to exhaust state remedies?

Defendants contend that the plaintiff's complaint should be dismissed for plaintiff's failure to exhaust state remedies under the federal habeas statute, 28 U.S.C. § 2254. While the specific enforcement schemes of Title II of the ADA and Section 504 of the Rehabilitation Act do not require individuals to exhaust available state remedies before filing claims, the federal habeas statute requires individuals to exhaust all available state remedies before petitioning a federal court for relief.

Defendants assert that plaintiff's complaint is merely a veiled petition for release from confinement and should therefore be treated as a habeas petition. In support of their argument, defendants rely on the Supreme Court's holding in *Preiser v. Rodriguez,* 411 U.S. 475 (1973), that a plaintiff cannot avoid the exhaustion requirements of the federal habeas statute by labeling her claims as civil rights claims arising under other federal laws.

According to the plaintiff, however, the *Preiser* doctrine is inapplicable to this case because her claims arise under more specific statutes (namely the ADA Title II and the Rehabilitation Act Section 504) that were enacted after the federal habeas statute. Alternatively, plaintiff contends that her claims cannot arise under the federal habeas statute because her claims do not challenge the fact or duration of her confinement, but challenge only the conditions of her confinement. *See Graham v. Broglin,* 922 F.2d 379, 381 (7th Cir.1991) (explaining distinction in *Preiser* between cases that challenge the "fact or duration" of confinement, which are only cognizable in habeas corpus, and those that challenge "conditions" of confinement, which are properly raised in civil rights actions); *see also Wright v. Cuyler,* 624 F.2d 455, 458 (3d Cir.1980).

***8** The court finds that plaintiff's claims do not challenge the fact or duration of her confinement or seek release from confinement; rather, the plaintiff seeks "reasonable" modifications, auxiliary aids, and the provision of services in the most integrated setting according to plaintiff's needs. Plaintiff's claims, therefore, are properly brought under the enforcement provisions of the ADA and Section 504 and not under the enforcement provisions of the federal habeas statute. The enforcement provisions of the ADA and Section 504 do not require the plaintiff to exhaust state remedies. *Jeremy H.,* 95 F.3d at 281–82 & n. 17.

To require individuals who properly allege federal claims under the ADA and Section 504 to first exhaust state remedies in accordance with the enforcement scheme of the federal habeas statute would frustrate Congress's intent to permit individuals to proceed with claims under those laws and their implementing regulations. Therefore the court finds that the exhaustion requirements of the federal habeas statute are not applicable to the plaintiff's ADA and Rehabilitation Act claims.

D. ***Does the court lack subject matter jurisdiction to hear the plaintiff's claims under the Rooker–Feldman doctrine?***

Defendants next contend that, under the *Rooker–Feldman* doctrine, the court lacks subject matter jurisdiction to hear the plaintiff's claims. *Rooker v. Fidelity Trust,* 263 U.S. 413 (1923); *District of Columbia Ct. of Appeals v. Feldman,* 460 U.S. 462 (1983); 28 U.S.C. 1257. The *Rooker–Feldman* doctrine provides that "a party losing in state court is barred from seeking what in substance would be appellate review of the state judgment in a United States District Court based on the losing party's claim that the state judgment itself violates the loser's rights." *Johnson v.. DeGrandy,* 512 U.S. 997, 1005–1006 (1994). According to the defendants, the relief that the plaintiff seeks is barred by the *Rooker–Feldman* doctrine because "the Superior Court has considered and ruled on the same issues regarding plaintiff's psychiatric treatment, personal safety, and the safety of the public ." Def. Amended Br. at 14.

A federal proceeding is barred by the *Rooker–Feldman* doctrine "only when entertaining the federal court claim would be the equivalent of an appellate review of [a state court] order." *Ernst v. Child and Youth Servs. of Chester County,* 108 F.3d 486, 149 (3d Cir.1997) (quoting *FOCUS v. Allegheny County Court of Common Pleas,* 75 F.3d 834, 840 (3d Cir.1996)). Thus, the doctrine "applies only when in order to grant the federal plaintiff the relief sought, the federal court must determine that the state court judgment was erroneously entered or must take action that would render that judgment ineffectual." *Id.*

The court finds that the plaintiff's claims under the ADA and the Rehabilitation Act do not challenge the original determination of the Delaware Superior Court ordering her involuntary commitment. Rather, plaintiff's claims allege that defendants are now violating the reasonable accommodation mandate of Title II of the ADA and of Section 504 of the Rehabilitation Act by refusing to provide the plaintiff with modifications that would enable her to benefit equally from defendants' hospital services, transitional services, and community services within the context of her involuntary commitment and by failing to administer its services to her in the most integrated setting appropriate to her needs. These claims are unrelated to the Superior Court's determination regarding the plaintiff's need for involuntary commitment. *See e.g. Kathleen S. v. Dep't. of Pub. Welfare,* 10 F.Supp.2d 460, 470 (E.D.Pa.1998) (rejecting application of *Rooker–Feldman* doctrine in ADA integration case brought by involuntarily committed residents of state mental hospital).

***9** Resolving the plaintiff's federal claims will not require this court to review the determination of the Superior Court with respect to the need for plaintiff's commitment, nor will it require this court to effectively overturn the Superior Court's involuntary treatment order. Therefore, the court finds that the *Rooker–Feldman* doctrine does not present a bar to its subject matter jurisdiction over the plaintiff's claims in this case.

E. ***Are the plaintiff's claims precluded under the doctrines of claim or issue preclusion?***

Defendants' final argument is that plaintiff's claims are barred by the preclusive effect of the Delaware Superior Court's involuntary commitment order. Precluding litigants from contesting matters that they have already had a full and fair opportunity to litigate protects their adversaries from multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions. *See* 18 Charles Allen Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure* § 4402 (1981). Defendants raise two arguments regarding preclusion. First, defendants argue that plaintiff's claims are barred by the doctrine of claim preclusion. Second, defendants argue that plaintiff's claims are barred by the doctrine of issue preclusion.

Claim preclusion bars a party from litigating in a subsequent action an issue that was or could have been raised by the party in a finally adjudicated prior action. *Allen v. McCurry,* 449 U.S. 90, 94 (1990). Claim preclusion attaches when there has been "(1) a final judgment on the merits in a prior suit involving (2) the same parties or their privies and (3) a subsequent suit based on the same causes of action." *United States v. Athlone Indus., Inc.,* 746 F .2d 977, 983 (3d Cir.1984).

According to the defendants, plaintiff's claims should be precluded under the claim preclusion doctrine because she could have and should have raised her federal claims to the state court at her involuntary commitment hearing. Plaintiff argues that her ADA and Section 504 claims would not have been properly raised in such a forum. She contends that, because her federal claims require different determinations and involve different periods of time than the determinations made by the state court, she should not be barred from now raising her federal claims.

The court finds that the plaintiff is not precluded from raising her federal claims before this court. The involuntary commitment hearing was focused only on assessing the plaintiff's mental health and treatment options at the time of the hearing. It cannot be said that plaintiff's current civil rights suit is based on the same cause of action or that by participating in the state commitment proceedings, the plaintiff waived her rights to later assert federal claims.

Issue preclusion bars the relitigation of specific issues of fact or law in a subsequent action involving a party to the first action. *Allen v. McCurry,* 449 U.S. at 94. Issue preclusion applies when a question of fact essential to the judgment has been already been actually litigated and determined in a final judgment of a prior case. *Messick v. Star Enterprise,* 655 A.2d 1209, 1211 (Del.1995).

***10** The court finds that plaintiff's claims for reasonable accommodations for her disability under the ADA and the Rehabilitation Act and for integration under the ADA also cannot be barred by issue preclusion. Neither of those claims were litigated or addressed in the state court commitment proceedings. The only issues considered and adjudicated by the state court were whether the plaintiff was a mentally ill person at the time of the hearing and if so, what disposition would impose the least restraint upon her liberty and dignity at the time of the hearing, given the available alternatives. Plaintiff's claims require separate determinations of whether, given her disability, the state met its obligations under *Olmstead v. L.C* to provide reasonable accommodations and whether defendants' failed to administer their services in the most integrated

setting appropriate to plaintiff's needs. Because there is no identity of issue, the court finds that issue preclusion does not bar the plaintiff's claims.

The court will enter an order in accordance with this opinion. The court will address the plaintiff's motion for preliminary injunction in a separate opinion.

Parallel Citations

21 NDLR P 224

Footnotes

1 The Eleventh Amendment to the United States Constitution provides: "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. Const. Amend. XI.

2 209 U.S. 123, 128 (1908).