

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-2892

AARON ABADI,
Appellant

v.

TARGET CORPORATION,
AND NUMEROUS UNNAMED EMPLOYEES OF TARGET CORPORATION

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 2:22-cv-02854)
District Judge: Honorable Chad F. Kenney

Submitted Pursuant to Third Circuit LAR 34.1(a)
March 13, 2024
Before: JORDAN, PHIPPS, and NYGAARD, Circuit Judges

(Opinion filed: April 22, 2024)

OPINION*

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

PER CURIAM

Appellant Aaron Abadi, proceeding pro se, appeals from the District Court’s grant of judgment on the pleadings for defendants. For the following reasons, we will affirm.

Abadi filed a complaint against Target Corporation and unnamed Target employees in 2022. Dkt. No. 2. He alleged that, when he entered a Target store in Philadelphia in 2021, employees asked him to put on a face mask. Id. at 8. He refused, explaining that he was unable to wear a mask due to a sensory processing disorder. Id. The employees told him to put on a mask or leave the store, and Abadi left. Id. at 8-9. He contended that, in refusing to allow him to shop without a mask, defendants violated the Americans with Disabilities Act (“ADA”), the Rehabilitation Act, the Pennsylvania Human Relations Act (“PHRA”), and 42 U.S.C. §§ 1985 and 1986. Id. at 10-20. He sought compensatory, declaratory, and injunctive relief. Id. at 20-21.

The District Court sua sponte dismissed Abadi’s §§ 1985 and 1986 claims and granted defendants’ motion to dismiss as to the remaining claims. Dkt. Nos. 7 & 30. On appeal, we affirmed the District Court’s judgment as to all but Abadi’s PHRA claim, which we vacated and remanded to the District Court. Abadi v. Target Corp., C.A. No. 23-1050, 2023 WL 4045373 (3d Cir. June 16, 2023). Defendants filed a motion for judgment on the pleadings on the PHRA claim, asserting, inter alia, that they were allowed to deny Abadi access to the store because he posed a direct threat to the health

and safety of others. Dkt. No. 38. The District Court granted the motion on that ground, Dkt. Nos. 41-42, and Abadi filed a timely notice of appeal, Dkt. No. 43.

We have jurisdiction under 28 U.S.C. § 1291. We review de novo a district court's order granting a motion for judgment on the pleadings and apply the same standards as those for a motion made pursuant to Rule 12(b)(6). Bibbs v. Trans Union LLC, 43 F.4th 331, 339 (3d Cir. 2022). Judgment on the pleadings may be appropriate where an affirmative defense is apparent on the face of the complaint and no question of fact exists. See Blonder-Tongue Labs, Inc. v. Univ. of Ill. Found., 402 U.S. 313, 348 (1971). For the purposes of deciding the motion, "a court may only consider the complaint, exhibits attached to the complaint, matters of public record, as well as undisputedly authentic documents if the complainant's claims are based upon these documents." Wolfington v. Reconstructive Orthopaedic Assocs. II PC, 935 F.3d 187, 195 (3d Cir. 2019) (internal quotations omitted).

On appeal, Abadi argues that the District Court erred by concluding that defendants properly assessed whether Abadi constituted a direct threat before denying him access to the store. C.A. Dkt. No. 10 at 18-21. We disagree. The PHRA is interpreted in accord with the ADA, Buskirk v. Apollo Metals, 307 F.3d 160, 166 n.1 (3d Cir. 2002), and the ADA's direct threat exception "allows discrimination if a disability poses a direct threat to the health or safety of others," Doe v. Cnty. Of Ctr., PA, 242 F.3d 437, 447 (3d Cir. 2001) (internal quotations and citations omitted); see also 16 Pa. Code

§ 44.21. Entities deciding whether to deny access to a disabled person must determine whether the risk to the health or safety of others is significant; to do so, they must assess the nature, duration, and severity of the risk, and the probabilities the disease will be transmitted and will cause varying degrees of harm. Doe, 242 F.3d at 447-48 (citing Sch. Bd. of Nassau Cnty. v. Arline, 480 U.S. 273, 288 (1987)). The denial of access must be reasonable in light of the available objective medical evidence. Bragdon v. Abbott, 524 U.S. 624, 649-50 (1998) (explaining that the views of public health authorities, including the Centers for Disease Control (“CDC”), “are of special weight and authority” in this inquiry).

When Abadi entered the Target without a mask on in January 2021, there was no risk that Abadi’s sensory processing disorder would be transmitted and cause harm, but the consequence of that disorder—that he could not wear a mask—implicated the significant risk of respiratory transmission of COVID-19 and the related CDC’s masking guidelines.¹ At the time, the CDC indicated that COVID-19 was a highly transmissible virus that had contributed to more than 200,000 deaths in the United States, and half of

¹ We take judicial notice of the CDC’s December 2020 information about COVID-19 and its related recommended public health strategies as information publicly available on a government website. See Vanderklok v. United States, 868 F.3d 189, 205 n.16 (3d Cir. 2017); see also Gent v. CUNA Mut. Ins. Soc’y, 611 F.3d 79, 84 n.5 (1st Cir. 2010). Abadi also referred to the CDC guidance about masking in his complaint, Dkt. No. 2 at 3, so those guidelines are incorporated by reference. See Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, 322 (2007). We note that our ruling today speaks only to the record as presented in this case and the circumstances that existed in January of 2021.

the transmissions of the virus occurred from those without symptoms. See Dkt. No. 38-1 at 3-4. Vaccines for the virus were not readily available, and, according to the CDC at that time, “universal face mask use” was a “critical evidence-based” strategy to reduce respiratory transmission of COVID-19 indoors. Id. at 4 & 7. Accordingly, at that time, in light of the objective medical evidence and view of the CDC at that time, defendants reasonably denied Abadi’s access to the store because he was unable to wear a mask. See Doe, 242 F.3d at 448.

We will affirm the judgment of the District Court.