

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JEROME HAMILTON,)
)
Plaintiff,)
)
v.) Civil Action No. 94-336-KAJ
)
FAITH LEAVY, PAMELA FAULKNER,)
WILLIAM QUEENER, FRANCES)
LEWIS, GEORGE M. DIXON, JACK W.)
STEPHENSON, DEBORAH L. GRAIG,)
JOANNE SMITH, DENNIS LOEBE,)
ELDORA C. TILLERY, FRANCIS)
COCKROFT, JERRY BORGA,)
RICHARD SHOCKLEY,)
)
Defendants.)

MEMORANDUM OPINION

John W. Shaw, Esquire, Young Conaway Stargatt & Taylor LLP, 1000 West Street, Wilmington, Delaware 19801; Counsel for Plaintiff.

Richard W. Hubbard, Esquire, Deputy Attorney General, Department of Justice, 820 N. French Street, Wilmington, Delaware 19801; Counsel for Defendant Richard Shockley.

Mark Niedzielski, Esquire; Thomas H. Ellis, Esquire; Ralph K. Durstein, III, Esquire; and Aaron R. Goldstein, Esquire, Deputy Attorney General, Department of Justice, 820 N. French Street, Wilmington, Delaware 19801; Counsel for Defendants.

February 22, 2005
Wilmington, Delaware

JORDAN, District Judge

I. INTRODUCTION

Presently before me is a Motion for Summary Judgment (the “Motion”) filed by defendant Richard Shockley (“Shockley”) (Docket Item [“D.I.”] 399). For the following reasons, I will grant Shockley’s Motion.

II. BACKGROUND¹

The factual background and procedural history of this case has been previously set forth in several published and unpublished opinions.² For purposes of this Motion, the relevant background information is as follows. Plaintiff Jerome Hamilton (“Plaintiff”) amended his Complaint on July 23, 1999 to add Richard Shockley and two other defendants. (D.I. 164.) Shockley, a former employee of the Delaware Department of Corrections (“DOC”) at the Delaware Correction Center (“DCC”), is alleged to have been one of the individuals who served on the Delaware Department of Corrections Central Institutional Classification Committee (“CICC”) during its meetings on June 17 and 24 of 1992 when the CICC was deciding whether to place Plaintiff in protective custody. (*Id.* at 2.) It is essentially undisputed that the minutes from the CICC meetings and attendee lists erroneously name a “James Shockley” as having been in attendance

¹The following rendition of background information does not constitute findings of fact and is cast in the light most favorable to the non-moving party, the plaintiff.

² See *Hamilton v. Leavy*, 322 F.3d 776 (3d Cir. 2003); *Hamilton v. Leavy*, No. Civ. A. 94-336-GMS, 2001 WL 848603 (D. Del. July 27, 2001); *Hamilton v. Leavy*, 117 F.3d 742 (3d Cir. 1997); and *Hamilton v. Lewis*, Civ. A. No. 94-336-SLR, 1995 WL 330728 (D. Del. May 26, 1995).

during the days in question. (D.I. 402 at 10; see D.I. 400 at 3.)³ Supplemental discovery was conducted by Plaintiff to “identify with certainty the person who served as a member of the CICC” (D.I. 379 at ¶ 4) and thereby to determine whether Shockley is a proper defendant in this case (D.I. 400 at 3). As part of that supplemental discovery, Plaintiff deposed Faith Levy, Pamela Faulkner, William Queener, George M. Dixon, Jack W. Stephenson, Frances Lewis, Deborah L. Graig, Joanne Smith, Eldora C. Tillery, Francis Cockroft, Jerry Borga, and a Rule 30(b)(6) witness for the DOC. (*Id.*)

III. STANDARD OF REVIEW

Pursuant to Federal Rule of Civil Procedure 56(c), a party is entitled to summary judgment if a court determines from its examination of “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,” that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). In determining whether there is a triable issue of material fact, a court must review the evidence and construe all inferences in the light most favorable to the non-moving party. *Goodman v. Mead Johnson & Co.*, 534 F.2d 566, 573 (3d Cir. 1976). However, a court should not make credibility determinations or weigh the evidence. *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000). To defeat a motion for summary judgment, the non-moving party must “do more than simply show that there is some metaphysical doubt as to the material facts.” *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*,

³ Although in his Opening Memorandum in Support of his Motion for Summary Judgment Richard Shockley seems to acknowledge that the listing of “James” Shockley was erroneous (see D.I. 400 at 3), he argues in his Reply that even this conclusion “while likely, is not certain.” (D.I. 404 at 4.)

475 U.S. 574, 586-87 (1986) (internal citation omitted). The non-moving party “must set forth specific facts showing that there is a genuine issue for trial.” Fed. R. Civ. P. 56(c). “Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial.” *Matsushita Elec. Inds. Co., Ltd.*, 475 U.S. at 587 (internal citation omitted). Accordingly, a mere scintilla of evidence in support of the non-moving party is insufficient for a court to deny summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986).

IV. DISCUSSION

It is well established that speculative evidence is insufficient to defeat a motion for summary judgment. “[A]n inference based upon a speculation or conjecture does not create a material factual dispute sufficient to defeat entry of summary judgment.” *Robertson v. Allied Signal, Inc.*, 914 F.2d 360, 382 n.12 (3d Cir. 1990) (citing *Blackston v. Shook & Fletcher Insulation Co.*, 764 F.2d 1480, 1482 (11th Cir. 1985)).

Shockley argues that “Plaintiff has failed to demonstrate any fact which demonstrates that [he] was, in any manner, personally involved in any aspect of the Plaintiff’s allegations” (D.I. 400 at 3) and that the inferences upon which Plaintiff relies are speculative (D.I. 404 at 3-5) and thus insufficient to defeat his Motion. In short, Shockley asserts that there is insufficient evidence to establish that he participated in the June 17 and 24, 1992 CICC meetings. (See *id.* at 7-8.)

In support of that assertion, Shockley points to the deposition testimony of several of the individuals deposed by Plaintiff during the supplemental discovery period as demonstrating that none of them could recall whether Richard Shockley was a

member of the CICC during the relevant time in June of 1992. (*Id.* at 4-7.) The following excerpts are illustrative of that point. Jack W. Stephenson testified as follows:

- Q. Do you know James Shockley?
A. No.
Q. Have you ever heard the name James Shockley before?
A. No. ...
Q. I asked you earlier if you knew a James Shockley. Is there a variation on that name that could have been the person in attendance at this meeting?
A. That could have been there?
Q. Yes. Somebody that you know has a name similar to that?
A. Well, we have a - there was a Shockley that worked in security. He was not a regular member, nor do I recall him, ever recall him being present. But, then again, it changes so much you don't know who's going to be there.

(D.I. 400, Ex. B at 3,16, Dep. of Jack Stephenson, July 12, 2004.) Jerry Borga testified as follows:

- Q. ... Do you know of a James Shockley?
A. No, I don't. ...
Q. How about a Richard Shockley?
A. Yes.
Q. And who was he?
A. He was an officer, I believe, correction officer or lieutenant, I believe. Yeah. ...
Q. Was he a member of the CICC, do you remember?
A. I don't know. ...
Q. How about James Shockley?
A. No.
Q. The name doesn't - do you remember anyone else that's not on this list being at that meeting?
A. No.
Q. How about Richard Shockley, do you remember him being at that meeting?
A. No.

(D.I. 400, Ex. C at 3-4, 14, Dep. of Jerry Borga, July 13, 2004.) Deborah L. Graig testified as follows:

- Q. And James Shockley, who is listed next?
A. I don't recall Mr. Shockley.

(*Id.*, Ex. D at 9, Dep. of Deborah L. Graig, July 13, 2004.) Pamela A. Minor testified as follows:

Q. So since the purpose of this is to try to determine who Richard or possibly James Shockley is, are you aware of anyone who served on the CICC or is associated with this group called the CICC back in the early nineties that went by the name Richard or James Shockley?

A. No.

(*Id.*, Ex. E at 7, Dep. of Pamela A. Minor, July 12, 2004.) Faith M Levy, Eldora C.

Tillery, and William A. Queener all testified similarly, that they did recognize the name Richard Shockley and did not remember him being at the CICC meeting. (See *id.*, Ex. F at 22, Dep. of Faith M. Levy, July 12, 2004; *id.*, Ex. G at 4-6, Dep. of Eldora C. Tillery, July 13, 2004; *id.*, Ex. H at 70, Dep. of William A. Queener.) In addition, Shockley himself testified that he never went by the first name “James” and does not remember attending any CICC meetings where Plaintiff was discussed. (See D.I. 400, Ex. I at 25, 29-30, Dep. of Richard F. Shockley, July 16, 2004.)

Plaintiff, however, argues that substantial evidence exists for a reasonable fact finder to conclude that Richard Shockley attended the June 17 and 24, 1992 CICC meetings as a substitute member. (D.I. 402 at 13-17.) First, Plaintiff notes, as discussed above, that the minutes and attendee lists from the June 17 and 24 meetings erroneously listed a “James” Shockley. (*Id.* at 10-13.) Second, based on this error, Plaintiff argues that “[a] reasonable person ... would reasonably infer that the error occurred in recording the attendee’s first name and that someone with the last name ‘Shockley’ was the attendee in question.” (*Id.* at 11.) And finally, that the individual with the last name Shockley was the defendant Richard Shockley. (*Id.* at 13-17.)

To support this argument, Plaintiff makes several inferential leaps by putting together information which is, at best, speculative in nature. First, Plaintiff relies on a statement by the lawyer who defended Mr. Shockley's deposition, at the Rule 30(b)(6) deposition of the DOC, where the lawyer said, "[i]t's more likely they would make a mistake as to a person's first name, last name than their gender." (D.I. 402, attached Dep. of DOC designee Alan Machtinger at 13:13-14, July 14, 2004.) Second, Plaintiff notes that the Rule 30(b)(6) witness confirmed that there were no female DOC employees in 1992 with the last name "Shockley." (D.I. 402 at 12 (citing attached Dep. of DOC designee Alan Machtinger at 32:7-9, July 14, 2004.)) Third, all of the members of the CICC had to be employed by DOC. (*Id.* at 12 (citing Dep. of Jack W. Stephenson at 13:9-13, July 12, 2004.)) Fourth, of the male DOC employees with the last name of "Shockley," only one, Richard Shockley, had the rank and experience to serve on the CICC. (*Id.* at 12.) Fifth, Shockley admitted that he had served on the CCIC on various occasions. (*Id.* at 9 (citing attached Dep. of Shockley at 23:15-17, July 16, 2004.)) Sixth, George Dixon, the assigned DCC security representative on the CICC, did not attend the June 17 or June 24, 1992 CICC meetings. (*Id.*, Ex. C, CICC attendance list for June 17, 1992; *id.*, Ex. D, CICC attendance list for June 24, 1992.) Seventh, that on some occasions when George Dixon could not serve on the CICC, Shockley, amongst others, replaced him. (*Id.* at 14 (citing Dep. of George Dixon at 19:13-19, July 21, 2004.)) Eighth, that when the minimum number of members did not attend the CICC meetings, additional people were often requested from the DCC, where Shockley worked. (*Id.* at 15-16 (citing Dep. of Richard Shockley at 37:22-38:21, July 16, 2004; Dep. of George Dixon at 20:22-21:21, July 21, 2004.)) Ninth, that the June 17 and 24

CICC meetings occurred at the beginning of the Delaware vacation season and therefore the need for additional people at the meetings was not unusual. (*Id.* at 16.) Tenth, that Shockley's time records show that he worked on both June 17 and June 24 of 1992. (*Id.* at 16 (citing Ex. F, Shockley's Employee Time Card.)) And finally, that a verified interrogatory response asking for the identity of all persons who were on the CICC during the relevant time from the four original defendants, Faith Leavy, Pamela Faulkner, William Queener, and Frances Lewis, identified "James Shockley (may be Richard F. Shockley last known address...)." (*Id.* at 17 (citing Ex. G, Defendants' Responses to 3rd Set of Interrogatories, Response No. 4.))

Based on these arguments and Plaintiff's assertion that no evidence indicates that Richard Shockley did not participate in the June 17 and 24, 1992 CICC meetings, Plaintiff argues that substantial evidence exists for a reasonable fact finder to conclude that Richard Shockley served on the CICC during the dates in question.

Plaintiff's evidence, however, is fundamentally guesswork and surmise and is therefore insufficient to defeat Shockley's Motion. Assuming that there was an error listing an attendee as "James Shockley," there are two large gaps in Plaintiff's argument. First, that the mistake listing a "James Shockley" was with respect to the individual's first name, rather than the individual's last name. And second, that even if the mistake was the individual's first name, that Richard Shockley was the Shockley at the meetings, although at least four men named Shockley worked at the Department in 1992 and may have served on the CICC. (See D.I. 404 at 9; D.I. 402 at 12.)

Additional evidence, or lack thereof, also demonstrates the speculative nature of Plaintiff's assertions. First, Plaintiff has not pointed to any documentary evidence to

support that it was in fact “Richard” Shockley who attended the June meetings.

Second, those individuals who did attend, had no recollection of Richard Shockley being in attendance. Although Plaintiff argues that the individuals, whose testimony was described above, were not regular members on the CICC, Frances Lewis, the chair of the CICC, could not remember whether Richard Shockley had participated in the June meetings nor why Richard Shockley’s name was indicated in the interrogatory response. (D.I. 204 at 6 (citing attached Dep. of Frances Lewis at 29:1-11, July 14, 2004.)) Thus, Plaintiff has not presented any direct testimony by any individual who served on the CICC during the June meetings that Shockley was in attendance. Third, Shockley was not a regular member of the CICC and only participated five times, during his entire employment at DOC, in CICC meetings as a substitute when regular members could not attend. (*Id.* at 7 (citing attached Dep. of Shockley at 21, 39-40, July 16, 2004.)) Fourth, the attorney’s language quoted by Plaintiff regarding whether an error in the individual’s first name, last name, or gender, does not support the Plaintiff’s argument that the error was most likely made in the individual’s first name. The statement was that, “[i]t’s more likely they would make a mistake as to a person’s first name, last name than their gender.” (D.I. 402, attached Dep. of DOC designee Alan Machtinger at 13:13-14, July 14, 2004.) This statement, however, was clearly indicating the attorney’s belief that a mistake in the individual’s first or last name was more likely than a mistake in the individual’s gender, not whether a mistake in the first name was more likely than a mistake in the last name. In any event, whether a mistake is more likely to have been made in recording or recalling an individual’s first name or last name

is entirely speculative. And finally, there was a James Patterson who often substituted for George Dixon. Frances Lewis testified as follows:

- Q. James Patterson, did he represent a particular—
A. I just wonder why his name was on there because that was a security person from DCC and he is a security person also.
Q. Was he typically a representative or person who came to the meetings?
A. I don't remember, but I would say that if George Dixon was not there, then James would take his place.

(D.I. 404 at 8 (quoting Dep. of Frances Lewis at 21-22, 27, July 14, 2004.))

Based on the lack of documentary and testimony evidence presented by Plaintiff that Richard Shockley was the “James Shockley” who served on the CICC during the June 17 and 24 meetings in 1992, a trier of fact would be left only to guess as to which individual was actually there. Because the Plaintiff's evidence is based on the guess that Shockley attended these CICC meetings, it is insufficient to defeat Shockley's Motion, since it would be unreasonable for the trier of fact to conclude that Richard Shockley is the individual listed as “James Shockley” in the CICC minutes.

V. CONCLUSION

Accordingly, defendant Richard Shockley's Motion for Summary Judgment (D.I. 399) will be granted.⁴

⁴ Additionally, defense counsel has requested, in a recent letter (D.I. 405), that defendant Dennis Loebe be excused from attending the trial in person, for medical reasons. In this regard, it would be of assistance for defense counsel to submit medical documentation of defendant Loebe's condition and provide a citation to the record by Docket Item number and page number where, as he states, I granted this request last year.

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RICHARD SHOCKLEY,)	
)	
Defendants.)	

ORDER

For the reasons set forth in the Memorandum Opinion issued in this matter today,
IT IS HEREBY ORDERED that defendant Richard Shockley's Motion for Summary
Judgment (D.I. 399) is GRANTED.

Kent A. Jordan
UNITED STATES DISTRICT JUDGE

Wilmington, Delaware
February 22, 2005