

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

CYNTHIA D. RHOUNI,

Plaintiff,

MEMORANDUM and ORDER
05-C-300-S

v.

WISCONSIN DEPARTMENT OF CORRECTIONS,
MATTHEW J. FRANK and one or more JOHN DOES,

Defendants.

Plaintiff Cynthia D. Rhouni brought this civil action under 42 U.S.C. §1983 and state law against defendants Wisconsin Department of Corrections, Matthew J. Frank and John Does for a violation of her Constitutional rights. In her complaint she alleges that while visiting her ex-husband at the Columbia Correctional Institution, Portage, Wisconsin she was asked to remove her religious head scarf.

On September 30, 2005 defendants moved for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, submitting proposed findings of facts, conclusions of law, affidavits and a brief in support thereof. This motion has been fully briefed and is ready for decision.

On a motion for summary judgment the question is whether any genuine issue of material fact remains following the submission by

both parties of affidavits and other supporting materials and, if not, whether the moving party is entitled to judgment as a matter of law. Rule 56, Federal Rules of Civil Procedure. This motion has been fully briefed and is ready for decision.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. An adverse party may not rest upon the mere allegations or denials of the pleading, but the response must set forth specific facts showing there is a genuine issue for trial. Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

There is no issue for trial unless there is sufficient evidence favoring the non-moving party that a jury could return a verdict for that party. If the evidence is merely colorable or is not significantly probative, summary judgment may be granted. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

FACTS

For purposes of deciding defendants' motion for summary judgment the Court finds there is no genuine dispute as to any of the following material facts.

Plaintiff Cynthia D. Rhouni is an adult resident of Wisconsin. Defendant Wisconsin Department of Corrections (DOC) is a department

of the executive branch of the government of the State of Wisconsin. Defendant Matthew J. Frank has been employed as the Secretary of the DOC since January 6, 2003.

Pursuant to DOC 200 IMP 1, the Division Administrator of the Division of Adult Institutions (DAI), Steve Casperson, is responsible for the approval or disapproval of Internal Management Procedures (IMP). A revised DOC 309 IMP 11, Identification and Dress Code Policy, was signed by Steve Casperson on November 22, 2002. This policy prohibited visitors from wearing hats or head gear.

On February 3, 2003 plaintiff took her son to the Columbia Correctional Institution, Portage, Wisconsin to visit his father. She was informed that she had to remove her head scarf to enter the institution.

On June 15, 2005 Matthew Frank directed that the DOC policy DOC 309 IMP 11 be changed to allow visitors to wear head gear where it does not conceal the identity of the visitors. Further, head gear is not required to be removed for inspection prior to passing through the metal detector.

Defendant Frank does not personally supervise the day-to-day operation of DOC's adult correctional institutions. He does not personally supervise visitation at the institutions. Defendant Frank was not personally involved in informing plaintiff that she would have to remove her head scarf to enter the institution.

Defendant Frank did not know about ant visit that plaintiff made to CCI until he was advised of this lawsuit which was filed on May 25, 2005.

MEMORANDUM

Plaintiff concedes that the only remaining claim in the above entitled matter is plaintiff's 42 U.S.C. § 1983 claim against defendant Matthew Frank for money damages. She concedes that her request for her injunctive relief is moot.

Plaintiff claims that defendant Frank was personally involved in the alleged deprivation of her constitutional rights. She argues that he was responsible for implementing the policy. It is undisputed, however that he did not implement the policy, DOC IMP 11, which prohibited visitors to the institutions from wearing head gear. Steve Casperson approved and implemented the policy on November 22, 2002 before defendant Frank became the Secretary of DOC in January 2003. Defendant Frank had no personal involvement in creating or approving the policy. Accordingly, he cannot be held personally liable. Polk County v. Dodson, 454 U.S. 312, 325 (1981).

Plaintiff also argues that because the violation of her rights was pursuant to a state policy defendant Frank is liable. Constitutional attacks against official policies are suits against the governmental entity responsible for the policy. Kentucky v. Graham, 473 U.S.159, 166 (1985). If a government is a municipality

it may be sued because it is a "person" within the meaning of § 1983. Monell v. New York City Dept. Of Social Services, 436 U.S. 658, 694 (1978).

In this case, however, the governmental unit, DOC, is an arm of the state. The Eleventh Amendment bars a suit against the state and its agencies. Where plaintiff is suing defendant Frank as the entity responsible for a state policy, such suit is barred by the Eleventh Amendment. Edelman v. Jordan, 415 U.S. 651, 675-77 (1974).

Defendant Frank, in his individual capacity, is not liable for any alleged deprivation of plaintiff's constitutional rights because he was not personally involved in the alleged deprivation. Further a suit against defendant Frank, in his official capacity, is barred by the Eleventh Amendment. Accordingly, defendant Frank's motion for summary judgment will be granted.

ORDER

IT IS ORDERED that defendants' motion for summary judgment is GRANTED.

IT IS FURTHER ORDERED that judgment be entered in favor of defendants against plaintiff DISMISSING his complaint and all claims contained therein with prejudice and costs.

Entered this 28th day of October, 2005.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge