

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

BARBARA WELLS,)	No. 3:01CV00030
)	
Plaintiff,)	
)	
v.)	<u>ORDER</u>
)	
)	
THOMAS LEINBACH, et al.,)	
)	
Defendants.)	JUDGE NORMAN K. MOON

This matter is before the Court on Defendants’ motion for summary judgment. For the reasons stated in the accompanying Memorandum Opinion, it is hereby ORDERED that Plaintiff’s claims against Dr. William Horbaly are DISMISSED with prejudice.

It is further ORDERED that Plaintiff’s Claims against Catherine Pearson and Dr. Thomas Leinbach are DISMISSED with prejudice because: (1) Plaintiff has failed to allege any specific, nonconclusory facts that would support her charges; and (2) Defendants are entitled to the affirmative defense of good faith, qualified immunity.

The Clerk of the Court is hereby directed to send a certified copy of this Order to all counsel of record, and is further directed to strike this matter from the docket of this Court.

ENTERED: _____
U.S. District Judge

Date

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

BARBARA WELLS,)	No. 3:01CV00030
)	
Plaintiff,)	
)	
v.)	<u>MEMORANDUM OPINION</u>
)	
)	
THOMAS LEINBACH, et al.,)	
)	
Defendants.)	JUDGE NORMAN K. MOON

I.

This matter is before the Court on Defendants’ motion for summary judgment. Plaintiff is suing Defendants for racial discrimination and conspiracy to discriminate under 42 U.S.C. §§ 1981 & 1985. Plaintiff Barbara Wells (“Ms. Wells”) is the foster mother for Michael Guggino, (“Michael”) who was at all relevant times herein twelve years old. Defendants are Dr. Thomas Leinbach, the director of the dental clinic at the University of Virginia Primary Care Center (“clinic” or “dental clinic”) , Ms. Catherine Pearson, an employee of the clinic, and Dr. William Horbaly, a dentist at the clinic.

As a preliminary matter, Plaintiff conceded during the November 7th hearing on Defendants’ motion that Dr. William Horbaly was not involved in the events that form the basis of Plaintiff’s complaint and that any claims against him should be dismissed. Therefore, it is hereby ORDERED that Plaintiff’s claims against Defendant Dr. William Horbaly are DISMISSED with prejudice.

The undisputed facts of the case as they pertain to the remaining Defendants are as follows. On February 19, 1999, Ms. Wells brought Michael to the dental clinic for an orthodontic appointment. Once arriving at the clinic, Plaintiff initially met with Ms. Jessica Larocco, the receptionist. Ms. Larocco gave Ms. Wells a clipboard and a medical history form, and asked to fill out the form. Plaintiff informed Ms. Larocco that she did not know Michael's medical background, and therefore could not complete the form. Ms. Larocco responded that without a properly completed form, Michael could not be seen. Frustrated with the treatment she received from Ms. Larocco, Ms. Wells asked to see the supervisor.

Ms. Larocco then left and Ms. Pearson, as the administrator in charge, came to the waiting room to meet with Ms. Wells. Ms. Pearson attempted to resolve the question of the medical history form, asking Ms. Wells if she knew Michael's history number. It is unclear how the issue of the form was resolved. In any case, Ms. Pearson moved on, and asked to see Michael's Medicaid card. Plaintiff responded that she did not have it. Ms. Pearson then informed her that without an insurance card, the child could not be treated.

Dr. Leinbach, who was not present in the waiting room, was then informed by his staff that Plaintiff was being belligerent and disruptive. Dr. Leinbach reviewed Michael's chart and learned that Michael had broken one appointment, canceled another, and missed a third for lateness. After considering all of the information provided to him, Dr. Leinbach, as the director of the clinic, decided not to treat Michael on that day.

Ms. Pearson, who was still in the waiting room with Plaintiff and her son, was informed by the medical staff that Michael would not be treated. She relayed this information to Ms. Wells and instructed her to leave the clinic immediately. Plaintiff resisted, insisting that she speak with

someone else. Ms. Pearson called hospital security, and Ms. Wells and her foster child were escorted out of the clinic. Following this incident, Dr. Leinbach filled out a consultation request form, referring Michael to Dr. Horbaly. Dr. Horbaly thereafter began treating Michael, and he continues to do so.

Dr. Leinbach and other Defendants insist that the decision not to treat on February 19, 1999 was based on Plaintiff's belligerent behavior and on the patient's history of missed, broken, and canceled appointments. Plaintiff, in contrast, alleges that these reasons are merely pretextual excuses covering up Defendants' racial bias against Plaintiff.

II.

Summary Judgment is appropriate according to Rule 56(c) if the movant is able to "show that there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." "The function of the judge at the summary judgment stage is not to determine the truth of a matter or to weigh credibility, but to determine whether there is any genuine issue of fact...." JKC Holding Co., LL.C. v. Washington Sports Ventures, Inc., 264 F.3d 459, 465 (4th Cir. 2001). Thus, if there is a reasonable dispute as to any material fact, then summary judgment is improper. However, to defeat a motion for summary judgment, the non-movant must do more than merely point to bare allegations of wrongdoing. Rather, the non-movant must be able to present "specific facts showing that there is a genuine issue for trial." Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986).

A.

Defendants first argue that they are entitled to summary judgment based on a claim of good faith immunity. Before considering Defendants' defense, this Court must first determine whether Defendants' qualify for consideration under this doctrine. Defendants' assert, and it is undisputed by Plaintiff, that they were acting as employees of the University of Virginia Primary Care Center, an agency of the Commonwealth of Virginia. Plaintiff does contend, however, that because Dr. Leinbach is also employed by the Virginia Health Services Foundation, a private, non-profit corporation, that the defense of qualified immunity does not apply to him, even though he was performing a governmental function. To support this assertion, Plaintiff cites to Richardson v. McNight, 521 U.S. 399 (1997).

In Richardson, the Supreme Court determined that prison guards who were privately employed by a prison management firm could not claim an immunity designed to protect government officials. The guards argued that they performed essentially the same functions as their state-employed counterparts, and that therefore their immunity claim was valid. The Court disagreed, noting that immunity should not apply to a private employee, "especially for a private person who performs a job without government supervision or direction." 521 U.S. at 409.

In Dr. Leinbach's case, the fact that he is both a private and public employee is irrelevant, so long as his claim of immunity arises from duties performed as a public official. Richardson concerned wholly private individuals. Its holding, therefore, is inapplicable to Dr. Leinbach's situation. In short, this Court holds that Defendants were Virginia state employees working at a University of Virginia dental clinic that was open to the public. Because their challenged actions were directly related to their jobs as governmental officials, Defendants are subject for

consideration under the Supreme Court’s qualified immunity doctrine.

B.

As the Supreme Court recently noticed, “The privilege is ‘an *immunity from suit* rather than a mere defense to liability; and like an absolute immunity, it is effectively lost if a case is erroneously permitted to go to trial.’¹ As a result, ‘we repeatedly have stressed the importance of resolving immunity questions at the earliest possible stage in litigation.’” Saucier v. Katz, 533 U.S. 194, ___, 121 S.Ct. 2151, 2156 (2001) (emphasis in original) (citations omitted). The reason for addressing qualified immunity claims at the earliest possible stage is clear. “[B]are allegations of malice should not suffice to subject government officials either to the costs of trial or to the burdens of broad-reaching discovery.” Harlow v. Fitzgerald, 457 U.S. 800, 817-18 (1982). Stated differently, courts have designed the privilege “to spare individual officials the burdens and uncertainties of standing trial in those instances where their conduct would strike an objective observer as falling within the range of reasonable judgment.” Gooden v. Howard County, 954 F.2d 960, 965 (4th Cir. 1992). For these reasons, it is critical that the Court consider Defendants’ claim of qualified immunity as soon as is practically possible, and in any event, before Defendants are subjected to additional discovery.

The qualified immunity doctrine is complex, specifically as it relates to cases such as this

¹In Plaintiff’s Memorandum in Opposition to Defendants’ Motion for Summary Judgment and Defendants’ Motion to Stay Discovery, Plaintiff’s counsel grossly misstates the law on this point. He claims, “Such immunity is not, as defendants’ motion implies, a defense from liability. It is instead an entitlement of a public official not to stand trial...” (citations omitted). As the above quotation makes clear, the privilege is not a *mere* defense to liability. Instead, it is considerably more than that, providing public officials with immunity even from standing trial in cases where the defense applies.

one, where a plaintiff is required to prove a government official's improper intent. In Crawford-El v. Britton, 523 U.S. 574 (1998), the Supreme Court overruled a court of appeals decision that required a plaintiff to provide "clear and convincing evidence of improper motive" in order to survive a motion for summary judgment. Id. at 584. The Court held that a plaintiff should not be required to meet a heightened standard of pleading, noting that there is no justification for "a rule that places a thumb on the defendant's side of the scales when the merits of a claim that the defendant knowingly violated the law are being resolved." Id. at 593.

At the same time, however, the Court was sensitive to the concerns of government employees who may be unfairly subjected to frivolous and harassing lawsuits. Therefore, a plaintiff cannot survive a motion for summary judgment merely by alleging that a defendant was unconstitutionally biased against her. "[T]he improper intent element of various causes of action should not ordinarily preclude summary disposition of insubstantial claims." Id. at 593. The Crawford-El Court gave trial judges significant guidance in how to manage motions for summary judgment such as this one:

When a plaintiff files a complaint against a public official alleging a claim that requires proof of wrongful motive, the trial court must exercise its discretion in a way that protects the substance of the qualified immunity defense. It must exercise its discretion so that officials are not subjected to unnecessary and burdensome discovery or trial proceedings. * * *

Thus, the court may insist that the plaintiff 'put forward specific, nonconclusory factual allegations' that establish improper motive causing cognizable injury in order to survive a prediscovery motion for summary judgment. This option exists even if the official chooses not to plead the affirmative defense of qualified immunity. Second, if the defendant does plead the immunity defense, the district court should resolve that threshold question before permitting discovery.

Id. at 597-98 (internal citations omitted). Of these two options, the Supreme Court has suggested

that district courts begin with the first – asking a plaintiff to amend his or her pleadings. “[T]he district judge may choose that alternative before resolving the immunity question, which sometimes requires complicated analysis of legal issues.” Id. at 598.

C.

Therefore, before turning to the merits of Defendants’ good faith immunity defense, this Court will consider whether Plaintiff has alleged any specific, nonconclusory facts. At this stage, Plaintiff has no evidence, direct or circumstantial, to support any of the charges in her motion for judgment. Her entire case rests solely on her perception that she was being discriminated against. The following excerpt from Plaintiff’s deposition, wherein she describes what transpired shortly before she was escorted out, highlights this point.

A: Ms. Pearson took Michael’s hand....And she leaned over the counter and took his hand like this, stroking it. “You haven’t done anything wrong, Sweetie. None of this is your fault.”....

Q: Did you think it was inappropriate for her to do that to Michael?

A: Absolutely.

Q: Why?

A: Because Michael is my son. She had no business putting her hands on him in any way, especially when it’s obvious he’s white, I’m black, and she’s letting him know that he did nothing wrong, but your mother did something wrong....

* * *

Q: Why do you think that [race] had anything to do with her touching your son?

A: Why did she have to touch him? Why couldn’t she just say, Young man, I’m sorry this is happening to you, but this is our decision.

Q: Yeah. But my question is why do you think his race or your race had anything to do with her touching your son?

A: Just an educated knowledge of how people behave. I am black, and I’ve been through similar situations before. So it wouldn’t take a rocket scientist for it to be in my face and I not know it when I see it.

The Court does not doubt that Ms. Wells perceived Ms. Pearson's behavior and Dr. Leinbach's decision as racially motivated. However, her perception alone is not enough to survive a motion for summary judgment. Plaintiff must be able to point to some item of evidence that would support her assertion that her rights under 42 U.S.C. §§ 1981 & 1985 were violated. To date, she has offered no such evidence. Instead of facts, Plaintiff, in her Memorandum in Opposition to Defendants' Motion for Summary Judgment, repeatedly restates the conclusory assertion that her discrimination claim should not be dismissed because she alleges that she has been discriminated against.

Therefore, it might be appropriate, in light of Crawford-El, for this Court to refrain from considering Defendants' good faith immunity claim, and instead *sua sponte* grant Plaintiff leave to amend her complaint. See 523 U.S. at 598. However, Plaintiff has informed the Court, through its Memorandum and at the November 7th hearing, that she cannot provide any specific, nonconclusory facts without additional discovery. Since the good-faith immunity defense would protect a government official from discovery, the Court must now consider Defendants' claim of that affirmative defense.

D.

The test for whether a public official is protected by a claim of qualified immunity is twofold. First, a court must consider "whether a constitutional right would have been violated on the fact alleged." Saucier, 121 S.Ct. at 2155. If the court determines that a right would have been violated, then a second question must be asked; in the specific context of the case, was the right "clearly established." Id. at 2156.

Plaintiff's alleges that Defendants fabricated their reasons for turning her and her foster son away in order to hide their desire to discriminate against Plaintiff on the basis of her race. Plainly, Plaintiff's constitutional rights under the Fourteenth Amendment would be violated if these allegations are proven true. Therefore, this Court must proceed to the second question: is the right clearly established in this case.

Plaintiff suggests the answer to this second inquiry is "yes," stating, "The constitutional right to contract free from discrimination is a fundamental one that has been unambiguously established in law for more than a century." Plaintiff is correct that her right to make and enforce contracts is well-established. However, Plaintiff misunderstands this second portion of the Saucier test for considering a claim for qualified immunity, which requires a fact-based analysis. As the Supreme Court has ruled, it is not enough for a plaintiff to merely state as a general proposition that her Fourteenth Amendment rights have been violated. "The relevant, dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." Saucier, at 121 S.Ct. at 2156.

Based on the undisputed facts as described in Part I, above, it would not have been clear to either Ms. Pearson or Dr. Leinbach that their conduct might have been unlawful in the situation that they confronted. First, as to Ms. Pearson, she was called to the scene by Jessica Larocco. She therefore came to waiting room while a dispute was already under way, with the hope of resolving it. She continued to work with Plaintiff until she was informed by Dr. Leinbach's staff that the Plaintiff's foster child would not be seen. Having no authority or reason to question a decision by the director of the clinic, Ms. Pearson ordered Plaintiff to leave. When Ms. Wells

refused to cooperate, security was called. In sum, it would not have been clear to a reasonable official in Ms. Pearson's shoes that her actions might have violated Plaintiff's constitutional rights. As a result, she is entitled to the protection of the qualified immunity defense.

As for Dr. Leinbach, he and Plaintiff had no personal interaction on the day in question. The only factual allegation that Plaintiff provides to support her charges against Dr. Leinbach are that he "peered at Wells, looking at her face, which is very black, then turned around and went back through the door." In any case, it is acknowledged that they did not actually speak or otherwise communicate with each other. Therefore, Defendant made his decision to not treat Michael Guggino based on the information provided to him. He saw from Michael's chart that he had a history of broken and missed appointments. In addition, Dr. Leinbach had received reports that Plaintiff was causing a disruption in the waiting room. Accepting as true the information provided to him, Dr. Leinbach acted quickly to defuse the situation. He ordered that Ms. Wells be asked to leave the clinic. In short, it would *not* have been clear to a reasonable public official that his actions might have violated Plaintiff's constitutional rights. Defendant Leinbach, on the facts as pled, is entitled to a qualified good faith immunity defense.

III.

In conclusion, Plaintiff's claims against Dr. William Horbaly are DISMISSED WITH PREJUDICE with the consent of both Plaintiff and Defendants. Defendants' Motion for Summary Judgment is GRANTED and Plaintiff's Claims against Catherine Pearson and Dr. Thomas Leinbach are hereby DISMISSED WITH PREJUDICE because: (1) Plaintiff has failed to allege any specific, nonconclusory facts to support her charges; and (2) Defendants are entitled to

the affirmative defense of good faith, qualified immunity.

The Clerk of the Court is hereby directed to send a certified copy of this Order to all counsel of record, and is further directed to strike this matter from the docket of this Court.

ENTERED: _____

U.S. District Judge

Date