

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK

Donna S. Smith v. Michael J. DeVito

No. 6:23-CV-06465 EAW (W.D.N.Y. Mar. 2, 2026) · No. 6:23-CV-06465 EAW · Decided March 2, 2026

SUMMARY

The United States District Court for the Western District of New York grants Michael J. DeVito’s motion to dismiss Donna S. Smith’s claims arising from her termination as a provisional court reporter. The court dismisses the claims without prejudice, including claims under 42 U.S.C. § 1983, intentional infliction of emotional distress, pain and suffering, and potentially Title VII, while granting Smith 30 days to amend.

CASE DETAILS

COURT	United States District Court for the Western District of New York
WRITING FOR THE COURT	Elizabeth A. Wolford
JURISDICTION	United States District Court for the Western District of New York
DECIDED	March 2, 2026
DOCKET	6:23-CV-06465 EAW
DISPOSITION	other
PROCEDURAL POSTURE	Defendant moved under Federal Rule of Civil Procedure 12(b)(6) to dismiss a pro se plaintiff's claims under 42 U.S.C. § 1983, intentional infliction of emotional distress, negligence, and Title VII. The motion was granted, without prejudice, and plaintiff was granted thirty days to amend.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court considers the complaint, attached exhibits, and documents incorporated by reference, accepts well-pleaded factual allegations as true, draws reasonable inferences for the plaintiff, and asks whether the complaint states a facially plausible claim for relief.
PRECEDENTIAL VALUE	unpublished, nonprecedential district-court decision

TOPICS

- motions to dismiss
- civil procedure
- section 1983
- employment discrimination
- title vii

PRACTICE AREAS

civil procedure

civil rights

employment law

torts

QUESTIONS PRESENTED

1. Whether the complaint plausibly alleged a claim under 42 U.S.C. § 1983.
2. Whether the allegations stated a claim for intentional infliction of emotional distress under federal or New York law.
3. Whether the asserted pain-and-suffering claim stated an independent cause of action.
4. Whether the allegations stated a negligence or negligent supervision, hiring, training, or retention claim.
5. Whether plaintiff should be permitted to reassert a Title VII race-discrimination claim and plead administrative exhaustion and timeliness.

HOLDINGS

1. The complaint failed to state a plausible § 1983 claim because it did not identify the constitutional or federal right allegedly violated or explain how DeVito violated that right. The claim was dismissed without prejudice with leave to amend.
2. The allegations did not state an intentional-infliction-of-emotional-distress claim under § 1983 or New York law. The claim was dismissed without prejudice with leave to amend.
3. The third cause of action, characterized as pain and suffering from relocating between California and New York, was not an independent claim and was dismissed without prejudice.
4. To the extent the complaint intended to assert negligence in the wherefore clause, it failed to plausibly allege the elements of negligence. Any negligent supervision, hiring, training, or retention claim would also require allegations concerning the employee's known or reasonably discoverable propensity and conduct outside the scope of employment.
5. Because the complaint's claims were being dismissed and DeVito had not expressly addressed Title VII, plaintiff was permitted to reassert a Title VII claim in an amended complaint, but she was required to plead the basis for race discrimination and facts showing administrative exhaustion and compliance with the ninety-day filing requirement.

KEY QUOTATIONS

“Section 1983 itself creates no substantive rights; it provides only a procedure for redress for the deprivation of rights established elsewhere.” (Discussion II.A)

“For the foregoing reasons, the Court grants the motion to dismiss (Dkt. 13) but because of Plaintiff’s pro se status, the claims are dismissed without prejudice.” (Conclusion)

FACTUAL BACKGROUND

Smith alleged that DeVito provisionally hired her as a court reporter, failed to disclose rules governing the position, and ultimately fired her after she relocated from California to New York. She alleged that she was not

permitted to use audio synchronization to prepare transcripts, causing inaccurate records, and asserted claims based on alleged deception, a statement that they would get her eventually, failure to check on her after a workplace disturbance, and the resulting pain and suffering. An EEOC charge alleged that Smith, who is Black/African American, was hired as a provisional court reporter on or about April 28, 2022, and discharged on June 10, 2022, for poor work quality.

PROCEDURAL HISTORY

Smith initially filed the action in the Northern District of New York, which transferred it to the Western District of New York because the claims concerned events in Rochester. The court screened the complaint under 28 U.S.C. § 1915(e)(2) and allowed it to proceed to service, construing an EEOC charge as supplementing the complaint. DeVito moved to dismiss; Smith received multiple extensions to respond but filed no opposition. The court granted the motion without prejudice and allowed an amended complaint.

DISPOSITION

other

CASES CITED

- DiFolco v. MSNBC Cable L.L.C., 622 F.3d 104, 111 (2d Cir. 2010)
- Trs. of Upstate N.Y. Eng'rs Pension Fund v. Ivy Asset Mgmt., 843 F.3d 561, 566 (2d Cir. 2016)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 570 (2007)
- Turkmen v. Ashcroft, 589 F.3d 542, 546 (2d Cir. 2009)
- Ashcroft v. Iqbal, 556 U.S. 662, 676, 678 (2009)
- Nielsen v. AECOM Tech. Corp., 762 F.3d 214, 218 (2d Cir. 2014)
- Green v. United States, 260 F.3d 78, 83 (2d Cir. 2001)
- Gomez v. USAA Fed. Sav. Bank, 171 F.3d 794, 795 (2d Cir. 1999)
- Sykes v. James, 13 F.3d 515, 519 (2d Cir. 1993)
- City of Oklahoma City v. Tuttle, 471 U.S. 808, 816 (1985)
- Whalen v. County of Fulton, 126 F.3d 400, 405 (2d Cir. 1997)
- Eagleston v. Guido, 41 F.3d 865, 875-76 (2d Cir. 1994)
- Victory v. Pataki, 814 F.3d 47, 67 (2d Cir. 2016)
- Tangreti v. Bachmann, 983 F.3d 609, 618 (2d Cir. 2020)
- Nichols v. Livingston County, No. 6:18-CV-06669 EAW, 2019 WL 3935998, at *8 (W.D.N.Y. Aug. 20, 2019)
- Lamont v. City of New York, No. 12-CV-2478 WFK JMA, 2014 WL 4829328, at *7 n.7 (E.D.N.Y. Sept. 29, 2014)
- Howell v. N.Y. Post Co., Inc., 81 N.Y.2d 115, 121 (1993)
- Crout v. Haverfield Int'l, Inc., 269 F. Supp. 3d 90, 96 (W.D.N.Y. 2017)
- Lerner v. Fleet Bank, N.A., 459 F.3d 273, 286 (2d Cir. 2006)
- AA by BB v. Hammondsport Cent. Sch. Dist., 527 F. Supp. 3d 501, 508 (W.D.N.Y. 2021)

- N.U. v. East Islip Union Free Sch. Dist., 2017 WL 10456860, at *16 (E.D.N.Y. 2017)
- Felton v. Monroe Cmty. Coll., 579 F. Supp. 3d 400, 407-08 (W.D.N.Y. 2022)
- Collier v. Boymelgreen Dev., No. 06 CV 5425(SJ), 2007 WL 1452915, at *2 (E.D.N.Y. May 17, 2007)
- Van Zant v. KLM Royal Dutch Airlines, 80 F.3d 708, 712 (2d Cir. 1996)
- Coppedge v. United States, 369 U.S. 438 (1962)

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