

UNITED STATES DISTRICT COURT
Northern District of Indiana
South Bend Division

LIZA GARRETT,

Plaintiff,

v.

TOWN OF BRISTOL, BRISTOL-
WASHINGTON TOWNSHIP PUBLIC
LIBRARY, and MICHAEL W. ALBIN in his
individual capacity,

Defendants.

CASE NUMBER: 3:07CV0180

AMENDED ANSWER TO PLAINTIFF'S COMPLAINT

COMES NOW the Defendant, Bristol-Washington Public Library, and for its Answer to the Plaintiff's Complaint states as follows:

I. Nature of the Action

1. Plaintiff Liza Garrett (hereinafter "Garrett") brings this action against the Town of Bristol (hereinafter "Town"), the Bristol-Washington Township Public Library (hereinafter "Library"), and Michael W. Albin in his individual capacity (hereinafter "Albin") (hereinafter collectively "Defendants") pursuant to the Civil Rights Act of 1871, 42 U.S.C. § 1983, alleging that Defendants violated her rights as protected by the First and Fourteenth Amendments of the United States Constitution. Garrett also brings this action against Town and Library alleging that Town and Library violated her rights as protected by Title II of the Americans with Disabilities Act (hereinafter "ADA"), 42 U.S.C. § 12131 et seq and section 504 of the Rehabilitation Act (hereinafter "Rehabilitation Act"), 29 U.S.C. § 794 et seq.

ANSWER: Without sufficient information and, therefore, deny.

II. Parties

2. Garrett has resided within the Northern District of Indiana at all times relevant to this action.

ANSWER: Without sufficient information and, therefore, deny.

3. Town is a governmental entity that is located in the Northern District of Indiana.

ANSWER: Without sufficient information and, therefore, deny.

4. Library is a governmental entity that is located in the Northern District of Indiana.

ANSWER: Admit.

5. At all times relevant to this action, Albin was employed as a Sergeant by Town's Police Department.

ANSWER: Without sufficient information and, therefore, deny.

III. Jurisdiction and Venue

6. Defendants are "person[s]" within the meaning of 42 U.S.C. § 1983.

ANSWER: Without sufficient information and, therefore, deny.

7. Defendants, acting under color of law and pursuant to a policy, practice, and/or custom, violated Garrett's rights as protected by the First and Fourteenth Amendments of the United States Constitution.

ANSWER: Deny.

8. Library is a "public entity" as defined by the ADA, 42 U.S.C. § 12131(1).

ANSWER: Without sufficient information and, therefore, deny.

9. Garrett is a "qualified individual with a disability" as defined by the ADA, 42 U.S.C. § 12131(2), and the Rehabilitation Act, 29 U.S.C. § 705(20).

ANSWER: Without sufficient information and, therefore, deny.

10. Upon information and belief, Town and Library are a “program or activity receiving Federal financial assistance” as defined by 29 U.S.C. § 794 et seq.

ANSWER: Without sufficient information and, therefore, deny.

11. Jurisdiction is conferred on this Court by 28 U.S.C. § 1331, 28 U.S.C. § 1343, 42 U.S.C. § 12133, and 42 U.S.C. § 1983.

ANSWER: Without sufficient information and, therefore, deny.

12. All of the events, transactions, and occurrences pertinent to this lawsuit have occurred within the geographical environs of the Northern District of Indiana and all parties are located therein. Therefore, venue is proper in this Court pursuant to 28 U.S.C. § 1391.

ANSWER: Without sufficient information and, therefore, deny.

IV. Factual Allegations

13. On April 21, 2005, Garrett entered Library in order to read the newspaper and use the computers which are made available to members of the general public by Library.

ANSWER: Without sufficient information and, therefore, deny.

14. While inside Library, Garrett suffered a seizure as a result of her disability.

ANSWER: Without sufficient information and, therefore, deny.

15. When Garrett came out of her seizure, she was outside the Library and Albin, who upon information and belief had been contacted by Library, was present in his Bristol police Department uniform.

ANSWER: Without sufficient information and, therefore, deny.

16. Despite being informed that Garrett had a disability and was suffering a seizure, Albin presented Garrett with a trespass warning.

ANSWER: Deny that anyone was sufficiently informed that Garrett had a disability

and was suffering from a seizure. Albin did present Garrett with a trespass warning.

17. The trespass warning states “**You Must Leave This Property Immediately And You Must Not Return Again At Any Time In The Future.**” The property referenced in the trespass warning is Library. The trespass warning further states that Garrett will be subject to arrest and prosecution if she refused to leave Library immediately or returned to Library at any time.

ANSWER: Deny to the extent that this characterization of the document is inconsistent with the terms of the referenced document.

18. After presenting the trespass warning to Garrett, Albin informed her that if she refused to sign the trespass warning, she would be arrested.

ANSWER: Without sufficient information and, therefore, deny.

19. Albin also informed Garrett that she would be arrested if she returned to Library.

ANSWER: Without sufficient information and, therefore, deny.

V. Causes of Action

Count I: Violation of First and Fourteenth Amendment

20. Garrett hereby incorporates paragraphs one (1) through nineteen (19) of her Complaint.

ANSWER: Bristol-Washington Public Library incorporates by reference its answers to paragraphs one (1) through (19) of the Complaint.

21. Garrett has a right to access a public library in order to receive information and ideas.

ANSWER: Admit that Garrett has such a right subject to reasonable limitations,

terms and conditions.

22. Defendants' actions deprived Garrett of her right to access a public library in order to receive information and ideas.

ANSWER: Deny.

23. Defendants' actions were intentional, willful, and in reckless disregard of Garrett's clearly established rights as protected by the First and Fourteenth Amendments of the United States Constitution.

ANSWER: Deny.

24. Garrett has suffered damages as a result of Defendants' unlawful actions.

ANSWER: Deny.

Count II: Violations of ADA

25. Garrett hereby incorporates paragraphs one (1) through twenty-four (24) of her Complaint.

ANSWER: Bristol-Washington Public Library incorporates by reference its answers to paragraphs one (1) through (24) of the Complaint.

26. Town and Library have denied Garrett the benefits of the services, programs, and/or activities of a public entity because of her disability.

ANSWER: Deny.

27. The actions of Town and Library were intentional, willful, and in reckless disregard of Garrett's clearly established rights are protected by the ADA.

ANSWER: Deny.

28. Garrett has suffered damages as a result of the unlawful actions of Town and Library.

ANSWER: Deny.

Count II: Violations of Rehabilitation Act

29. Garrett hereby incorporates paragraphs one (1) through twenty-eight (28) of her Complaint.

ANSWER: Bristol-Washington Public Library incorporates by reference its answers to paragraphs one (1) through (28) of the Complaint

30. Town and Library have excluded Garrett from participate in, denied Garrett the benefits of, and/or subjected Garrett to discrimination under a program or activity receiving Federal financial assistance.

ANSWER: Deny.

31. The actions of Town and Library were intentional, willful, and in reckless disregard of Garrett's clearly established rights as protected by the Rehabilitation Act.

ANSWER: Deny.

32. Garrett has suffered damages as a result of the unlawful actions of Town and Library.

ANSWER: Deny.

WHEREFORE, the Defendant Library prays that the Plaintiff take nothing by way of her complaint and that the Court grant all other appropriate relief

AFFIRMATIVE DEFENSES

COMES NOW the Library and for its affirmative defenses states as follows:

1. The Complaint fails to state a claim on which relief can be granted.
2. The Plaintiff's actions were viewed by Library staff as a credible threat to the health and safety of Library staff and other patrons present, and the actions taken by the Library were

reasonable under the circumstances to protect against the credible threat.

3. The Library's intentions were not to discriminate against the Plaintiff because of her disability; the Library's intentions were to protect the staff, patrons and property of the Library.

4. The Plaintiff's actions had damaged the Library's property.

5. The Library asked for the assistance of legal authorities which was reasonable under the circumstances.

6. Patrons' use of the library is subject to reasonable restrictions including but not limited to the unwritten requirement that patrons not frighten Library staff and other patrons and that they not damage Library property. Plaintiff failed to abide by these restrictions.

7. The Plaintiff failed to mitigate damages by not contacting the Library by letter, phone, e-mail or other form of communication to request accommodations for her alleged illness.

8. The Plaintiff's claim is barred because of Plaintiff's failure to comply with the Indiana Tort Claims Act by giving notice.

9. The Plaintiff's claim is barred because of waiver, estoppel and/or laches.

10. The Plaintiff agreed to the procedure followed by the police and the Library.

11. The Plaintiff failed to ask for a reasonable accommodation.

12. The Plaintiff's disability was latent and Plaintiff failed to notify the Library of her latent disability and provide adequate proof thereof.

13. The Library's actions were to respond to an emergency condition, and, under the circumstances, were reasonable.

14. The Library's actions were intended to respond to a potentially threatening situation and, under the circumstances, were reasonable.

15. The Library has submitted this claim to its liability insurance carrier which has not

yet decided if there is coverage; this answer was prepared without the benefit of defense counsel hired by the insurance carrier. The Library reserves the right to add or remove affirmative defenses, to add counterclaims, and to change its responses to the Plaintiff's allegations so that the insurance carrier will have full opportunity to defend the case as it deems appropriate.

16. Defendant, Bristol-Washington Township Public Library, is entitled to qualified immunity from damages under 42 U.S.C. §1983 with respect to any claim of the Plaintiff based upon federal constitutional principles or federal law because its actions were objectively reasonable and did not violate clearly established principles of law.

Respectfully submitted,

THORNE GRODNIK, LLP

/s/ James R. Byron
James R. Byron (3068-20)
228 West High Street
Elkhart, IN 46516
(574) 294-7473
(574) 294-5390 (facsimile)
jbyron@tglaw.us
Attorney for Bristol-Washington
Public Library

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing amended answer was served, via regular United States mail, postage prepaid, on the 4th day of September, 2007, upon:

Philip J. Gibbons, Jr.
Andrew G. Jones
Haskin, Lauter, LaRue & Gibbons
255 North Alabama Street
Indianapolis, IN 46204

Mr. Martin J. Gardner
Gardner & Rans
Wells Fargo Bank Building
112 W. Jefferson, Suite 603
South Bend IN 46601

/s/ James R. Byron
James R. Byron