United States Court of Appeals
For the First Circuit

No. 10-1326

TIMOTHY W. KILROY, individually and on behalf of K.O.K., K.B.K., E.A.K. and K.E.K.,

Plaintiff, Appellant,

v.

STATE OF MAINE, ET AL.,

Defendants, Appellees.

Before

Boudin, Howard and Thompson,
Circuit Judges.

JUDGMENT

Entered: March 8, 2011

Appellant, proceeding pro se, challenges the district court's dismissal, pursuant to Fed. R. Civ. P. 12(b)(6), of his complaint asserting claims of disability discrimination under Title II of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, the Medicaid Act, and 42 U.S.C. § 1983 against the State of Maine, the Commissioner of the Maine Department of Health and Human Services, and the Attorney General of the State of Maine. Substantially for the reasons stated in the magistrate judge's January 8, 2010, Recommended Decision, which was subsequently adopted by the district court, we affirm.

In essence, appellant, who is a quadriplegic and receives 86 hours per week of in-home care under Maine's Home and Community Based Services (HCBS) Medicaid waiver program, alleged that, in accordance with various court and administrative orders issued in connection with divorce, child custody and social security proceedings, appellant's income has been garnished to such an extent that he will soon be forced into an institution and denied home-based care. The district court was correct in determining that the allegations in the complaint fail to establish that defendants' actions resulted in disability-based discrimination and, contrary to appellant's contention, was not required to consider the documents appellant submitted in support of his complaint and response to defendants' motion to dismiss. See Trans-Spec Truck Serv., Inc. v. Caterpillar, Inc., 524 F.3d 315, 321 (1st Cir. 2008).

Appellant also argues that, notwithstanding the usual common-law rule barring pro se litigants from representing their minor children, see, e.g., Maroni v. Pemi-Baker Regional Sch. Dist., 346 F.3d 247, 249 (1st Cir. 2003), he should have been permitted to assert claims on behalf of his children because their interests and his own were so intertwined. In support of this proposition, appellant cites cases holding that non-attorney parents may represent minor children in appeals from the denial of social security benefits in light of the unique policy considerations involved in such cases. See Machadio v. Apfel, 276 F.3d 103, 106 (2d Cir. 2002); Harris v. Apfel, 209 F.3d 413, 417 (5th Cir. 2000). Since this is not an appeal from the denial of social security benefits, the cited cases are plainly inapposite. Appellant's contention that the district court erred in dismissing the complaint without addressing his request for injunctive relief or reaching the question whether his claims were barred by the Eleventh Amendment are equally unavailing. The underlying substantive claims having been properly dismissed, there was no basis for injunctive relief, and ruling on the Eleventh Amendment issues was neither necessary nor appropriate. See United States v. Georgia, 546 U.S. 151, 159 (2006) (holding, inter alia, that courts should determine whether a state's conduct violated Title II before deciding Eleventh Amendment); Hudson Sav. Bank v. Austin, 479 F.3d 102, 106 (1st Cir. 2007) (stating that court should avoid making a constitutional judgment when a case can be disposed of on some narrower ground).

For the foregoing reasons, the judgment of the district court is affirmed. See 1st Cir. Loc. R. 27.0(c).

By the Court:

/s/ Margaret Carter, Clerk.

cc:
Dirk Phillips
Jessica Dunsay Silver
Ronald Lupton
Timothy Kilroy