

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
AT FRANKFORT

CIVIL ACTION NO. 3:14-CV-00001-GPVT

ELECTRONICALLY FILED

OSCAR ADAMS and MICHAEL KNIGHTS,

PLAINTIFFS

v. **MOTION TO DISMISS ON BEHALF OF BOBBIE UNDERWOOD**

COMMONWEALTH OF KENTUCKY, et al.,

DEFENDANTS

Comes Defendant Bobbie Underwood, (hereinafter referred to as “Underwood”), by counsel, pursuant to Fed. R. Civ. P. 12(b)(6) and other applicable law, and move this honorable Court to dismiss the above-styled action for failure to state a claim for which relief may be granted. In support of this motion, Defendants submit the following memorandum of law.

INTRODUCTION

Plaintiffs, Kentucky Department of Corrections inmates who identify themselves as deaf and/or hard of hearing, filed the initial Complaint in this action alleging that their rights have been violated. At the core of their action are complaints regarding accommodations for them as deaf and/or hard of hearing inmates.

Plaintiffs have now filed an Amended Complaint adding several defendants, including Bobbie Underwood. In the Amended Complaint, Plaintiffs assert that it is their information and belief that Underwood is responsible for KDOC employee compliance with federal laws including the Americans with Disabilities Act (“ADA”), 42 U.S.C. §12131, et seq., the Rehabilitation Act, 29 U.S.C. §794, et seq., and the Constitution of the United State and that she is aware of KDOC’s policies and practices regarding deaf and hard of hearing individuals and

whether KDOC employees KDOC policies comply with federal law. (DN 42, Amended Complaint, p. 13).

STANDARD OF REVIEW

Underwood is due to be dismissed from this action because Plaintiffs fail to state a claim against her. As set out below, Underwood has no contact with on inmates nor is she involved in establishing or enforcing policy and procedure as they relate to accommodations for inmates housed at KYDOC institutions. As such, Plaintiffs do not and cannot state a claim against Underwood unless they are bringing this action as KYDOC employees challenging her activities in her oversight of activities tied to employee personnel, payroll, recruitment, or in various areas of employee Human Resources.

In presenting this argument to the Court, Underwood attaches an Affidavit explaining her job responsibilities. While consideration of material outside the pleadings can result in the Court converting the Motion to Dismiss into a Motion for Summary Judgment, it is Underwood's understanding that introduction of this Affidavit under these circumstances without converting the Motion to Dismiss into a Motion for Summary Judgment is appropriate under *Weiner v. Klais & Co.*, 108 F.3d 86, 89 (6th Cir., 1997). Nonetheless, to the extent the Court converts the Motion to Dismiss into a Motion for Summary Judgment, Underwood is still due to be dismissed from this action for the reasons stated.

DISCUSSION

Underwood is due to be dismissed from this action because Plaintiffs fail to state a claim against her. Specifically, Plaintiffs do not state any factual allegations concerning Underwood.

While Underwood has general knowledge regarding the ADA and other laws that are relevant in the human resources area, her knowledge of those areas are only as they relate to employees. Underwood is employed in a central office position and her position is not tied to any institution. Underwood's position involves oversight of activities tied to employee personnel, payroll, and recruitment, as well as various employee Human Resources responsibilities. Underwood's job duties do not involve KYDOC inmates – she does not oversee inmate issues, she is not assigned to any KYDOC institution, she has no contact with inmates, her job duties do not involve making or enforcing policy or procedure for inmates, and issues regarding accommodations of any type for KYDOC inmates do not fall within her job responsibilities. While Underwood has basic knowledge of various federal and state laws as they apply to human resources and personnel for KYDOC employees, she has no knowledge of these laws as they apply to KYDOC inmates. (See Affidavit of Bobbie Underwood attached as Exhibit A). At a minimum, to state a claim for relief, Plaintiffs must show how Underwood is accountable because she was personally involved in the acts about which Plaintiffs complain. *See Rizzo v. Goode*, 423 U.S. 362, 375-76 (1976). Plaintiffs Complaint is not filed on behalf of any KYDOC employee, nor does it allege any violation of rights relevant to KYDOC employee personnel, payroll, recruitment, or Human Resources. Plaintiffs Complaint not only fails to show that Underwood was personally involved in the acts about which Plaintiffs complain, they fail to allege any facts concerning Underwood or her position within KYDOC.

CONCLUSION

With Plaintiffs failure to show how Underwood is involved at all in the acts about which they complain, and failure to allege any facts concerning Underwood, Underwood should be dismissed from this action.

WHEREFORE, based on the foregoing, Underwood, by counsel, respectfully moves this Court to dismiss Plaintiffs' claims against her and dismiss her from this action.

Respectfully submitted,

/s/ Angela T. Dunham

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CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2014, I electronically filed this document with the Clerk of the United States District Court, Eastern District of Kentucky by using the CM/ECF system. I further that it is my understanding that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system:

/s/ Angela T. Dunham

COUNSEL FOR UNDERWOOD