

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

CYNTHIA D. RHOUNI,

Plaintiff,

MEMORANDUM and ORDER
06-C-365-S

v.

STEVEN B. CASPERSON,

Defendant.

The above entitled matter was removed to this Court from Dane County Circuit Court on July 6, 2006. In her complaint plaintiff alleges that while visiting her ex-husband at the Columbia Correctional Institution, Portage, Wisconsin she was asked to remove her religious head scarf pursuant to a policy implemented by the defendant. She claims that her First Amendment rights were violated.

Plaintiff previously filed a case in this Court against the Wisconsin Department of Corrections, Matthew J. Frank and one or more John Does (Case No. 05-C-300). The Court granted the defendants' motion for summary judgment in that case finding that defendant Frank was not liable in his individual capacity for any deprivation of plaintiff's constitutional rights and that a suit against the Wisconsin Department of Corrections was barred by the Eleventh Amendment. Judgment was entered dismissing plaintiff's complaint and all claims contained therein with prejudice and costs.

On August 24, 2006 defendants moved for judgment on the pleadings arguing that plaintiff is precluded from pursuing a state law claim because of her failure to file a notice of claim. Plaintiff concedes that she is precluded from pursuing her state law claims. Defendant also argues that plaintiff is barred from seeking damages from defendant Casperson in his official capacity. Plaintiff agrees.

Defendant further contends that plaintiff is precluded from pursuing her claim against defendant Casperson in his personal capacity because of res judicata. In order for Res judicata to apply there must be a judgment on the merits of the earlier action, identity of parties or privity and identity of the cause of action between both suits. Brzostowski v. Laidlaw Waste Systems, Inc., 49 F.3d 337, 338 (7th Cir. 1995).

In Gray v. Lacke, 885 F.2d 399, 505-406 (7th Cir. 1989), plaintiff sued Dane County which was dismissed for failure to show that the supervisors were acting pursuant to a policy or custom of Dane County. The Court found that the second suit against the supervisors in their personal capacities was not barred by res judicata because they were not in privity with Dane County nor had the Court previously decided whether Gray's constitutional rights had been violated.

Plaintiff's case is similar to Gray. In her previous case, the Court determined that defendant Frank was not responsible for

the policy, but did not reach the issue of whether the policy was constitutional. Plaintiff's present case against defendant Casperson in his personal capacity is not barred by the doctrine of res judicata because he is not in privity with defendant Frank. In fact defendant Frank specifically argued in the prior case that he could not be held liable for the actions of Casperson because he was a completely different party than Frank. Plaintiff's claims against defendant Casperson in his individual capacity are not barred by the doctrine of res judicata.

Defendant also argues that the doctrine of res judicata bars plaintiff's claim against defendant Casperson who could have joined in the previous suit. Res judicata requires one to raise all claims on issues in an action but not to join every party against whom a claim might apply in one lawsuit. Sterling v. United States, 85 F.3d 1225, 1227 (7th Cir 1996). Plaintiff was not required to join defendant Casperson in the prior action.

The doctrine of res judicata is concerned with preventing inconsistent decisions. A decision in this case concerning the personal involvement of defendant Casperson in the alleged violation of plaintiff's Constitutional rights would not be inconsistent with the Court's prior decision that defendant Frank was not personally involved or that the Department of Corrections was immune from a suit for damages under the Eleventh Amendment.

Defendant's motion for judgment on the pleadings on plaintiff's claim against defendant Casperson in his individual capacity will be denied. In all other respects defendant's motion for judgment on the pleadings will be granted.

ORDER

IT IS ORDERED that defendant's motion for judgment on the pleadings on plaintiff's claim against defendant Casperson in his individual capacity is DENIED.

IT IS FURTHER ORDERED that defendant's motion for judgment on the pleadings on plaintiff's state law claim and claim against defendant Casperson for damages in his official capacity is GRANTED.

Entered this 17th day of October, 2006

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge