

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Magistrate Judge Craig B. Shaffer

Civil Action: 11-cv-01769-RBJ-CBS
Date: May 17, 2012

FTR - Reporter Deck-Courtroom A402
Courtroom Deputy: Robin Mason

Parties:

DARRYL RICHMOND,

Plaintiff,

v.

KEN GREENE,

Defendant.

Counsel:

Anne Thomas Sulton

Andrea J. Kershner

COURTROOM MINUTES/RECOMMENDATION PURSUANT TO RULE 72(b)

HEARING: MOTION HEARING

Court in Session: 9:36 a.m.

Court calls case. Appearances of counsel. *Mr. Darryl Richmond present with his counsel.*

The court addresses parties regarding defendant's MOTION to Dismiss #87 Plaintiff's Second Amended Complaint (ECF #67) Based on Qualified Immunity (Docket No. 81, filed on 4/6/2012), the plaintiff's BRIEF in Opposition to #81 MOTION to Dismiss Plaintiff's Second Amended Complaint (ECF #67) Based on Qualified Immunity (Docket No. 98, filed on 4/30/2012), and defendant's REPLY to Response to #81 MOTION to Dismiss Plaintiff's Second Amended Complaint (ECF #67) Based on Qualified Immunity (Docket No. 103, filed on 5/14/2012).

Ms. Kershner presents oral argument to the court.

Ms. Sulton presents oral argument to the court.

The court has heard arguments from the parties. The court stated, from the bench, its findings and legal basis for its recommendation.

As stated on the record, the court hereby recommends that the defendant's MOTION to Dismiss

#87 Plaintiff's Second Amended Complaint (ECF #67) Based on Qualified Immunity (Docket No. 81, filed on 4/6/2012) be **GRANTED IN PART and DENIED IN PART**.

The court finds that the motion should be granted as to the second claim for relief which asserts a Fourteenth Amendment violation of the Equal Protection Clause. The court does not find that the amended complaint sets forth sufficient facts to properly allege an Equal Protection claim which has any degree of plausibility. Because the plaintiff has not properly asserted a claim under the Fourteenth Amendment, the court finds that the defendant's assertion of qualified immunity is absolutely well founded. However, as to the first and third claims for relief which assert a First Amendment violation and a claim of retaliation, the court finds that the facts set forth in the amended complaint are sufficient to properly allege a claim under those theories. The court finds that the First Amendment protections were well established by Supreme Court and 10th Circuit case law and the court finds that there are sufficient facts alleged, at least at this point, to support a causal connection between the speech in question, and the adverse action taken against Mr. Richmond.

The court advises that the fourteen (14) days to appeal starts today as a result of the court's recommendation being made from the bench at today's hearing.

The court addresses the parties regarding the defendant's MOTION to Stay Discovery Based on Qualified Immunity (Docket No. 82, filed on).

ORDERED: For reasons as stated on the record, the court **DENIES** the defendant's MOTION to Stay Discovery Based on Qualified Immunity (Docket No. 82, filed on).

The parties make a joint oral motion to extend the current discovery cut off date of May 31, 2012. Discussion regarding what discovery the parties have completed and what discovery is still needed. The court grants the parties joint oral motion.

ORDERED: The discovery cut off date shall be extended to **June 29, 2012**. The dispositive motions deadline shall be extended from May 31, 2012 to **June 29, 2012**. The Final Pretrial Conference shall be moved to **August 3, 2012 at 11:00 a.m.** The parties shall submit their proposed Final Pretrial Order **on or before July 27, 2012**. (See the court's website for Instructions for Preparation and Submission). **The court advises the parties that no further extensions of these dates shall be given.**

HEARING CONCLUDED.

Court in recess: 10:21 a.m.

Total time in court: 00:45

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