NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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No. 18-3193

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HOSEA L. FLAGG,
Appellant

v.

STATE OF NEW JERSEY OFFICE OF CHILD SUPPORT SERVICES

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On Appeal from the United States District Court
for the District of New Jersey
(D.N.J. Civil Action No. 3-17-cv-02602)
District Judge: Honorable Peter G. Sheridan

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Submitted Pursuant to Third Circuit LAR 34.1(a)
February 21, 2019

Before: MCKEE, COWEN and ROTH, Circuit Judges

(Opinion filed: November 27, 2019)

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OPINION*

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PER CURIAM

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Hosea Flagg, proceeding pro se, appeals an order of the United States District Court for the District of New Jersey dismissing his employment discrimination action. For the reasons that follow, we will affirm the judgment of the District Court.

Flagg filed a complaint against the State of New Jersey, Office of Child Support Services ("OCSS") claiming employment discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-2000e-17. OCSS moved to dismiss the complaint for failure to state a claim for relief and asserted that Flagg had failed to comply with basic rules of pleading.

The District Court granted the motion and allowed Flagg to amend his complaint. OCSS moved to dismiss the amended complaint. Flagg then filed a second amended complaint purporting to add four individual defendants. Flagg claimed, among other things, that he was wrongfully terminated based on his age and after he had complained about remarks about sexual orientation. The District Court allowed OCSS to withdraw its pending motion and file a motion to dismiss the second amended complaint.

The District Court granted OCSS's motion to dismiss the second amended complaint with leave to amend Count I, the wrongful termination claim. The District Court stated that Flagg had agreed at oral argument to dismiss all other counts and explained that Flagg had not sufficiently alleged the elements of a claim under the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634 ("ADEA"). The District Court stated that it would not review the merits of a claim based on sexual orientation

because it found no statements in Count I that could be construed as supporting such a claim. It also noted that Flagg had acknowledged that he was employed by ACRO Services Corporation, not OCSS.

Flagg filed a third amended complaint against OCSS, which OCSS moved to dismiss on several grounds, including sovereign immunity under the Eleventh Amendment. After a hearing, the District Court granted the motion. The District Court ruled that OCSS is entitled to immunity on Flagg's claim for age discrimination under the ADEA because it is an agency of the Department of Human Services of the State of New Jersey. The District Court noted that it was unclear whether Flagg intended to assert a retaliation claim for engaging in protected activity under Title VII and did not review such a claim. Finally, the District Court stated that Flagg had several opportunities to cure the deficiencies in his complaint and ruled that further amendment would be futile. This appeal followed.

We have jurisdiction pursuant to 28 U.S.C. § 1291. We review the grant of a motion to dismiss under a plenary standard. Connelly v. Lane Const. Corp., 809 F.3d 780, 786 n.2 (3d Cir. 2016).

Flagg contends on appeal that the District Court erred by failing to address his claims against the four individual defendants named in his second amended complaint. He contends the case should have continued against these defendants or the District Court should have dismissed the action against them. As Flagg appears to recognize, he did not

properly serve these individuals when he filed his second amended complaint. And significantly, he did not name them as defendants in his third amended complaint filed six months later. We find no error under these circumstances.[1]

Flagg also argues that the District Court erred in dismissing his claim under the ADEA based on sovereign immunity, but he has not shown an error in this regard. See Kimel v. Florida Bd. of Regents, 528 U.S. 62, 91 (2000) (Congress did not abrogate States' sovereign immunity to suits under the ADEA); Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 100 (1984) (the Eleventh Amendment proscribes suits against States, their agencies, and departments in federal court).

Accordingly, we will affirm the judgment of the District Court.

[1]A docket entry was made advising Flagg after he attempted service of his second amended complaint that, if he wished to serve additional defendants, he must request the issuance of summonses. The copy of the docket entry mailed to Flagg was returned to the Court, but to the extent he did not learn then of the defect, he had ample time to discover it. OCSS noted service was improper in its motion to dismiss the second amended complaint.