

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Kurd v. Republic of Turk.

Kurd v. Republic of Turk., 374 F. Supp. 3d 37 (D.D.C. 2019) · Decided March 18, 2019

SUMMARY

In this 2019 D.C. District Court decision, plaintiffs alleged that civilian defendants assaulted and battered Kurdish protesters during a 2017 protest against Turkish President Erdogan in Washington, D.C. The court held that plaintiffs stated valid claims for assault, aiding-and-abetting battery (recognizing D.C. law permits aiding-abetting liability for common law torts under **Halberstam v. Welch**), and hate crimes under D.C. Code § 22-3704, but dismissed conspiracy-to-commit-battery claims for lack of factual allegations of an agreement. The court also dismissed 42 U.S.C. § 1985 civil rights claims because no state action was alleged for the deprivation clause and plaintiffs failed to adequately plead a conspiracy to violate First Amendment rights under the prevention clause.

CASE DETAILS

COURT	United States District Court for the District of Columbia
WRITING FOR THE COURT	Colleen Kollar-Kotelly
JURISDICTION	Federal
DECIDED	March 18, 2019
DISPOSITION	other
PROCEDURAL POSTURE	Motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).
STANDARD OF REVIEW	Under Rule 12(b)(6), the court accepts as true all well-pled factual allegations and draws all reasonable inferences in favor of the plaintiff. The complaint must contain sufficient factual matter to state a claim that is plausible on its face.
PRECEDENTIAL VALUE	Published

TOPICS

civil procedure

motions to dismiss

torts

intentional infliction of emotional distress

civil rights

first amendment

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether plaintiffs stated a claim for assault against defendants E. Yildirim, Narin, and A. Dereci.
2. Whether plaintiffs stated a claim for battery against defendants on theories of aiding and abetting and conspiracy.
3. Whether plaintiffs stated a claim for intentional infliction of emotional distress against defendants.
4. Whether plaintiffs stated a claim for hate crimes under D.C. Code § 22-3704 against defendants.
5. Whether plaintiffs stated a claim for civil rights violations under 42 U.S.C. § 1985 against defendants.

HOLDINGS

1. Plaintiffs sufficiently alleged that each defendant committed an intentional act that placed each plaintiff in reasonable apprehension of harmful or offensive contact. The court denied the motion to dismiss the assault claims.
2. Plaintiffs sufficiently alleged that defendants aided and abetted battery by knowingly and substantially assisting in the attacks. The court denied the motion to dismiss battery claims on aiding and abetting theory.
3. Plaintiffs failed to allege sufficient facts to establish an agreement among defendants to commit battery. The court granted the motion to dismiss the conspiracy-based battery claims without prejudice.
4. All plaintiffs except Kheirabadi sufficiently alleged extreme and outrageous conduct, intentional acts, and severe emotional distress. Kheirabadi's claim dismissed without prejudice for failure to allege severe emotional distress.
5. Plaintiffs sufficiently alleged that defendants committed a designated act (assault and aiding and abetting battery) with bias based on plaintiffs' Kurdish identity and anti-Erdogan political affiliation. The court denied the motion to dismiss.
6. Plaintiffs failed to state a claim under § 1985. The deprivation clause requires state action, which was not alleged. Even assuming the prevention clause does not require state action, plaintiffs failed to adequately allege a conspiracy to violate First Amendment rights.

KEY QUOTATIONS

"An assault is 'an intentional and unlawful attempt or threat, either by words or acts, to do physical harm to the victim.'" (46)

"A battery is 'an intentional act that causes harmful or offensive bodily contact.'" (48)

"Extreme and outrageous conduct is defined as conduct 'so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized community.'" (53)

“To survive a motion to dismiss for failure to state a claim, a plaintiff must set forth more than just conclusory allegations of an agreement.” (51)

FACTUAL BACKGROUND

In May 2017, during a protest against Turkish President Erdogan's visit to Washington D.C., plaintiffs were attacked by a group including defendants. The attack occurred in two phases. In the first attack, defendants pushed past police and physically assaulted protesters, including repeatedly hitting, punching, and kicking. In the second attack, after President Erdogan's arrival, defendants broke through a police cordon in a coordinated manner and attacked protesters again, with greater violence. Defendants allegedly yelled anti-Kurdish slurs and threats. Some defendants specifically targeted certain plaintiffs. The attacks were eventually stopped by law enforcement. Several defendants later pled guilty to assault charges.

PROCEDURAL HISTORY

Plaintiffs filed a complaint against the Republic of Turkey, Turkish security forces, and five civilian defendants. Defendants Eyup Yildirim, Sinan Narin, and Alpkenan Dereci filed partial motions to dismiss certain claims. The court addresses these motions.

DISPOSITION

other

CASES CITED

- Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007)
- Ashcroft v. Iqbal, 556 U.S. 662 (2009)
- Halberstam v. Welch, 705 F.2d 472 (D.C. Cir. 1983)
- Flax v. Schertler, 935 A.2d 1091 (D.C. 2007)
- Ortberg v. Goldman Sachs Grp., 64 A.3d 158 (D.C. 2013)
- Bray v. Alexandria Women's Health Clinic, 506 U.S. 263 (1993)
- Aboye v. U.S., 121 A.3d 1245 (D.C. 2015)
- Collier v. District of Columbia, 46 F.Supp.3d 6 (D.D.C. 2014)
- Morton v. District of Columbia Hous. Auth., 720 F.Supp.2d 1 (D.D.C. 2010)
- Ralls Corp. v. Comm. on Foreign Inv. in U.S., 758 F.3d 296 (D.C. Cir. 2014)
- United Brothers of Carpenters v. Scott, 463 U.S. 825 (1983)
- Bassi v. Patten, No. 07-1277, 2008 WL 4876326 (D.D.C. Nov. 12, 2008)