

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Case No.: 1:08-cv-119

EDWARD CARRINGTON, et al.,)
)
Plaintiffs,)
)
vs.)
)
DUKE UNIVERSITY, et al.)
)
Defendants.)

**REPLY MEMORANDUM OF DEFENDANT DAVID ADDISON
IN SUPPORT OF HIS MOTION TO DISMISS**

Defendant David Addison (hereinafter “Addison”), by and through his counsel of record, respectfully, submits this, his Reply to the “Plaintiffs’ Opposition to Defendant David Addison’s Motion to Dismiss Pursuant to Rule 12(b)(6).” (Doc. No. 90, hereinafter Plaintiffs’ Opposition to Addison’s Motion or “POA”).

In their Complaint, the Plaintiffs had named David Addison as an individual Defendant in one of their thirty-one counts (Count 25). He was also initially identified as a “supervisor” and listed among those who comprised the “Durham Supervisors.” (Complaint, ¶ 79). While not listed individually, the “Durham Supervisors” were named Defendants in seven counts of the Complaint (Counts 24, 26, 27, 28, 29, 30 and 31). In addition, Counts 22 and 23 listed “All Defendants” as the named Defendants which would presumably have included

David Addison. Thus, David Addison was individually named in only one count of the Complaint, but would have been presumptively included as a member of a grouping of Defendants (“Durham Supervisors” and “All Defendants”) in nine others.

In the Plaintiffs’ Opposition to Defendant David Addison’s Motion to Dismiss Pursuant to Rule 12(b)(6), they acknowledge that David Addison should not have been included as a member of the “Durham Supervisors” when they wrote: “it is a misnomer to refer to Addison as a “Durham Supervisor.” Plaintiffs regret the confusion.” (POA, p. 1). This effectively removed David Addison, as an individual Defendant in those seven Counts in which the “Durham Supervisors” are the named Defendants (Counts 24, 26, 27, 28, 29, 30 and 31). In addition, in the Plaintiffs’ Opposition to Defendant David Addison’s Motion to Dismiss Pursuant to Rule 12 (b)(6), they also agree that he should be dismissed as an individual Defendant in those Counts where his actions or inactions were undertaken “in his official capacity” as a Durham Police Officer when the City is a named Defendant in those same counts and would be the real party in interest. In their Conclusion, they stated that David Addison’s Motion to Dismiss “may be granted with respect to Counts 29 – 30 and with respect to the official-capacity claims in 8 (sic), 10 (sic), 20-22, 25-26, 28 and 31.” (POA, p. 9). This concession effectively removed David Addison from one of the two counts where he had been included among “All Defendants” (Count 22) and, by including Count 25 in this

list, the Plaintiffs have agreed that Addison's Motion to Dismiss should be granted on the only Count in which he was individually named as a Defendant.

The only remaining Count in the Complaint in which David Addison was included that is not dismissed by the Plaintiffs Opposition to his Motion to Dismiss is Count 23 (which names "All Defendants"). However, nowhere in their Opposition to David Addison's Motion to Dismiss Pursuant to Rule 12(b)(6) filing (Doc. No. 90) do they ever address Count 23 as it may relate to David Addison or make any argument as to why it should not be dismissed as to him.

Count 23 is identified as "Obstruction of and Conspiracy to Obstruct Public Justice." (Complaint ¶¶ 643 – 648). David Addison is not mentioned, by name, in any of those paragraphs which repeat the litany of perceived wrongs done to the Plaintiffs by the Defendants and the only individuals or group of individuals who are identified as responsible for this alleged obstruction and conspiracy to obstruct public justice are "Duke's officers, directors, and/or managers and *the Durham Supervisors* (who) participated in, ratified and condoned these actions." (emphasis added) (Complaint ¶ 647). Since the Plaintiffs concede that Addison is not a "Durham Supervisor," this reference would not include him. In that the Plaintiffs have chosen to not specifically oppose Addison's Motion to Dismiss Count 23 against him in their Opposition, there is nothing for him to now respond to with his Reply in regard to that Count and it should be dismissed. To the extent that the Court would feel that David Addison is required to make some further showing on this issue (other than was contained in his Memorandum in Support of his Motion

to Dismiss [Rule 12(b)(6), F.R.Civ.P., Doc. 59]), then he incorporates by reference Paragraph VI of the Reply of the City of Durham filed on behalf of all employees of the City of Durham as his Reply on this Court.

However, by the Plaintiffs' failure to address Count 23 in their filed Opposition to David Addison's Motion to Dismiss, the Court should find that they have abandoned this Count as to him and it should be dismissed.

CONCLUSION

For the reasons set forth initially in David Addison's Motion to Dismiss (Doc. 58) and his Memorandum of Law in Support of (his) Motion to Dismiss (Doc. 59); with the consent of the Plaintiffs that his Motion to Dismiss should be granted as to Counts 22, 24, 25, 26, 27, 28, 29, 30 and 31 as set forth above; and, for failure of the Plaintiffs to respond as to why Count 23 should not be dismissed as to him, David Addison respectfully requests the Court to Dismiss all claims against him, *individually*, arising out of the Complaint filed against him.

This the 26th day of September, 2008.

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Certificate of Service

I hereby certify that I have served a copy of the foregoing Reply Memorandum of Defendant David Addison in Support of his Motion to Dismiss upon the below listed individuals by electronically filing the document with the Clerk of Court on this date using the CM/ECF system which will send notification of such filing to the following counsel and Linwood Wilson, *Pro se*:

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This the 26th day of September, 2008.

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