

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAR 19 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

PATRICIA A. GRANT, Ph.D.,

Plaintiff-Appellant,

v.

CLAUDIO GABRIEL ALPEROVICH; et
al.,

Defendants-Appellees.

No. 14-35288

D.C. No. 2:12-cv-01045-RSL
Western District of Washington,
Seattle

ORDER

Before: CANBY, TROTT, and GRABER, Circuit Judges.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to hear the matter en banc. *See Fed. R. App.*

P. 35.

Grant's petition for rehearing en banc (Docket Entry No. 75) is denied.

No further filings will be entertained in this closed case.

NOT FOR PUBLICATION

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MEMORANDUM*

**Appeal from the United States District Court
for the Western District of Washington
Robert S. Lasnik, District Judge, Presiding**

Submitted November 15, 2017**

Before: CANBY, TROTT, and GRABER, Circuit Judges.

Patricia A. Grant appeals pro se from the district court's summary judgment in favor of the defendants in her civil rights action alleging discrimination on the basis of her mental health disability, as well as her race, age, and gender, in the

*** This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.**

**** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).**

medical treatment of symptoms that she suffered following surgery. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Zetwick v. Cty. of Yolo*, 850 F.3d 436, 440 (9th Cir. 2017), and we affirm.

We affirm the district court's conclusion that the defendants were not liable for any violation of Grant's constitutional rights under 42 U.S.C. § 1983 because they did not act under color of state law. *See Chudacoff v. Univ. Med. Ctr. of S. Nev.*, 649 F.3d 1143, 1149 (9th Cir. 2011). Grant did not establish any genuine issue of material fact as to whether the defendants conspired to deprive her of the equal protection of the laws under 42 U.S.C. § 1985(3). *See Caldeira v. Cty. of Kauai*, 866 F.2d 1175, 1181 (9th Cir. 1989). She also did not establish any genuine issue of material fact regarding racial discrimination under Titles II, VI, and XI of the Civil Rights Act. *See Hardie v. Nat'l Collegiate Athletic Ass'n*, No. 15-55576, 2017 WL 4250174, at *1 (9th Cir. Sept. 11, 2017).

The district court did not err in granting summary judgment on Grant's claims under the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12132 & 12182(a). *See Ariz. ex rel. Goddard v. Harkins Amusement Enters., Inc.*, 603 F.3d 666, 670 (9th Cir. 2010) (setting forth elements of claim). The district court correctly concluded that Grant's assertion of discrimination in medical treatment decisions amounted to a claim of medical malpractice, rather than a claim of discrimination governed by the ADA.

Grant failed to exhaust administrative remedies under the Age Discrimination Act. *See* 42 U.S.C. § 6104(e)(1) & (2); 34 C.F.R. § 110.39. Neither the Health Insurance Portability and Accountability Act nor the statutes criminalizing health care fraud provide a private right of action. *See Garmon v. Cty. of L.A.*, 828 F.3d 837, 847 (9th Cir. 2016); *Logan v. U.S. Bank N.A.*, 722 F.3d 1163, 1170-71 (9th Cir. 2013).

The district court did not abuse its discretion in declining to exercise supplemental jurisdiction over Grant's remaining state law claims under 28 U.S.C. § 1367(a). *See* 28 U.S.C. § 1367(c); *Acri v. Varian Assocs., Inc.*, 114 F.3d 999, 1001 (9th Cir. 1997) (en banc).

Finally, the district court did not abuse its discretion in failing to grant a continuance for additional discovery. *See Atay v. Cty. of Maui*, 842 F.3d 688, 698 (9th Cir. 2016).

AFFIRMED.

United States District Court
WESTERN DISTRICT OF WASHINGTON

PATRICIA GRANT,

v.

JUDGMENT IN A CIVIL CASE

CLAUDIO GABRIEL ALPEROVICH, *et al.*

CASE NUMBER: C12-1045RSL

 Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

 X **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

THE COURT HAS ORDERED THAT

Judgment is entered against plaintiff and in favor of defendants.

April 2, 2014

William M. McCool
Clerk

/s/Rhonda Stiles
By, Deputy Clerk

**Additional material
from this filing is
available in the
Clerk's Office.**