

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

FRANK G. McALEESE,

Plaintiff,

v.

PENNSYLVANIA DEPARTMENT OF
CORRECTIONS, ET AL.

Defendants,

No. CA99-381 Erie

**THE UNITED STATES' OPPOSITION TO
DEFENDANTS' SECOND MOTION FOR SUMMARY JUDGMENT**

Preliminary Statement

Defendants have moved for summary judgment on four issues. Defendants argue: (1) plaintiff's claim under the Americans with Disabilities Act, 42 U.S.C. 12111 et seq ["ADA"] is barred by the Eleventh Amendment; (2) the individual defendants should be dismissed from this action because there is no individual liability under title II of the ADA or section 504 of the Rehabilitation Act, 29 U.S.C. 704; (3) plaintiff is not entitled to punitive damages under the ADA or Rehabilitation Act; and (4) plaintiff's claim for compensatory damages is barred by the Prison Litigation Reform Act. The United States, as Intervener, files this brief in opposition to address the first and second issues.

Procedural Background

The plaintiff, Frank McAleese, an inmate at the State Correctional Institution at Albion,

initiated this suit in 1999. He alleged that he was refused the opportunity to participate in the Correctional Industries Program because he is an individual with a disability, in violation of title II of the ADA and section 504 of the Rehabilitation Act. The District Court dismissed the suit on the grounds that the Eleventh Amendment barred actions brought against the Commonwealth of Pennsylvania pursuant to title II of the ADA and Rehabilitation Act.

The plaintiff appealed, and the Department of Justice intervened in the appeal. The Court of Appeals for the Third Circuit determined that it would not address the issue of whether the ADA and Rehabilitation Act were legislation properly enacted pursuant to the 14th Amendment of the Constitution. Holding that “it is not the habit of the court to decide questions of a constitutional nature unless absolutely necessary to a decision of the case,” the Court instead held that this case could be resolved under section 504 if the Department of Corrections is a recipient of federal financial assistance. It further held that the plaintiff can pursue his claim under title II of the ADA and section 504 pursuant to the principles in Ex parte Young, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed 714 (1908). McAleese v. Pennsylvania Department of Corrections et al., No. 00-1875, Slip Op. at 4-5 (3d Cir. 2001) (attached hereto). The Court directed the District Court to determine whether the Pennsylvania Department of Corrections received federal financial assistance during the period that the alleged acts of discrimination occurred. Id. at 6-7. The Court did not specifically hold that the acceptance of federal funds would constitute a waiver of Eleventh Amendment immunity; it directed the District Court to make this determination. However, subsequently, the Court of Appeals ruled in Koslow v. Commonwealth of Pennsylvania, 302 F.3d 161, 173-76 (3d Cir. 2002) that the Pennsylvania Department of Corrections receives federal financial assistance and that by doing so, it has waived its sovereign

immunity to suits brought under section 504 of the Rehabilitation Act.¹ Also, in the meantime, the Supreme Court has granted certiorari in Medical Bd. of California v. Hason, No. 02-479, to address whether Congress properly abrogated states' Eleventh Amendment immunity when it enacted title II of the ADA. The Court's decision is expected later this term.

Argument

1. The Court Does not Need to Address Defendants' Motion on the Constitutionality of Title II of the ADA

Defendants move for summary judgment on the issue of whether plaintiff is entitled to compensatory damages under title II of the ADA. In effect, defendants are raising again the constitutionality of title II, and whether the state of Pennsylvania has Eleventh Amendment immunity from suits brought under title II.

We submit that the District Court need not address this issue. The Court of Appeals reversed the District Court's Order dismissing this action. In so doing, it also ruled that it is unnecessary to address whether title II is legislation properly enacted under the Fourteenth Amendment where, as here, this action could proceed independently under section 504. McAleese, No. 00-1875, Slip Op. at 4-5. Instead, the Court of Appeals instructed this Court to determine whether the Pennsylvania Department of Corrections is subject to suit under section 504 of the Rehabilitation Act, and specifically whether the Department of Corrections has received federal funds. Id., Slip. Op. at 6-8. Subsequently, the parties in this action stipulated

¹ Koslow establishes that plaintiff can proceed under section 504. Defendants do not challenge the section 504 claim; they only challenge the nature of the monetary relief that plaintiff is entitled to under section 504.

that the Department of Corrections received federal funds during the period when the alleged acts of discrimination occurred. In addition, the Court of Appeals recently affirmed that the Department of Corrections is a recipient of federal funds, and that by accepting federal funds it has waived its Eleventh Amendment immunity to suits brought under Section 504. Koslow, 302 F.3d at 173-76.

Accordingly, because plaintiff can bring this action against the Department of Corrections under section 504, and in accordance with the decision by the Court of Appeals, this Court should not address again whether the Eleventh Amendment bars suits for damages under title II.²

2. The individual defendants can be sued in their official capacity for injunctive relief under the principals of Ex Parte Young

Defendants seek to have the Court dismiss the individual defendants, arguing that they are not proper party defendants and cannot be sued in their personal capacity. The Court should not dismiss the individual defendants because they are subject to suit under the ADA and section 504 in their official capacity pursuant to the principles set forth in Ex parte Young, 209 U.S. 123,

² Additionally, as noted above, the Supreme Court will decide this term whether the Eleventh Amendment bars claims based on title II of the ADA against the states. Inasmuch as the Court's decision will affect the outcome of this claim, it makes sense to defer consideration of the title II claim. However, if this Court determines that it intends to address the constitutionality of title II, the United States respectfully requests additional time to brief that issue.

28 S.Ct. 441, 52 L.Ed 714 (1908).³

Ex parte Young held that when a state official acts in violation of the Constitution or federal law (which the Constitution's Supremacy Clause makes the "supreme Law of the Land"), he is acting ultra vires and is no longer entitled to the State's immunity from suit. The doctrine permits only prospective injunctive relief. See Edelman v. Jordan, 415 U.S. 651, 664, 667-668 (1974). By limiting relief to prospective injunctions of officials, the Court avoided a judgment directly against the State but, at the same time, prevented the State (through its officials) from continuing illegal action.

The Ex parte Young doctrine has been described as a legal fiction, but it was adopted by the Supreme Court almost a century ago to serve a critical function in permitting federal courts to bring state policies and practices into compliance with federal law. "Both prospective and retrospective relief implicate Eleventh Amendment concerns, but the availability of prospective relief of the sort awarded in Ex parte Young gives life to the Supremacy Clause. Remedies designed to end a continuing violation of federal law are necessary to vindicate the federal interest in assuring the supremacy of that law." Green v. Mansour, 474 U.S. 64, 68 (1985); see also Alden, 527 U.S. at 757 ("Established rules provide ample means to correct ongoing violations of law and to vindicate the interests which animate the Supremacy Clause."). The Supreme Court recognized that Title I of the ADA can be enforced by private individuals in

³ As noted above, Koslow holds, and defendants do not dispute, that plaintiff can sue the state of Pennsylvania under section 504. If the Court agrees, then it will not need to address the liability of the individual defendants. However, if the Court should find that the state has not waived its Eleventh Amendment immunity by accepting federal financial assistance, then plaintiff should be allowed to proceed against the Corrections officials, in their official capacity, for prospective injunctive relief.

actions for injunctive relief under Ex parte Young. Bd. of Trustees of the Univ. of Alabama v. Garrett, 531 U.S. 356, 374, n.9, 121 S.Ct. 955, 968, n.9, 148 L.Ed. 2d 866 (2001).

Defendants now argue that a suit against a state official for injunctive relief to cure a continuing violation of federal law is not available under title II and section 504 because Congress only intended States, and not their officials, to be named as defendants.

Defendants' argument must fail because the Court of Appeals has already held that plaintiff can "pursue Ex parte Young relief under the ADA and the Rehabilitation Act." McAleese, Slip Op. at 4-5. More recently, in Koslow v. Commonwealth of Pennsylvania, the Court reaffirmed that a party can assert claims for prospective injunctive relief under the ADA against individuals acting in their official capacity:

When the relief sought is prospective injunctive relief, the request is ordinarily sufficient to invoke the Young fiction. Koslow's claim for reinstatement, with accommodations for his disability is the type of injunctive, 'forward-looking' relief cognizable under Ex parte Young. Therefore, he can state federal claims under the ADA against Superintendent Vaughn, acting in his official capacity, for prospective injunctive relief. (Citations omitted).

302 F.3d at 179. The holdings of the Court of Appeals dispose of defendants' motion to dismiss the individual defendants: the individual defendants should remain in this case in the event the Court must invoke the Ex parte Young doctrine.

Accordingly, because the Third Circuit has previously held that individual defendants are subject to liability in their official capacity under title II and section 504, the individual defendants should not be dismissed at this time.

Conclusion

For the foregoing reasons, defendants' second motion for summary judgment should be denied as to the following issues: (1) whether plaintiff's claim under title II is barred by the Eleventh Amendment and (2) whether the claims individual defendants are proper party defendants.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing Opposition to Defendants' Second Motion for Summary Judgment was served upon the parties, by federal express, by sending copies thereof to:

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on this _____ day of _____, 2003.

Laura Einstein