

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-2030

KESHA T. WILLIAMS,

Plaintiff – Appellant,

v.

STACEY A. KINCAID, in her official capacity; XIN WANG, NP, in her individual and official capacities; DEPUTY GARCIA, in his individual and official capacities,

Defendants – Appellees.

AMERICAN CIVIL LIBERTIES UNION; BLACK AND PINK MASSACHUSETTS; GLBTQ LEGAL ADVOCATES & DEFENDERS; LAMBDA LEGAL; NATIONAL CENTER FOR LESBIAN RIGHTS; NATIONAL CENTER FOR TRANSGENDER EQUALITY; NATIONAL LGBTQ TASK FORCE; TRANS PEOPLE OF COLOR COALITION; TRANSCENDING BARRIERS (ATL); TRANSGENDER LEGAL DEFENSE & EDUCATION FUND; DISABILITY LAW CENTER OF VIRGINIA; DISABILITY RIGHTS VERMONT,

Amici Supporting Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Claude M. Hilton, Senior District Judge. (1:20-cv-01397-CMH-TCB)

Argued: March 11, 2022

Decided: August 16, 2022

Before MOTZ, HARRIS, and QUATTLEBAUM, Circuit Judges.

Reversed and remanded for further proceedings by published opinion. Judge Motz wrote the opinion, in which Judge Harris joined. Judge Quattlebaum wrote an opinion concurring in part and dissenting in part.

ARGUED: Joshua Harry Erlich, THE ERLICH LAW OFFICE, PLLC, Arlington, Virginia, for Appellant. Philip Corliss Krone, COOK CRAIG & FRANCUZENKO, PLLC, Fairfax, Virginia, for Appellees. **ON BRIEF:** Davia Craumer, Katherine L. Herrmann, THE ERLICH LAW OFFICE, PLLC, Arlington, Virginia, for Appellant. Alexander Francuzenko, COOK CRAIG & FRANCUZENKO, PLLC, Fairfax, Virginia, for Appellees. Shannon Minter, NATIONAL CENTER FOR LESBIAN RIGHTS, San Francisco, California; Jennifer Levi, GLBTQ LEGAL ADVOCATES & DEFENDERS, Boston, Massachusetts; Kevin M. Barry, QUINNPIAC UNIVERSITY SCHOOL OF LAW LEGAL CLINIC, Hamden, Connecticut, for Amici GLBTQ Legal Advocates & Defenders, National Center for Lesbian Rights, Lambda Legal, Transgender Legal Defense & Education Fund, Black and Pink Massachusetts, Transcending Barriers (ATL), National LGBTQ Task Force, The American Civil Liberties Union, The National Center for Transgender Equality, and Trans People of Color Coalition. John Cimino, Rebecca S. Herbig, Steven M. Traubert, DISABILITY LAW CENTER OF VIRGINIA, Richmond, Virginia, for Amici The disAbility Law Center of Virginia and Disability Rights Vermont.

DIANA GRIBBON MOTZ, Circuit Judge:

Kesha Williams, a transgender woman with gender dysphoria, spent six months incarcerated in the Fairfax County Adult Detention Center. Though prison deputies initially assigned her to women’s housing, they quickly moved her to men’s housing when they learned that she was transgender. There, she experienced delays in medical treatment for her gender dysphoria, harassment by other inmates, and persistent and intentional misgendering and harassment by prison deputies. Following her release from the detention center, Williams filed this § 1983 action against the Sheriff of Fairfax County, a prison deputy, and a prison nurse alleging violations of the Americans with Disabilities Act (“ADA”), the Rehabilitation Act, the United States Constitution, and state common law. The district court dismissed the case, holding that the complaint failed to state grounds for relief with respect to some claims and that the statute of limitations barred others. For the reasons that follow, we disagree and so reverse and remand for further proceedings.

I.

Because this is an appeal from a district court’s grant of a motion to dismiss, we must “assume the truth of the facts as alleged in [the] complaint.” *Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 249 (2009). We thus recount those facts.

Williams is a transgender woman whose gender identity (female) differs from the gender (male) she was assigned at birth. Prior to her incarceration, Williams changed her legal name and lived her life as a woman. Her home state of Maryland has recognized her gender as female and issued her a driver’s license with that designation. Williams suffers from gender dysphoria, a “discomfort or distress that is caused by a discrepancy between

a person's gender identity and that person's sex assigned at birth." Am. Compl. ¶ 12 (quoting the World Professional Association for Transgender Health Standards of Care (7th Version 2012) ("WPATH Standards")). People suffering from gender dysphoria often benefit from medical treatment, including hormone therapy. Williams had received such medical treatment in the form of a daily pill and biweekly injections for fifteen years prior to her incarceration.

At the outset of her incarceration, prison deputies searched Williams, assigned her housing on the women's side of the prison, and gave her uniforms typically provided to female inmates, including several bras and women's underwear. Later that same day, during her preliminary medical evaluation, Williams told the prison nurse, Xin Wang, that she is transgender, suffers from gender dysphoria, and for fifteen years had received hormone medical treatment for her gender dysphoria. Williams had brought this hormone medication with her to the prison and asked Nurse Wang to retrieve it for her. Nurse Wang did not return Williams' medicine to her; instead she instructed Williams to fill out a medical release form and indicated that prison healthcare staff would follow up with her soon.

In response to Nurse Wang's further questioning, Williams explained she had not undergone transfeminine bottom surgery. Because Williams retained the genitalia with which she was born, Nurse Wang labelled Williams as "male" and changed her prison records, including her housing assignment, to reflect that label. Pursuant to the prison's policy, which provides that "[m]ale inmates shall be classified as such if they have male genitals" and "[f]emale inmates shall be classified as such if they have female genitals,"

prison deputies required Williams to live on the men's side of the facility. Deputies also required her to give up the women's clothing she had previously received and to wear men's clothing.

As instructed by Nurse Wang, Williams filled out the medical release form later that same day. But two weeks went by without Williams receiving her prescribed hormone medication for gender dysphoria. As a result, Williams began experiencing significant mental and emotional distress. She requested a visit from a nurse, who directed her to fill out another medical release form. Williams did so. Nurse Wang received Williams' medical records on December 4, 2018, but did not approve the medication or re-initiate hormone treatment until on or about December 10. Subsequently, Nurse Wang failed to provide Williams with her approved and scheduled hormone treatment on two separate occasions.

While Williams was housed on the men's side of the prison, prison deputies repeatedly harassed her regarding her sex and gender identity. Deputies ignored her requests that they refer to her as a woman. Instead, they referred to her as "mister," "sir," "he," or "gentleman." Williams' requests for some accommodations — to shower privately and for body searches to be conducted by a female deputy — were denied. One deputy threatened to place her in solitary confinement if she resisted a search by a male deputy. Male inmates also harassed Williams, causing her to fear for her safety throughout her incarceration in male housing.

In January 2019, during a "shakedown" search of Williams' housing unit, Williams again requested that a female deputy conduct the body search. Despite the presence and

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