United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18-7191 **September Term, 2019**

FILED ON: DECEMBER 20, 2019

REGINALD LEAMON ROBINSON,
APPELLANT

v.

ANTHONY K. WUTOH, PROVOST, AND TITLE IX DECISIONAL AUTHORITY, HOWARD UNVERSITY AS AGENT, EMPLOYEE, AND INDIVIDUALLY, ET AL.,
APPELLEES

Appeal from the United States District Court
for the District of Columbia
(No. 1:18-cv-00518)

Before: HENDERSON and TATEL, *Circuit Judges*, and GINSBURG, *Senior Circuit Judge*.

J U D G M E N T

This appeal from the United States District Court for the District of Columbia's order granting the Defendants' motion to dismiss in part and motion for summary judgment in part was considered on the record from the district court and the briefs filed by the parties. *See* Fed. R. App. P. 34(a)(2); D.C. Cir. R. 34(j). The court has accorded the issues full consideration and has determined a published opinion is not warranted. *See* D.C. Cir. R. 36(d). For the reasons stated below, it is hereby

ORDERED and ADJUDGED that the judgment of the district court be affirmed.

Reginald Robinson, originally appearing pro se, appeals the district court's decision to grant the Defendants' motion to dismiss Count 4 of his complaint and for summary judgment on Counts 1, 2, 3, and 9. Even under the less stringent standards accorded pro se litigants, *see Erickson v. Pardus,* 551 U.S. 89, 94 (2007), we think it clear the court did not err.

First, the district court did not abuse its discretion when it denied the Appellant's request for additional discovery, as the Appellant rested upon "conclusory assertion[s] without any supporting facts to justify the proposition that the discovery sought will produce the

evidence required." *Messina v. Krakower*, 439 F.3d 755, 762 (D.C. Cir. 2006) (citation omitted).

Regarding Counts 1 and 2, the district court correctly granted the Appellees' motion for summary judgment because the Appellant failed to produce sufficient evidence to raise a material issue of disputed fact as to whether the University breached Mr. Robinson's contract or the implied duty of good faith and fair dealing. *See Francis v. Rehman*, 110 A.3d 615, 620 (D.C. 2015) (describing breach of duty as a necessary element of proof for breach of contract claim).

Regarding Count 3, the district court did not err in determining the Appellant's "conclusory statements" were insufficient to raise a material issue of disputed fact in support of a claim for relief under an erroneous outcome theory of Title IX liability. *Robinson v. Howard University, Inc.,* 335 F. Supp. 3d 13, 27–28 (D.D.C. 2018); *see also Yusuf v. Vassar College,* 35 F.3d 709, 715 (2d Cir. 1994).

Regarding Count 9, we agree with the district court that the Appellant's speculative and conclusory allegations could not make the required showing for negligent hiring or supervision that "an employer knew or should have known its employee behaved in a dangerous or otherwise incompetent manner, and that the employer, armed with that actual or constructive knowledge, failed to adequately supervise the employee." *Robinson,* 335 F. Supp. 3d at 31 (quoting *Giles v. Shell Oil Corp.*, 487 A.2d 610, 613 (D.C. 1985)).

Regarding Count 4, a claim of deliberate indifference under Title IX must show a "school administrator with authority to take corrective action responded to harassment with deliberate indifference." *Fitzgerald v. Barnstable School Comm.*, 555 U.S. 246, 257 (2009). Robinson's factual allegations were conclusory and insufficient to state a plausible claim under Title IX. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("To survive a motion to dismiss, . . . the plaintiff [must] plead[] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged").

We note the record does not show the district court provided Robinson with notice, consistent with good practice in pro se cases in this Circuit, that "any factual assertion in the movant's affidavits will be accepted ... as being true unless he submits his own affidavits or other documentary evidence contradicting the assertion." *Neal v. Kelly*, 963 F.2d 453, 456 (D.C. Cir. 1992)(cleaned up); *see e.g., Acosta v. Nelson,* 561 Fed. App'x 4, 5 (D.C. Cir. 2014) (recognizing district court provided pro se party "adequate notice below of the consequences of failing to respond with evidence to the factual assertions made by the defendants in seeking summary judgment"). Because the Appellant is represented by counsel on appeal and does not claim to have been prejudiced by the lack of notice, we mention the matter solely for the benefit of the district court.

The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. *See* Fed. R. App. P. 41(b); D.C. Cir. R. 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Michael C. McGrail
Deputy Clerk