

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 05-10884
Non-Argument Calendar

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT SEPTEMBER 29, 2005 THOMAS K. KAHN CLERK

D. C. Docket No. 04-00636-CV-ORL-28JGG

LISA HAMILTON,

Plaintiff-Appellant,

versus

FLORIDA DEPARTMENT OF EDUCATION/VOCATIONAL
REHABILITATION SERVICES,
JUDY WHITAKER,
DAVID GIVENS,
JOYCE A. WELLS,
LEONARD SKIZYNSKI, Dr.,
DAVID BOGERT,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

(September 29, 2005)

Before BARKETT, HULL and WILSON, Circuit Judges.

PER CURIAM:

Lisa Hamilton appeals pro se the district court's order dismissing her nine-count second amended complaint against the Florida Department of Education/Division of Vocational Rehabilitation ("DVR"), its employees Judy Whitaker and David Givens, and state vendors Joyce Wells, David Bogert, and Dr. Leonard Skizynski (collectively "the defendants"), alleging race discrimination, in violation of 42 U.S.C. § 1983; disability discrimination, in violation of Title II of the ADA, 42 U.S.C. § 12131 et seq., and the Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq.; violation of her Fourteenth Amendment rights; civil conspiracy; fraud; mail fraud; libel; and malpractice.

On appeal, Hamilton argues that the district court "erred by applying a heightened pleading standard more stringent than Federal Rules of Civil Procedure 8 and 9 require," failing to construe liberally her claims. Hamilton contends that she "could have at least been granted relief under The Privacy Act which requires correction of false records concerning any citizen who files a complaint that an agency is maintaining records about him that he alleges are false." Hamilton argues that she established a prima facie case of discrimination "under 504 of the Rehabilitation act of 1973 and the [ADA]," by alleging that: (1) she is a disabled

and an SSDI recipient, (2) as an SSDI recipient, she qualified for participation in the VR program, (3) she was denied VR benefits and subjected to discrimination on account of her disability, and (4) the DVR receives federal funding. Hamilton also argues that she established a prima facie case of racial discrimination, pursuant to Title VII of the Civil Rights Act of 1964, by alleging that: (1) she is an African-American, (2) her SSDI status qualified her for VR training and services, (3) she was denied VR services, and (4) she was denied “self employment” assistance which the DVR had afforded to other clients. Hamilton contends that, pursuant to 42 U.S.C. § 2000d-7, the State of Florida is not immune under the Eleventh Amendment from a suit in federal court alleging a violation of Title VII of the Civil Rights Act of 1964. Hamilton also argues that the Eleventh Amendment “does not bar suit against State Officials in their individual capacities, even if arising from their official acts . . . unless the claim will ‘run into the State Treasury’ under State law.” Hamilton further contends that the State of Florida is also not immune under the Eleventh Amendment from a suit in federal court alleging a violation of Title II of the ADA.

We review the district court’s grant of a motion to dismiss de novo, accepting all allegations in the complaint as true. Kyle K. v. Chapman, 208 F.3d 940, 942 (11th Cir. 2000). A district court may dismiss a complaint for failure to

state a claim only where it appears beyond a doubt that a pro se litigant can prove no set of facts that would entitle him to relief. See Leal v. Georgia Dep't of Corr., 254 F.3d 1276, 1280 (11th Cir. 2001).

As an initial matter, Hamilton fails to present any arguments regarding her claims of violation of her 14th Amendment rights and malpractice, and, consequently, those claims are deemed waived. See Rowe v. Schreiber, 139 F.3d 1381, 1382 n.1 (11th Cir. 1998). Moreover, Hamilton makes only passing reference to her claims of civil conspiracy, fraud, mail fraud, and libel, and, consequently, those claims are likewise waived. See Farrow v. West, 320 F.3d 1235, 1242 n. 10 (11th Cir. 2003) (stating that, where appellant made only a passing reference to the district court's dismissal of a particular claim in a 42 U.S.C. § 1983 case and made no arguments on the merits as to that issue, the issue was deemed waived). Furthermore, Hamilton contends for the first time on appeal that she was entitled to relief under the Privacy Act, and we generally will not consider issues raised for the first time on appeal. See Narey v. Dean, 32 F.3d 1521, 1526 (11th Cir. 1994) (stating rule and five exceptions in civil context).

As to Hamilton's claims of discrimination based upon race and disability against defendants DVR and against Whitaker and Givens in their official capacities, Hamilton's § 1983 claim was barred by the Eleventh Amendment. To

the extent that Hamilton made individual capacity claims against Whitaker and Givens in her complaint, she failed to allege that they, rather than DVR, violated her federal rights. Moreover, Hamilton failed to allege an essential element necessary to establish a prima facie case of discrimination based upon disability, in violation of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, namely, that she was denied services because of her disability. As to defendants Bogert, Wells, and Skizynski, Hamilton failed to (1) comply with the pleading requirements of the Federal Rules of Civil Procedure, as well as (2) state a claim against them, as she does not mention them in the counts of her complaint related to racial and disability discrimination. Consequently, the district court did not err by dismissing Hamilton's complaint against the defendants.

AFFIRMED.